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**Competition and Regulation in the Provision of Local Transportation Services – Note by
the United Kingdom**

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More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/competition-and-regulation-in-the-provision-of-local-transportation-services.htm>

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1. Introduction

1. Public transport in the United Kingdom (UK) is largely delivered by private enterprise, just as it was when the rail network was first built, starting from the 1820s. After a period of public ownership following nationalisation of rail and bus operators by the Transport Act 1947, nearly all of the UK's public transport networks have since reverted to private ownership or operation as a result of government interventions in the 1980s and 1990s.²

2. Government policy on bus and rail has led to periodic, significant changes in regulation and how competition works and this remains the case. In the 1980s, legislation led to local authorities transferring their bus operations to companies owned and operated at an "arm's length" and ultimately sold to private enterprise. Meanwhile by the 1990s, the privatisation of British Rail,³ led to the introduction of rail franchising and the advent of private enterprises once again operating passenger rail services in Great Britain.⁴

3. At the time of writing, both local bus and passenger rail services are experiencing further change, impacting on how competition works at a local and national level.

4. Local bus services are largely operated by a small number or large firms albeit with a large number of small independent firms competing in individual towns and cities, whereas rail franchises have been held by a small number of large transport businesses, which in some cases are subsidiaries or joint-ventures of foreign state-owned enterprises and which also often operate local bus services.

5. Meanwhile, the impact of innovation, such as through the advent of app-based 'taxi'⁵ booking platforms has highlighted how existing regulatory frameworks have struggled to keep pace. The rise of 'Mobility as a Service' (*MaaS*) be that through ride-hailing, ride-sharing, e-bike, e-scooter, automated vehicles and other demand responsive transport is likely to provide the next regulatory frontier as previously separate frameworks collide and create friction to innovation and the benefits of competition.

6. The COVID-19 pandemic has introduced further uncertainty to local transport markets. Social distancing, closure of non-essential retail and work-from-home

¹ Batzoglou, Ioanna and Kellaway, Paul. These are the views of the authors and should not necessarily be taken to be those of the CMA.

² The London Underground is one exception, but buses, light rail and heavy rail services in London are operated by private enterprise on a franchise or concession basis. A limited number of light rail and bus services are owned and operated at an arm's length by local authorities in England, Wales and Scotland (which together form the island of Great Britain).

³ State-owned company with control over British railways.

⁴ In Northern Ireland, the services are controlled by Northern Ireland Transport Holding Company (NITHC) a public corporation. Its responsibilities include holding and managing property assets and the oversight in terms of support, control and supervision of its private limited subsidiary companies (principal ones being Ulsterbus, Metro, and Northern Ireland Railways). NITHC is expected to operate commercially and has a duty to operate in line with Ministerial policy.

⁵ As noted below, the United Kingdom has separate regulatory regimes for taxis/hackney carriages which can be hailed on the street and private hire vehicles which must be pre-booked.

requirements and other restrictions all led to sharp reductions in usage. Bus and rail journeys in Great Britain fell by around 60%⁶, and 80%⁷ respectively between 2019/20 and 2020/1 and required government to provide additional financial support and in the case of rail to accelerate plans to reform the existing franchise arrangements.⁸

7. Evidence of the impact of COVID-19 has also been seen in the number of licensed taxi and private hire vehicle (PHV) drivers which decreased significantly between 2019 and 2021.⁹

8. Amidst these significant operational and regulatory developments, the CMA has taken an active role to advocate for policy measures that so far as possible, preserve competition for the benefit of consumers, while also discharging its sector specific statutory functions in these markets.

9. Whether it has been on road, rail, sea or air, the CMA has prioritised transport as a focus of its competition and consumer advocacy, developing close links with policymakers across the UK. The CMA's experience is that governments at all levels have implemented transport policy which has the potential to impact on how competition works, and on the economy as a whole. Transport and especially public transport is likely to remain a high priority area in the CMA's advocacy portfolio. Focusing on different modes of public transport – buses, rail, taxis and private hire vehicles – this paper provides insight into the CMA's experience with a particular focus on Great Britain and England.

2. Modes of Transport

2.1. Bus

10. In the Prime Minister, Boris Johnson's recent opening to the National Bus Strategy for England, buses were recognised to be at the centre of public transport network.¹⁰ However, usage and modal share in Great Britain have decreased since the 1950s, from 13 billion journeys (92 billion passenger kilometres) and a 42% modal share to around 5 billion journeys (33 billion passenger kilometres) and 4% modal share in 2019.¹¹

⁶ Gov.uk, [BUS0101: Passenger journeys on local bus services: Great Britain, annual from 1950. The data for bus refer to financial year, i.e. 2019/2020 compared to 2020/2021. Precise estimate is 62%.](#)

⁷ [Table 1220 - Passenger journeys | ORR Data Portal](#). Precise estimate is 78%. Due to an unprecedented number of season ticket refund claims the estimation methodology for 2020/1 was adapted, and as a result there is uncertainty in the 2020/1 data.

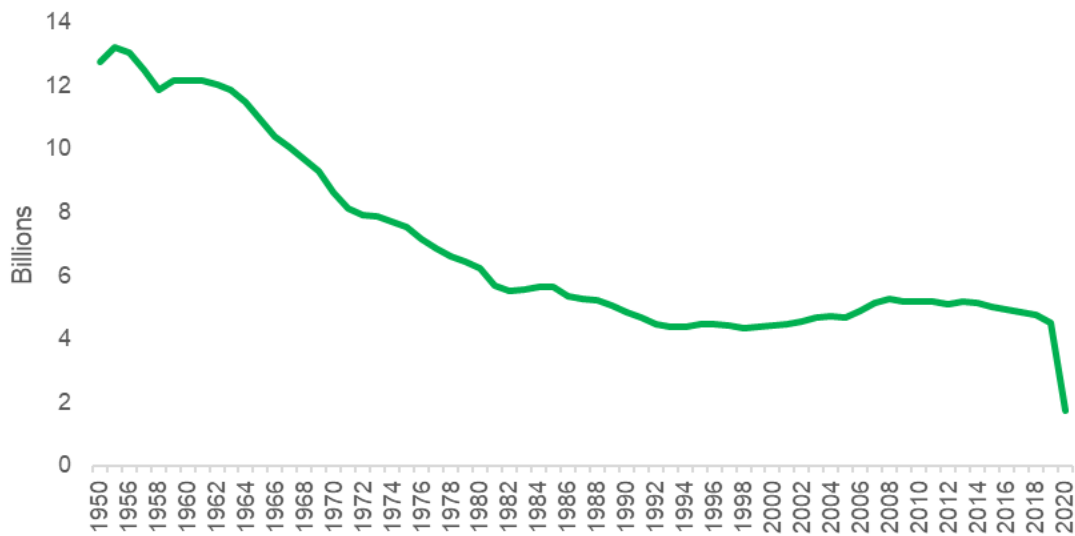
⁸ <https://www.gov.uk/government/speeches/supporting-vital-bus-services-recovery-funding>
<https://www.gov.uk/government/speeches/rail-update-emergency-recovery-measures-agreements>

⁹ Estimated for England and Wales at 17% for taxis and 14% for PHVs: [TAXI0102: Taxis, Private Hire Vehicles \(PHVs\) and their drivers by type of vehicle and licence: England and Wales](#). Data apply to change between 2019 and 2021.

¹⁰ As he said: “They [*buses*] get teenagers to college. They drive pensioners to see their friends. They connect people to jobs they couldn't otherwise take. They sustain town centres, they strengthen communities and they protect the environment. They are lifelines and they are liberators.”

¹¹ TSGB0101: Passenger transport by mode from 1952, UK Department for Transport. <https://www.gov.uk/government/statistical-data-sets/tsgb01-modal-comparisons>

Figure 1. Passenger journeys, local bus services in Great Britain (1950-2021)



Source: gov.uk, [BUS0101: Passenger journeys on local bus services: Great Britain, annual from 1950](#)

Note: Data presented in calendar year up to 1984 when it changed to financial year (from 1985/86 to 2020/21). There is a break in 2004/5 due to a change in methodology, for 2004/05 data reflect the old methodology.

11. By the 1970s, falling patronage meant that bus operators struggled to cover their operating costs through fare revenue, relying instead on local authorities to subsidise shortfalls, particularly in rural areas. What followed was significant deregulation through the Transport Act 1985 ('the 1985 Act').¹² Licensing of bus routes was abolished outside of London, significantly increasing the opportunity for competition 'on the road' for the first time since nationalisation.¹³

12. The significance of the private sector in local bus markets increased, through both new entry and privatisation of both the National Bus Company and the newly incorporated municipal bus companies.¹⁴ The private sector's share of bus revenues increased from 25% in 1985, to about 93% in 1997¹⁵ and has remained at a similar level since. This increase has coincided with significant consolidation and concentration with five large operators emerging, currently having an estimated combined 80% share of the national bus market.¹⁶

¹² Transport Act 1985. <https://www.legislation.gov.uk/ukpga/1985/67/contents>

¹³ The previous long-standing system, introduced by the Road Traffic Act 1930, gave powers to regional traffic commissioners to control the licensing of (predominantly) publicly owned services, and specifying the route, operator, timetable and fare scale for each service. Buses. House of Commons Library Research Paper 99/59, June 1999 <https://commonslibrary.parliament.uk/research-briefings/rp99-59>

¹⁴ The 1985 Act also required local authorities to transfer their bus operations into dedicated companies (and granted the power to local authorities to dispose of them). Privatisation came through acquisition by existing bus companies and management buy-outs.

¹⁵ Buses. House of Commons Library Research Paper 99/59, June 1999 Northern Ireland (where the new rules did not apply), the industry continues to be regulated, and buses are state-owned. <https://commonslibrary.parliament.uk/research-briefings/rp99-59>

¹⁶ <https://www.stagecoachgroup.com/about/our-companies/market-share.aspx>

At a local level, concentration can be even greater, with one firm holding a 94% market share in the West Midlands region of England (which includes Birmingham, the UK's second largest city) with 12 other operators providing services in the region.

13. Despite the overall trend towards deregulation since the 1980s, the industry retained certain regulatory features. The 1985 Act gave Traffic Commissioners responsibility for applying entry standards for example, and for ensuring standards were maintained (but were not responsible for network design). Quality partnerships involving bus operators investing in better services like new vehicles and staff training, and local authorities improving bus facilities, were also trialled, although, without being enshrined in statute, and with limits in terms of scale and ambition, had little impact.¹⁷

14. The intensity of competition that followed the 1985 Act in some parts of Great Britain was striking and led to what has been described quite simply as 'bus wars'. The Competition Commission (CC), a predecessor to the CMA, noted petty behaviours including 'aggressive driving' (and 'hoovering up' passengers at busy stops), incumbents 'providing misleading information' about competing services at bus station information points and even denying rival drivers' access to canteen facilities. Fare competition on the other hand was limited to entrants matching incumbents' pricing. Levels of new-entry also varied across the country.¹⁸

15. The nature of operator conduct could have some impact on the viability of rival operators. One notable example was during the sale process of a municipal bus company in 1994 when the conduct of one private operator who had unsuccessfully bid to buy the municipal bus company was sufficiently egregious to be described as "predatory, deplorable and against the public interest" and led to the collapse of the municipal bus company.¹⁹

16. Bus companies have sought action by the relevant competition authority to address perceived anticompetitive action and the CMA's predecessor the Office for Fair Trading (OFT) considered a number of allegations, including a complaint from a municipal bus company against a large transport group, which was found by the OFT not to have abused a dominant position.²⁰

17. Alleged anti-competitive conduct has not been limited to the private sector. In 2008, the OFT found that Cardiff Bus, a municipal bus company had abused its dominant position between 2004 and 2005. In that case Cardiff Bus, which had a market share of around 70%

Go ahead, Annual Report and Accounts, for the year ended 27 July 2021, page 42. <https://www.go-ahead.com/investors/results-reports-and-presentations>

¹⁷ Buses. House of Commons Library Research Paper 99/59, June 1999 <https://commonslibrary.parliament.uk/research-briefings/rp99-59/>

¹⁸ In Greater Manchester for example around 40 firms registered services following deregulation and 26 in West Yorkshire but only seven in Tyne and Wear. Paragraphs 2.29-2.30. [CC Final Report](#)

¹⁹ Having failed to make a successful bid to buy the company, the operator was alleged to have poached 60 of the municipal bus company's 88 staff through the payment of significant joining bonuses. As a result the municipal bus company could not operate and ceased trading. 'The supply of bus services in the north-east of England', Monopolies and Merges Commission, 1995. https://webarchive.nationalarchives.gov.uk/ukgwa/20120120004948/http://www.competition-commission.org.uk/rep_pub/reports/1995/371bus.htm#summary

²⁰

<https://webarchive.nationalarchives.gov.uk/ukgwa/20140402160247/http://www.oft.gov.uk/OFTwork/competition-act-and-cartels/ca98/decisions/lothian>

in and around Cardiff deliberately launched a ‘no-frills’ budget bus service that duplicated and undercut (at a financial loss) those planned by a new entrant which would compete with its own existing services. The new entrant ultimately failed and exited the market, at which point Cardiff Bus immediately ceased its no-frills service.²¹

18. The role of regulation was notable in that instance, because under the 1985 Act, Cardiff Bus as an incumbent was able to introduce its new no-frills service in parallel with its existing services without notification. The new entrant however had to give 56 days’ notice which allowed Cardiff Bus to anticipate and respond to the planned entry with its reserve fleet of vehicles.

19. In Scotland ‘bus wars’ similarly took place with one operator attempting to eliminate an incumbent by using the same livery, name, service number, route and tickets.²² In Glasgow three companies were summoned to a public hearing over ‘multiple and significant’ breaches of traffic regulations including poaching passengers and blocking bus stops.²³

20. Further changes in England and Wales were introduced through the Transport Act 2000 (‘the 2000 act’), which introduced ‘Quality Contract Schemes’ (QCS) and ‘Quality Partnership Schemes’ (QPS). Both of these allowed local transport authorities different opportunities to shape their local bus market by formalising how collaboration with private operators would work.²⁴ QCS in particular was intended to provide franchise-like agreements but remained untested for 15 years and ultimately did not deliver franchising.²⁵

21. Against this historic background, in 2011, the CC conducted a market investigation into local bus services markets across Great Britain, finding that head-to-head competition in the bus services market was often uncommon, and identified key features in the market that contributed to this.²⁶ Using the Commission’s information gathering powers it assessed concentration in every urban area in Great Britain.

22. The independent Group overseeing the investigation found that (i) head-to-head competition in the supply of local bus services was uncommon, (ii) that anticipation of costly, short-lived rivalry created a barrier to entry and expansion and (iii) that many local markets exhibited persistently high levels of concentration. Where ongoing sustained head-to-head competition was found, it was noted to deliver significant benefits to customers.

²¹ [Cardiff Bus: alleged abuse of a dominant position](#), Office for Fair Trading, 18 November 2008

²² http://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/7504474.stm

²³ <https://www.dailyrecord.co.uk/news/scottish-news/chiefs-to-be-quizzed-over-alleged-bus-1056266>

²⁴ <https://researchbriefings.files.parliament.uk/documents/RP99-59/RP99-59.pdf>, page 30.

²⁵ Only one attempt to introduce franchising was made through QCS and only starting some 12 years after the 2000 act created the opportunity. In that case, the QCS was prohibited by the QCS Board (chaired by the regional Traffic Commissioner) after a three year process as the Board found that the transport authority was unable to demonstrate it would deliver greater benefits than those proposed by a voluntary partnership proposed by local private operators, did not deliver value for money and would have a disproportionate adverse effect on operators. <https://www.gov.uk/government/news/qcs-board-publishes-report-on-tyne-and-wear-scheme>

²⁶ These were: high levels of concentration; barriers to entry and expansion; customer conduct in deciding which bus to catch; and operator conduct by which operators avoid competing with other operators in certain territories, leading to geographical segregation

The remedies chosen by the Group focused on operator conduct and recommendations to government and transport authorities on measures to promote competition.²⁷

23. The Group noted that while it had not adopted franchising as a remedy it recognised that transport authorities had wider social and policy objectives that the Group could not consider as part of its investigation and that authorities could legitimately use franchising to address problems.

24. As we turn to the most recent, policy and legislative developments, it is clear that a) policymakers at a national and local level have grappled with how manage local bus markets and what form regulation should take, and that b) deregulation and subsequent efforts could not necessarily slow the decline in bus use, that started in the mid 20th century, other than in London, which had experienced a different regulatory path.²⁸

Figure 2. % change in passenger journeys compared to 1985/6 (base), 1985/6-2019/20



Source: gov.uk . [BUS0108: Passenger journeys on local bus services by region: Great Britain, annual since 1970](#)

Note: There is a break in 2004/5 due to a change in methodology, for 2004/05 data reflect the old methodology.

²⁷ The Group concluded that, compared with the possible introduction of franchising, its remedy package directly addressed the Adverse Effects on Competition it had found, was at least as effective in addressing the associated customer detriment and was less costly and therefore a more proportionate solution

²⁸ In London, the London Regional Transport Act 1984 gave control of London's public transport to 'London Regional Transport' under the supervision of the Secretary of State for Transport and placed an obligation on it to tender for services. This ultimately led to privatisation of its own bus operations in 1994-95 which had been a [manifesto commitment](#) of the government in the lead up to the 1992 General Election but subsequently managed through franchising.

25. More recently, the Bus Services Act (BSA) 2017, has provided new powers for local authorities in England, to improve local bus service through either Enhanced Partnerships (EPs) or franchising with a simplified process compared to the requirements of QCS.²⁹ Given the potential impact on competition of further bus reform, the CMA exercised its power to comment on the draft legislation when it was introduced to Parliament. The CMA recommended that any process took into consideration effects on competition and the interest of consumers.³⁰ The CMA recognised that franchising could be appropriate in certain circumstances but emphasized that competition for the market should substitute on-road competition, only when this is clearly “*the only way to secure better outcomes for the travelling public*”. The government agreed with the CMA’s recommendations.³¹

26. Under the BSA 2017 the CMA has specific roles for both EPs and franchising to ensure competition is considered. As part of the process for introducing EPs, transport authorities must both consult the CMA and conduct a competition test, which requires an assessment of whether a scheme would have a significant adverse effect on competition.³²

27. Where the CMA believes the competition test has not been met for a proposed EP, it has powers to launch a statutory investigation (separate to any other antitrust or markets tools) and as a result direct the authority to amend the EP. In contrast, franchising does not have a statutory competition test, even though the impact of franchising is likely to be much more significant. The CMA however does have a role as a statutory consultee. This revised model of franchising has reduced the ‘hoops’ an authority must go through, but is not without legal risk and is a significant draw on an authority’s resource.

28. The Greater Manchester transport authority launched its consultation on introducing bus franchising in 2019 which the CMA responded to, having first digested around 1,000 pages of supporting documents. After deciding to proceed with franchising, the proposals were then subjected to judicial review, which found in favour of the authority, but at the time of writing is subject to further appeal by one operator. Implementation of franchising in Greater Manchester is expected by 2025, making this at least a five year process.

²⁹ As a result of devolution, transport policy now sits with each of the four governments of the United Kingdom. Equivalent provisions are broadly in place or are anticipated to be introduced in Scotland and Wales.

³⁰ <https://www.gov.uk/government/publications/bus-services-bill-cma-recommendations-to-ministers-and-government-response> <https://www.gov.uk/government/publications/bus-services-bill-cma-response>. A summary of recommendations and responses is available at: <https://www.gov.uk/government/publications/cma-recommendations-to-government/bus-services-bill-cma-recommendations-and-dft-response>

³¹ https://webarchive.nationalarchives.gov.uk/ukgwa/20170204005355/https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/558490/cma-response.pdf

Also see: <https://researchbriefings.files.parliament.uk/documents/CBP-7545/CBP-7545.pdf>

³² Even where a significant adverse effect on competition is found, it may be justified by the authority as part of the competition test on the grounds that it is necessary to deliver bus improvement objectives.

29. EPs and franchising gained further momentum in 2021, when the UK government introduced its National Bus Strategy ('Bus Back Better') for England, making access to funding for buses conditional on local authorities pursuing an EP or franchising.^{33,34}

30. Local authorities in England, have been developing their Enhanced Partnership (EP) plans and schemes over recent months, outlining obligations for authorities as well as operators. The partnerships aim to improve several aspects of the bus experience for passengers, for example through better integration with other modes of transport, better bus infrastructure, improved timetable reliability, facilities, and vehicle emission standards as well as simpler ticketing options. These plans have yet to come to fruition but suggest a new wave of impacts on local bus markets.

31. Having advocated for the need to consider competition even before the BSA 2017 was introduced and as EPs developed on the back of the 'Bus back better strategy', the CMA has experienced a significant draw on its advocacy resource as a result of the statutory role introduced by the BSA 2017. As of May 2022, the CMA's advocacy team have reviewed nearly 50 proposed EPs, and have provided comments

32. While not being in a position to provide legal assurances, about the potential impacts of the plans and schemes on competition, the advocacy team has been offering general feedback, focused on principle-based comments about potential impacts on competition and mitigations of any adverse effects (aspects of interest include for example multi-operator ticketing, branding, vehicle standards/ requirements, and EP governance arrangements). Needless to say, the CMA had not anticipated prior to the National Bus Strategy that its views on local bus markets would be so actively sought by so many authorities.

33. With several city-regions in England declaring their interest in introducing franchising in response to the Bus Strategy it is to be seen what the impact of the bus strategy in England will be, but will be one the CMA follows with keen interest.

34. Outside of England, both Scotland and Wales are at different stages of their plans to reform their local bus markets. The Scottish parliament has passed the Transport (Scotland) Act 2019 to allow local authorities to operate municipal bus companies as well as introducing equivalent provisions in relation to EPs and franchising as England.³⁵ The Welsh Government has announced its plans to introduce similar legislation to facilitate franchising and for local authorities to create municipal bus companies.³⁶

2.2. Rail

35. In some respects, rail has followed a similar trajectory to buses. Passenger rail transport in Great Britain has undergone two phases since the middle of the twentieth

³³ See The National Bus Strategy: delivering Bus Service Improvement Plans using an Enhanced Partnership (guidance) Bus Services Act 2017: Enhanced Partnerships, <https://www.gov.uk/government/publications/bus-services-act-2017-enhanced-partnership-creation>

³⁴ Bus back better - national strategy for England. <https://www.gov.uk/government/publications/bus-back-better>

³⁵ <https://www.transport.gov.scot/news/more-flexible-powers-to-improve-bus-services> Enabling legislation to allow municipal bus companies to operate from July 2022 and for franchising and partnerships from the end of 2023 has been announced

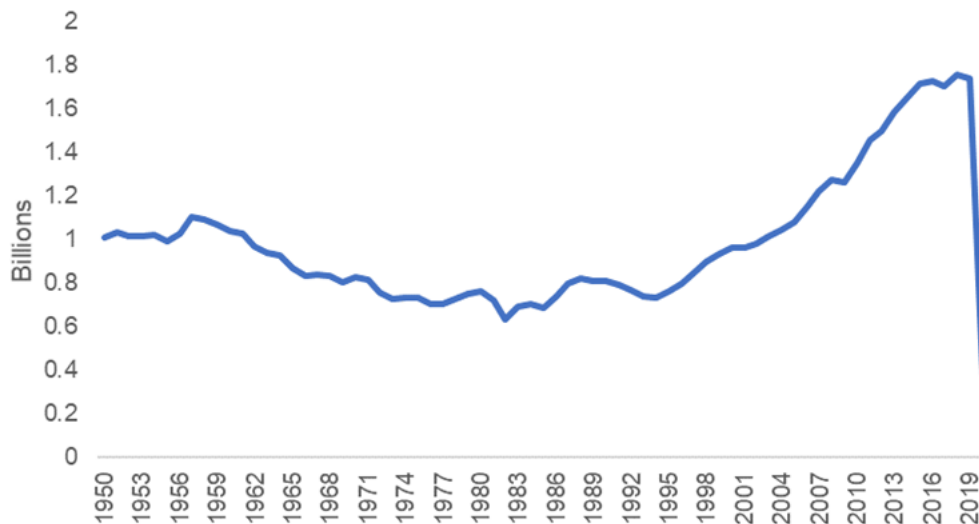
³⁶ <https://gov.wales/one-network-one-timetable-one-ticket-planning-buses-public-service-wales>

century, commencing with the nationalisation of the railways by the Transport Act 1947³⁷ before their subsequent privatisation in the 1990s by the Railways Act 1993.³⁸

36. The privatised rail network however operates through a series of franchises which are focused on operating services on either a series of rail lines in a given area, or for longer-distance intercity routes on one of the ‘mainlines’. Franchisees were responsible for generating revenue and managing their costs, albeit adjusted by either a subsidy or a premium paid to the government. Rail franchises could overlap each other, running services on the same tracks with, in some cases, one franchise potentially operating local ‘stopping’ services and another operating ‘express’ services. Passengers are restricted to which service they can use according to the type of ticket purchased.

37. In terms of usage, rail is used less frequently than bus, with fewer journeys, but unlike buses, journey numbers had been increasing in recent years. Its use is however predominantly focused on journeys to, from or within London, with two-thirds of journeys starting or ending in London.³⁹ The sharp decline caused by Covid is an exception to this, but there are signs of a revival, though the adoption of hybrid working may change usage patterns.

Figure 3. Rail Passenger journeys in Great Britain (annual) 1950-2020



Note: Data are annual (calendar year) up to 1983, and they change to annual (financial year) from 1984-85 onwards. 2020/21 data not available for full year.

Source: ORR. [Table 1220 - Passenger journeys | ORR Data Portal](#).

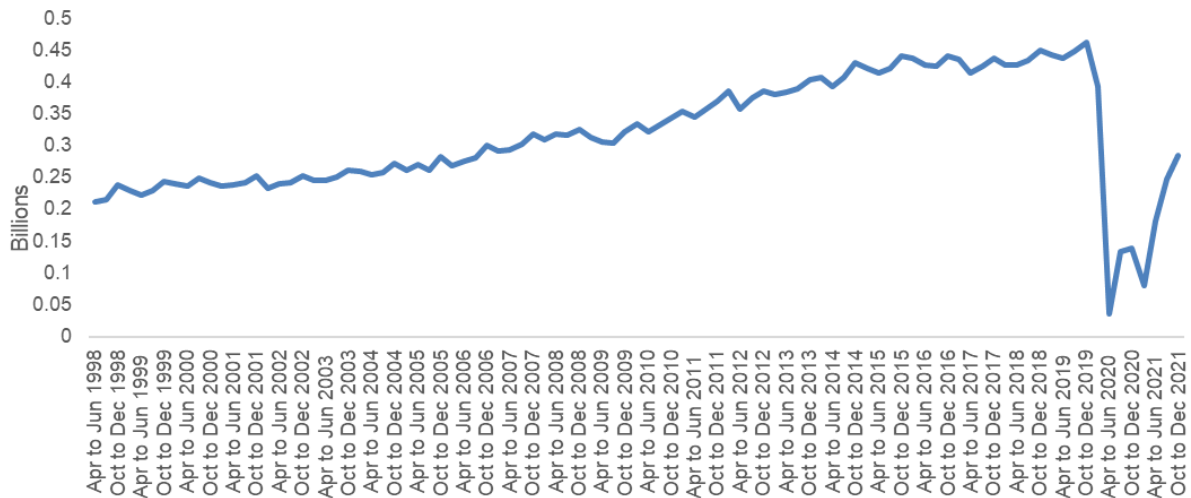
³⁷ <https://www.legislation.gov.uk/ukpga/Geo6/10-11/49/enacted>

³⁸ <https://www.legislation.gov.uk/ukpga/1993/43/contents>

³⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921331/rail-passengers-crowding-2019.pdf Pre-pandemic, London had 1.1million daily journeys by rail, compared to Birmingham, the second highest city with 136,000 daily journeys. This excludes the London Underground, which pre-pandemic had ridership of around 4 million journeys per day.

Figure 4. Quarterly passenger journeys on rail (April 1998- December 2021)



Note: Data include all journeys (total franchised journeys, plus non-franchised operators). April 2020 to March 2021 uses an alternative methodology to account for the high number of season ticket refund claims, due to COVID-19.

Source: ORR. [Table 1221 - Passenger journeys by sector | ORR Data Portal](#).

38. The CMA has had a particular role in rail franchising, as the award of a rail franchise has been treated as a *relevant merger situation* and the need to be considered by the CMA's merger control function. Merger assessments include consideration of overlapping franchises held by the same franchisee ('rail-rail' overlaps)⁴⁰ as well as where a franchise might compete with local bus services and the prospective franchisee might also operate local buses ('rail-bus' overlaps).⁴¹ The CMA has issued dedicated guidance on rail mergers.⁴²

39. In contrast to buses, the rail network is overseen by a single national regulator, the Office of Rail and Road (ORR), which has concurrent competition enforcement powers. In 2016, on the back of engagement with ORR⁴³ and following a public consultation, the CMA published a policy document on how greater competition could benefit rail passengers.⁴⁴

40. The CMA set out four possible options for increasing on-track competition in rail, three of which related to the existing system of awarding franchises namely (i) promoting greater use of open-access operators, (ii) awarding franchises to two or more operating companies for the same franchise area and (iii) overlapping franchise areas.

⁴⁰ An example are services to Exeter from London which use branches of either the Great Western mainline from London Paddington or the South West Main Line from London Waterloo the franchises for which are held by controlled by one TOC. <https://www.gov.uk/cma-cases/firstgroup-and-mtr-south-western-rail-franchise-merger-inquiry>

⁴¹ For example <https://www.gov.uk/cma-cases/arriva-rail-north-northern-rail-franchise-merger-inquiry>

⁴² <https://www.gov.uk/government/publications/rail-franchises-questions-and-answers>

⁴³ <https://www.gov.uk/government/news/cma-to-examine-scope-for-greater-rail-competition-for-passengers>

⁴⁴ <https://www.gov.uk/cma-cases/passenger-rail-services-competition-policy-project#final-policy-document>

41. The fourth option was a shift towards a licensing model in one or more current franchise areas which would allow train operating companies to apply to operate a route. A central planning body could then require licence holders to operate that service in a specific way such as including a social obligation.⁴⁵ Other operators would be able to apply to run alternative services on those routes.

42. The CMA's recommendation was for greater use of open access operators together with awarding franchises to two or more operating companies in parts of the network where this could be most beneficial to increase competition in the medium term, and in favour of considering a shift towards the licensing model over the longer term.

43. However, policy developments have progressed since then, with implications for the future operational model of the rail sector. In September 2018, Keith Williams was commissioned to look at the structure of the rail industry and how it delivered for the passenger and was due to publish in early 2020. However, the impact of COVID-19 was significant, with rail franchises financially supported by the government through Emergency Measures Agreements, initially described as a temporary measure in March.⁴⁶ By September 2020 these had been converted to Emergency Recovery Measures Agreements (ERMAs) when the government stated that they were 'designed to bring the rail franchising system to an end' and effectively transitioned the franchises to concessions operating under management contracts.⁴⁷

44. Following the interruption of COVID-19 the 'Williams-Shapps Plan for Rail', was published in May 2021.⁴⁸ This plan, envisaged the creation of Great British Railways (GBR), a new public body, intended to own the rail infrastructure as well as managing the network, delivered by private companies operating concessions and financial risk. The plan sets out amongst other things that:

- Franchising will be replaced by passenger service contracts, to improve reliability, efficiency and performance.
- The operational model will change, as operators will deliver the specification and manage the costs, whilst GBR will specify fares, aspects of the service and timetables, and do agree a fee for a competitive-procured operator to provide this.
- GBR will also replace the current (public sector) owner of rail infrastructure, Network Rail.
- Where there is spare capacity new open access services will be explored.
- Barriers to investment will be removed through modernised approval processes, simpler procurement, open data sharing and sandboxes.

45. How this shift from a franchise to the new model will affect competition and crucially the passenger experience is not yet fully clear. It is likely that under the new model

⁴⁵ Licensing arrangements currently exist in, for example, energy, water, telecoms and postal services. Licences in these sectors require providers to undertake a social activity which they would be unlikely to provide otherwise.

⁴⁶ <https://www.gov.uk/government/speeches/rail-emergency-measures-during-the-covid-19-pandemic>

⁴⁷ <https://www.gov.uk/government/speeches/rail-update-emergency-recovery-measures-agreements>

⁴⁸ Great British Railways: Williams-Shapps plan for rail, <https://www.gov.uk/government/publications/great-british-railways-williams-shapps-plan-for-rail>

competition will principally continue to happen ‘for the market’ (through a government tender process) rather than on the rail.⁴⁹

46. The CMA has been engaging with DfT throughout the rail reform process, both before and after the announcement of the Williams-Shapps plan, providing advice on implementing reforms in a way that, as far as possible and consistent with other policy objectives, promotes competition for the benefit of consumers and avoids disproportionate restrictions to competition when these are not necessary to implement reforms.

2.3. Taxi and Private Hire Vehicles

47. Taxis and private hire vehicles, unlike bus and rail, are non-ticketed means of public transport, but, like bus and rail, they have seen similarly profound changes over recent years. In the United Kingdom (and its constituent four nations), there are different regulatory frameworks for ‘taxis’ (or ‘hackney carriages’) which may be hailed on the street and ‘private hire vehicles’ which must be pre-booked. The regulations that each type of service must abide by varies by local authority with some local authorities setting volume limits.

48. The CMA and its predecessor, the OFT have had longstanding interest in how competition works in these markets.⁵⁰ The rise of online booking and especially ‘app’ based booking platforms has led to convergence of how the two forms of transport are used which has given rise to issues of how competition and regulation interact.

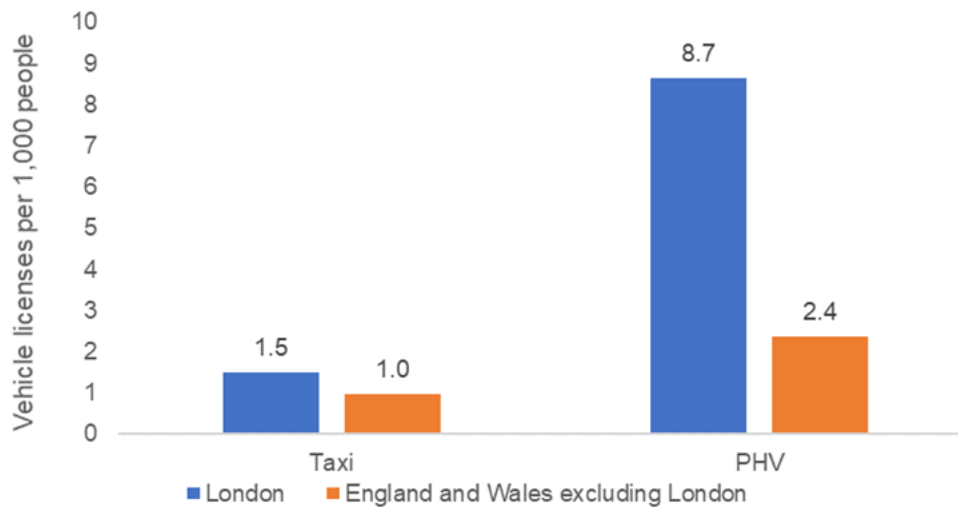
49. A significant driver of the CMA’s advocacy work in this sector has been prompted by local authorities seeking to amend their regulatory and licensing approach in response to developments in the private hire industry, including the emergence of new app-based technologies. Transport for London and some other large licensing authorities in England, had been concerned that PHV bookings through apps largely mimic the way customers use taxis, thus allowing some PHVs to serve taxi customers, whilst shouldering a lighter regulatory burden.⁵¹

⁴⁹ The government has stated there is scope for open access operators.

⁵⁰ This is in part summarised in the CMA’s previous contribution in Taxi, ride-sourcing and ride-sharing services - Summaries of Contributions, Working Party No. 2 on Competition and Regulation, June 2018. [https://one.oecd.org/document/DAF/COMP/WP2/WD\(2018\)1/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2018)1/en/pdf)

⁵¹ Taxi drivers, for example, are typically required to undertake an examination of their local ‘knowledge’ of routes in the relevant area and in many locations are required to have accessible vehicles (which tend to be larger and more expensive), which is not the case for PHVs.

Figure 5. Taxis and PHV per 1,000 people, 2021



Note: Population is mid 2019 estimate.

Source: gov.uk [TAXI0105: Taxis and Private Hire Vehicles \(PHVs\) per thousand people: England and Wales by licensing area and rural-urban classification, 31 March 2021](#).

50. A review of legislation in England and Wales in 2014 (following an initial consultation in 2012) recognised the benefits for consumer choice from maintaining the two-tier system but made recommendations to modernise the framework.⁵² This review, however, did not fully anticipate the impact of app-based booking and the ability to effectively ‘hail’ a PHV via a mobile device.

51. It was also around this time that tensions between local authorities and representatives of taxis and PHV operators increased, particularly as the number of PHV drivers and vehicles increased.⁵³ The CMA found itself in the middle of debates on the nature of regulation some of which intersected with issues of safeguarding and effective and sustainable enforcement.⁵⁴

52. Tensions also exist between licensing authorities as a result of the varying standards set by licensing authorities across the country. It is perceived that some PHV operators and drivers engage in regulator shopping, licensing with for authorities with perceived lower regulatory standards, more efficient processing or lower licensing costs. One small area in the North West of England was found to have a taxi driver licensed for every 19 inhabitants, compared to one for every thousand people across England (Figure 5, above) as a result of

⁵² The oldest extant statute relating to the regulation of taxis dates to 1847. The proposed draft legislation was not however implemented.

⁵³ The number of PHVs in London increased by 89% and drivers by 82% between 2011 and 2020. [TAXI0101: Taxis, Private Hire Vehicles \(PHVs\) and their drivers: England and Wales](#). There was a more limited increase of 35% in vehicles and 26% in drivers in England and Wales outside of London.

⁵⁴ PHV operators are able to be licensed in one local authority (and pay a licence fee to that authority) but operate in another authority. However, only the licensing authority would be able to impose penalties for any breach of its regulations. As a result, the cost of enforcement did not align with local authority revenues, or indeed the ability to take immediate action.

ostensibly PHV drivers registering as taxi drivers.⁵⁵ One Chief Licensing Officer stated that described cross-border licensing as “the single biggest threat” to maintaining high standards “and to the safety of anyone who uses a [PHV] in this country”.

53. The CMA’s approach to these debates and the ways in which the CMA has advocated for competition and the consumer interest, has been wide ranging. For example, the then Chief Executive of the CMA wrote an opinion piece in the Financial Times challenging proposed regulations which would prevent Uber from operating in London using its standard business model.⁵⁶ That article expressed clearly how the CMA saw its role as an advocate for competition: *‘[t]he job of a competition authority, therefore, is to consider the potential benefit to customers from innovations that enable them to exercise choice — and allow businesses, both new and established, to decide how best to meet demand.’* That article was also accompanied by a more traditional consultation response.⁵⁷

54. The CMA has also been represented in various forums. For example, in 2018, when the UK Department for Transport convened a ‘task and finish group’ whose terms of reference included an expectation that the CMA would be represented as a member.⁵⁸ That group, which included representatives of licensing authorities and representatives of the taxi and PHV trade found that competition between taxis and private hire vehicles had increased, but that the regulatory system was not necessarily fit for purpose and that local authorities were not able to effectively regulate vehicles operating in their area.⁵⁹ The CMA representative provided concluding comments that any attempt to impose a numerical cap would have *‘the effect of artificially and unnecessarily constraining competition, to the detriment of passengers – depriving them of the best prospect of high service standards, value for money and innovation in service provision’*.

55. The CMA has continued to engage with the UK Department for Transport and has attended subsequent stakeholder events to take opportunity to meet and understand the respective concerns of local authorities and representatives of the taxi and PHV trades.⁶⁰

⁵⁵ To complicate matters, a licensed taxi driver can conduct PHV bookings anywhere in England regardless of their licensing authority.
<https://www.lancashiretelegraph.co.uk/news/16248318.rossendale-revealed-taxi-capital-england/>
<https://www.thetimes.co.uk/article/taxi-scandal-borough-with-a-taxi-driver-for-every-19-residents-830q232rq>

⁵⁶ Transport for London, for example, proposed introducing a five-minute buffer between booking a PHV and it arriving as well as prohibiting apps from showing the location of vehicles. Chisholm, Alex, ‘Let consumers pick the winner in the battle over London cabs’, Financial Times, 1 December 2015 <https://www.ft.com/content/dc4a746a-953c-11e5-8389-7c9ccf83dceb>

⁵⁷ <https://www.gov.uk/government/publications/cmars-response-to-tfls-private-hire-regulations-proposals>

⁵⁸ http://data.parliament.uk/DepositedPapers/Files/DEP2017-0560/Taxi_PHV_Task_Finish_Group_Terms_of_Reference.pdf The CMA was represented by Dr Michael Grenfell, Executive Director for Enforcement.

⁵⁹ Attempts by local authorities to impose restrictions on the number of vehicles could be circumvented by PHV drivers licensing elsewhere and working within another local authority’s ‘capped’ area.

⁶⁰ One of the authors of this paper attended a series of workshops with representatives from local authorities, the lead trade associations, large online operators and consumer advocates to discuss proportionate ways to achieve improvements to enforcement without restricting competition.

56. Further opportunity for the CMA to advocate on behalf of consumers has also arisen from the CMA's non-discretionary merger control portfolio.⁶¹ which provided a detailed understanding of one local market, in Sheffield, and triggered a subsequent letter to the City Council about the potential impact of proposed restrictive regulatory practices, excluding new entrants, such as Uber (a risk which had been anticipated as part of the merger assessment).⁶²

57. In addition to engaging directly with central and local government, the CMA has also published sector specific guidance for local authorities to consider when amending licensing policies.⁶³ As with other policy areas, CMA work in the taxi and PHV space exists in the context of different competing priorities, like managing the sustainability of local markets, accommodating operators' concerns about the impact of new entry on their revenues and wages, as well as safeguarding passenger safety. As there are nearly 300 licensing authorities, the CMA tends to prioritise resource and engage on issues of national policy interest. This helps ensure that competition forms part of the policy considerations in key policy matters, which can bring benefits in terms of more choice, better prices, improved fare availability, and lower waiting times for passengers.

3. Conclusion and future outlook

58. The breadth of the CMA and its predecessors' work in bus, rail, taxis and private hire vehicles and other modes of transport⁶⁴ is clear testament to its social and economic importance. Its resonance as a policy area for a competition agency to show interest in is clear. Even where national regulatory frameworks exist, the scope for choices that governments have, at all levels – be that national or local – to directly or indirectly affect competition, is significant.

59. Over the years and across modes of transport, the CMA has been working at all levels of government, and across the nations of the UK, to foster relationships to promote competition and consumer outcomes. The CMA achieves that through regular meetings with government officials leading policy programmes, publishing guidance, providing formal and informal advice as well as openly challenging policy makers in public forums to ensure that the impact on competition is not forgotten.

60. Competition should be the means to an end, and not the end goal itself. As we have alluded to, bouts of 'excessive', but short-lived, competition such as during the bus wars of the 1990s and early 2000s did not benefit consumers in the long term. As time has

⁶¹ <https://www.gov.uk/cma-cases/sheffield-city-taxis-mercury-taxis-sheffield-merger-inquiry>

⁶² <https://www.gov.uk/government/publications/taxi-and-private-hire-regulation-cma-letter-to-city-of-sheffield> The CMA wrote that the CMA decided to clear [the merger] 'partly on the grounds that, following the merger, the merged business would face competition from mid-size private hire operators, taxis, and new businesses such as Uber and Gett. The CMA would be concerned if, as a result of changes to regulation, the ability of new or existing firms to compete with the merged business was reduced, harming the interests of taxi and PHV passengers in Sheffield.'

⁶³ Regulation of taxis and private hire vehicles: understanding the impact on competition, April 2017 <https://www.gov.uk/government/publications/private-hire-and-hackney-carriage-licensing-open-letter-to-local-authorities/regulation-of-taxis-and-private-hire-vehicles-understanding-the-impact-on-competition>

⁶⁴ The CMA's advocacy portfolio includes ad hoc and ongoing work on other modes of passenger and freight transport including ferries, container shipping and aviation.

progressed and in different situations the CMA has sought to be clear that policy choices are those of government but that in delivering policy objectives, the impact of competition should not be overlooked.

61. The regulatory and operational models for different modes of public transport have developed separately but the direction of travel in recent years suggests a broad desire from governments to create regulatory frameworks that allow governments to shape markets to achieve their policy aims. Proposed and realised changes have been significant and form a consistent record of government intervention. However, there remains uncertainty of what ongoing levels of demand will be post-pandemic⁶⁵ and in responding to longer term trends that lead modes of transport to converge. The global increase in the cost of living now focuses attention on how to ensure that markets deliver for consumers and naturally attention will be turned to competition as an important policy consideration alongside well considered regulation ensuring that it remains as relevant as ever.

⁶⁵ For example the trajectory of virtual and hybrid working. See <https://yougov.co.uk/topics/economy/articles-reports/2021/09/28/what-will-increased-remote-working-mean-britain>