

POLICY PAPER

An Economic Analysis of the Public Transport Regulation Act, 2009

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I INTRODUCTION

This paper analyses the Public Transport Regulation Act 2009, published on September 8, 2009. The Act provides for the regulation of public bus passenger services, changes the name of the Dublin Transport Authority to the National Transport Authority and abolishes the Commission for Taxi Regulation. The economic importance of the Act is that it retains the restrictions on new market entry to the bus sector and continues to subsidise the sector by direct award subsidies. The policy options foregone by the Act are the alternatives of competition in the market by independent bus operators and competition through competitive tendering to provide bus services where subsidies are deemed necessary.

The Explanatory Memorandum to the Bill states that “... the primary purpose of the Bill is to establish a modern system for the licensing of public bus services on a national basis in the public interest, as well as the promotion of integrated well-functioning and cost efficient public passenger transport

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services.” The explanatory memorandum states that “... the Bill will also provide for the introduction of new contractual arrangements for the procurement of public land transport services on a national basis that is modelled on the approach established in the Dublin Transport Authority Act 2008 in respect of the Greater Dublin Area.” The Dublin Transport Authority is to be renamed the National Transport Authority “... so as to reflect its expanded role” and will assume the role of the Commission for Taxi Regulation. According to the accompanying press release, “... as a result the Authority will be responsible for the regulation and control of all modes of public land transport.

The press release accompanying the legislation states that the Bill “... completes the final phase in our national bus licensing transformation programme. The legislative regime that had applied up to now in respect of the authorisation of bus routes has long been recognised as inadequate and in need of major reform. In the case of private operators, the legislation dates back to 1932 and is clearly not fit for purpose in supporting the provision of a modern bus service that places consumer needs at its core. Today we are introducing a completely new consumer centred regime for bus operators.”

Answering its own question, “What’s new,” the press release on the Bill lists the features of the “new system.” These include a level playing field for all bus operators, the primacy of consumer needs, “... a faster, more integrated, efficient system for granting licences, penalties for poor performance of bus licence holders, robust new contracts for Bus Éireann and Dublin Bus making both companies more accountable for their expenditure of State funds, the tendering out of new licences for State subvented routes, a statutory appeals mechanism, and intervention to expedite bus priority measures if local authorities fail to do so.”

Far from “... a completely new consumer centred regime for bus operators” the Act reinforces the “not fit for purpose” legislation of 1932 by protecting the state bus companies networks from new entrants and awarding the state bus companies direct award contracts rather than through a competitive tendering regime. Efficient unsubsidised independent operators owning 78 per cent of that national bus fleet are excluded from both market segments. While this is the track record of the Department of Transport it is noted in the Screening Regulatory Impact Analysis of the Bill that it is endorsed by all other government departments despite its implications for overall national competitiveness and for the public finances at a time of serious exchequer deficits.

The structure of this paper is to examine in Sections II to IV the three main economic aspects of the Act, namely, access to the bus market, government subsidies to state transport companies and the national transport authority. Section V is titled summary and conclusions.

II ACCESS TO THE BUS MARKET

Under Part 2 of the Act a public bus passenger service "... may only be provided in accordance with a licence". The licence shall specify the route that the bus must follow the commencement and completion points and any stopping points along the route. It may also specify requirements in relation to the scheduling and frequency of operation. The licensing requirements of the 2009 Act are largely based on the 1932 Act. This is illustrated in Table 1 below.

The Authority may specify different categories of public bus passenger services in respect of which licences may be granted and set out the details in guidelines under Section 23. All licences have a maximum period of validity of five years.

Section 10 makes provisions for the consideration of applications for the grant of licences. The Authority shall take account of the demand or potential demand that exists for the services to which the application refers "... having regard to the needs of consumers and any existing public bus passenger services on or in the vicinity of the route." Except where the Authority deems it not to be appropriate the following factors are also to be considered in the grant of licences: the need for a well-functioning, attractive, competitive, integrated and safe public transport system of services and networks for all users, road safety, the impact on a subsidised bus route of Bus Éireann and/or Dublin Bus, the increase in the availability of public transport services for the public, the planning guidelines of regional and local authorities, tourist bodies, the National Spatial Strategy, sustainable travel, and demographic, economic and social trends. In consideration of an application the Authority may seek the submission of information from the applicant or any other party. A potential problem with any Court interpretation of these provisions is that guidelines and strategies are not legal terms.

The press release accompanying the publication of the 2009 Bill states that "... the primary focus of this new Bill is to place the bus passenger at the centre of a new transformed national bus licensing regime to replace the current outmoded and inadequate regime that has applied to the authorisation of bus routes for some 77 years." The "... transformed national bus licensing regime" is however a retention of the 1932 Act, as indicated in Table 1. The only significant change made in the 2009 Act compared to the 1932 Act is the deletion of Section 21 which stated that the Minister shall have regard to whether the vehicles used are manufactured and repaired within the State.

The Authority may make "an offer of grant of licence" subject to conditions and which require reply within a stipulated period. A licence must be operated within four months of its grant. Licences have a validity of five years and may be transferred. A licence may be revoked if the service is not being provided.

The 2009 requirement to consider the impact of new bus services on incumbents echoes Section 11 of the 1932 Act at (3a) which states that the Minister shall have regard to "... whether the service in respect of which the application is made is required in the public interest having regard to the passenger road services and other forms of passenger transport available to the public or in the neighbourhood of the route of the proposed service" and whether "... the proposed service is sufficient in regard to frequency of service, duration of services and other respects to meet the requirements of the public."

The attachment of conditions to licences awarded is illustrated in Table 2. The 2009 Act has nine possible conditions at section 13 compared to eleven in the 1932 Act at section 12. The common points in both acts refer to frequencies, routes, terminal points, timetabling and vehicle standards. The similarities between the 1932 and 2009 Acts are again striking in view of the Department's claims that the later version is radical or a repeal of the earlier legislation.

Tables 1 and 2 both indicate that retention rather than the transformation of the 1932 legislation in 2009. This has been done despite the Department's statement that the 1932 Act "... is clearly not fit for purpose in supporting the provision of a modern bus service that places consumer needs at its core."

The 2009 legislation obstructs both competition in the market for commercial services and competition for the market in subsidised services. The Dublin Transport Authority Act 2008 at section 58 states that "Dublin Bus has an exclusive right to continue to provide the public bus services that it provides in accordance with the provisions of section 7 of the act of 1958 and section 8 of the act of 1986 within the City of Dublin and the counties of Fingal, South Dublin and Dun Laoghaire-Rathdown and contiguous areas," Bus Éireann has a similar provision except in so far as such services are provided by Dublin Bus. These companies are awarded in section 52 exclusive rights to direct award contracts for the provision of public bus passenger services which impose public service obligations. A direct award contract is defined in section 47 as "... a public service contract entered into by the Authority without a competitive tendering procedure." Public transport services contracts differ from direct award contracts in that there is "... a competitive tendering procedure" as in section 48 but this does not apply to any service provided by Dublin Bus or Bus Éireann under section 52. Direct award contracts to the state companies last for five years and are renewable. Section 48 provides for the branding of vehicles operating public transport services contracts rather than operating under their own brand. The transfer of these powers of the Dublin Transport Authority to the National Transport Authority extends nationwide the award of public service contracts without a

Table 1: *Bus Licensing Provisions of 2009 and 1932 Acts*

	<i>Section of 2009 Act</i>	<i>1932 Act</i>
Prohibition of unlicensed bus service	6	7
Grant of licences	7	11
Licence categories and periods	8	9
Form of application	9	8
General provision for consideration of applications	10	11(2)
Offer of grant of licence	11	11
Fees	12	20
Attachment of conditions to licences	13	12
Amendment of licence	14	15(2)
Requirement to commence passenger bus services	15	13
Renewal of licences	16	16
Death of licence holder	17	19
Revocation of licence by authority	19	17

Table 2: *Criteria for Considering New Bus Service Licence Applications in 2009 and 1932 Acts*

	<i>Section of 2009 Act</i>	<i>1932 Act</i>
Potential demand	10(a)	11(3b)
Impact on existing bus services	10(a)	11(3a)
Integrated service	10(b)	12(j)
Safety	10(b)	12(f)
Conditions re timetabling	13(b)	12(h), 12(i)
Conditions re route taken	13(c)	12(a)
Conditions re stopping places	13(d)	12(a)
Conditions re commencement and Completion points	13(e)	12(a)
Vehicle numbers	13(h)	12(d)

competitive tendering procedure with the added barrier to competition that independent bus companies would be required to rebrand their vehicles as state company vehicles in the unlikely event of being awarded such a contract without competitive tendering.

Table 3 illustrates the policy options which were available to the Minister in drawing up the 2009 legislation. The market entry policy options were the continuation of the 1932 Act allowing ministerial discretion in regard to market entry, the chosen policy under the 2009 Act of increasing the

restrictions on bus competition, or a policy of deregulation as already applies in aviation, road haulage and taxis. In regard to the subsidisation the policy options were a continuation of subsidisation as at present by the Department of Transport, the chosen option of the National Transport Authority or competitive route tendering.

Table 3: *Previous, Preferred and Rejected Policy Options in the Public Transport Regulation Act 2009*

<i>Previous Policy</i>	<i>2009 Act</i>	<i>Rejected Policy</i>
Regulation by Minister CIE subsidy	Regulation by NTA CIE subsidy via NTA	Deregulation of market access Competitive route tendering

NTA: National Transport Authority.

The 2009 policy choice excluded 78 per cent of the national public service vehicle fleet from operating individual stage carriage bus services while protecting the networks of the remaining 22 per cent of the fleet and transferring all the investment grants and operating subsidies to that segment.

The policy of restricting entry to the bus sector dates from 1932. In that era of protectionism railways succeeded in persuading both the 1932 government to regulate their road passenger competitors and the 1933 government to regulate their road freight competitors. Both rail and road transport companies were then privately owned. The interventions by both the outgoing 1932 government and the incoming 1933 government in favour of the privately owned railways at the expense of the bus and road freight sectors was an interesting case of regulatory capture of government by private companies. Nationalisation of railways and their associated bus and road freight operations did not occur until 1950. The bus sector in Ireland is a case study in market prevention by government intervention. It is not a case of market failure requiring government intervention. A programme of acquisition of 1,098 independent bus operations took place throughout the 1930s. Table 4 summarises these acquisitions.

The independent bus companies faced a Hobson's choice after the 1932 legislation. If they declined to sell their operations on a voluntary basis to the railway companies and the DUTC they faced compulsory acquisition. Notwithstanding this duress it is notable that the majority of the independent bus services acquired by both the GNR and the DUTC were compulsory acquisitions, as were the majority of acquisitions by the GSR after 1933.

Table 4: *Transfer of Independent Bus Service Licences to Statutory Transport Companies, 1933-1941*

	<i>To GSR</i>		<i>To GNR</i>		<i>To DUTC</i>	
	<i>Voluntary</i>	<i>Compulsory</i>	<i>Voluntary</i>	<i>Compulsory</i>	<i>Voluntary</i>	<i>Compulsory</i>
1933	459	1	5	12	–	–
1934	157	55	1	1	18	47
1935	11	191	4	78	–	–
1936	1	9	–	–	–	5
1937	2	17	1	–	–	–
1938	2	–	–	–	–	–
1940	1	–	–	–	–	–
1941	1	2	–	–	–	–
Total	634	275	11	91	18	52

Notes: GSR: Great Southern Railway; GNR; Great Northern Railway; DUTC Dublin United Tramway Company. In addition there were transfers to other railway companies comprising 10 in 1934, 3 in 1935 and 3 in 1938.

Source: *Irish Statistical Bulletin*, 1933-1941; Barrett (1982).

Following the reduction of their activities by legislation in the 1930s the independent bus sector retained some scheduled service routes in areas such as the midlands and southeast and developed charter services such as tourism and sports trips, travel clubs, student weekend travel from centres of higher education to rural areas and school tours. In addition, the independent bus sector subcontracted from CIE the majority of the school bus services and also subcontracted CIE scheduled services under the title of auxiliaries.

In 1972 the National Prices Commission found that the remaining independent bus companies, many operating in remote areas, charged lower fares, in some cases significantly lower fares than CIE, the successor of the companies protected by the 1932 legislation. In 1979 the Minister stated in the Dail that "... while I do not have full up-to-date particulars in relation to fares charged by private operators of licensed road passenger services, the information available to me suggests that these fares are in most, but not all, cases lower than CIE's fares mainly because of lower administrative and staff costs."

Ministerial discretion later allowed market entry of independent bus operators to intercity routes such as Dublin-Galway and Dublin-Waterford. The Waterford-Kilkenny area has a strong private bus sector. The results of new market entry have typically been increased frequency of service and lower fares. For example, Dublin-Galway had only one bus a day in the 1980s as a monopoly and 45 a day in 2009 comprising 16 by Bus Éireann, 15 by Citylink and 14 by GoBus. The Oireachtas Committee on State-Sponsored Bodies

(1995) reported day return fares in 1993 of £12 by rail, £9 by Bus Éireann and £5 by private bus between Dublin and Galway with extended return fares of £24 by rail, £10 by Bus Éireann and £8 by private bus. Barrett (2004) compared Bus Éireann fares and frequencies on Dublin to Belfast and Cork, then uncontested routes, with the contested routes to Waterford and Galway. Bus Éireann fares on uncontested routes were 58 per cent higher for a single journey and 66 per cent higher for a return journey. Barrett (2006) noted that the introduction of bus competition between Dublin and Cork in 2005 led to an increase in frequency from 6 to 14 per day and fare reductions of 66 per cent from €20.5 to €7 for a single journey and of 64 per cent from €33 to €12 for a return journey. There were 8 Aircoach and 6 Bus Éireann services a day in 2009.

The size of the independent bus fleet is shown in the Steer Davies Gleave (2002) and Goodbody (2005) reports. Steer Davies Gleave estimated that the private bus fleet of 4,890 vehicles, compared to the CIE fleet of 740 in Bus Éireann and 1,120 in Dublin Bus. This was a private sector share of 72 per cent. of the fleet. Deloitte (2009) reported 1,200 buses in the Dublin Bus fleet and 700 in the Bus Éireann fleet in 2007. With 8,500 large public services vehicles in the national fleet this gives a private sector share of 78 per cent. The Central Statistics Office (CSO) data indicate that the number of large public service vehicles increased between 1990 and 2007 from 4,047 to 8,451, an increase of 108 per cent.

Goodbody reports 4,859 buses in the private bus fleet in 2003 with receipts of €307 million and 6,000 employees. Goodbody estimated that the private sector bus fleet expanded by 91 per cent between 1992 and 2003 with fleet investment of €304 million over the years 1999-2003. The Goodbody data are combined with the CIE data for 2003 in Table 5 to give market share data showing that the private bus sector is greater than the CIE bus and rail services in terms of passenger receipts. The independent bus share of total bus passenger revenue was 44 per cent. Bus Éireann had 31.3 per cent but subcontracted 44 per cent of its vehicle kilometres and Dublin Bus had 24.7 per cent. The total consumer expenditure on bus services in both the private and public sectors in 2003 was 5.1 times greater than consumer expenditure on train fares. The independent bus fleet has a high market share despite the restriction of all subsidies and investment grants and the overwhelming majority of scheduled service licences to the state's own bus companies.

The development of the independent bus fleet from 44 per cent of passenger receipts and the 78 per cent of the fleet raises the issue of deregulating the market for scheduled bus services. There are three important precedents for deregulation in Irish transport markets. Four Irish airlines had almost 80 million passengers in 2009 compared to 2 million passengers on one

Table 5: *Consumer Expenditure on Bus Passenger Transport and Market Shares in 2003*

<i>Operator</i>	<i>Passenger Revenue €m</i>	<i>Share of Market %</i>
Independent bus sector	307	43.9
Bus Éireann	219*	31.3
Dublin Bus	173	24.7
Total	699	100

Note: *Bus Éireann in 2003 subcontracted 44 per cent of its vehicle kilometres to the private sector. (Annual Report, p. 2),

Source: Goodbody (2005); *CIE Annual Report* (2003).

airline under protectionist policies in 1984. (Barrett, 2009). The road haulage sector had 1,094 trucks for hire in 1969 and 2011 in 1978 under quantity licensing and 27,019 in 2007 under deregulation of market entry. The number of taxis increased from 4,218 before deregulation in 2000 to 21,177 in 2008. Goodbody (2009) estimated an increase in taxi trips in Dublin from 22 million before deregulation to 40 million in 2008, an increase of 82 per cent. In Dublin where there is the most substantial local bus service Goodbody found that “59.89 per cent of adults used cab services compared to 51.0 per cent availing of local bus services.” (p. 16).

In contrast to the evidence that deregulation has generated significant benefits to society as a whole in aviation, road haulage and taxis and on intercity bus routes in Ireland, the Department’s arguments against bus deregulation are shown in Table 6.

The opposition to deregulation in the bus sector illustrated in Table 6 is retained by the Department in its Screening Regulatory Impact Analysis of the Public Transport Regulation Bill, published with the Bill in September 2009. Deregulation is

... not consistent with an approach which seeks to ensure a competitive regime within a framework of national services. Some sectors of the public bus market can sustain an open competitive approach to licensing while others require a more regulated approach e.g. services in rural areas or urban areas.... A deregulated market, while offering certain efficiencies at route level, could lead to unsustainable competition at route level on certain key routes, cherry picking of services on other routes that would fragment the system, and hinder the development of a more integrated approach to the provision of bus services, especially in the context of services that require subvention. This could impact on profitable elements of PSO networks thus increasing the need for subvention” (p. 4).

Table 6: *The Department's Arguments Against Bus Competition, 1985 and 2002-09*

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- (a) The risk that unrestricted competition would adversely affect the quality of service, with safety implications.
 - (b) Full liberalisation might lead to gaps in service rather than an integrated network.
 - (c) Operators would concentrate on routes with high demand, leaving CIE to serve the low demand routes.
 - (d) Benefit of cross-subsidisation within CIE would be eroded, as CIE reduced fares on well-supported routes in order to retain traffic
 - (e) Possibility of reduction in CIE staff on foot of a fall in demand for CIE services, with redundancy and other cost implications.
 - (f) Competition would reduce CIE's share of bus traffic, in the short term at least, and possibly cause a further fall in rail passenger levels. This would adversely affect CIE's financial position and could lead to it having to reduce costs (by eliminating and/or reducing uneconomic services. (1985), Additional arguments against bus competition in 2002 by the Department's consultants, Steer Davies Gleave were as follows:-
 - (g) Commercial focus means that the free sale of tickets may be abandoned at times of peak demand to maximise potential profits.
 - (h) May be restricted opportunities for integration across network unless certain operators establish dominant position, or a franchise system is established.
 - (i) Fares may rise where there is limited or no competition.
 - (j) Standards may be variable and relate to the level of competition/opportunity.
 - (k) Low risk strategy is to focus on high demand corridors between major centres – tending to reinforce existing patterns of development and reduce service levels from intermediate towns and remote areas.
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Sources: Green Paper on Transport Policy (1985) for arguments (a) to (f) and Steer Davies Gleave (2002) for arguments (g) to (k).

In addition to ruling out deregulation the Impact Analysis also rules out continued use of the ministerial powers under the 1932 Act's to permit limited new market entry "... because it is not envisaged that this option will be pursued in practice."

The emphasis in the Department's case throughout the period since 1985 has been to assert the case against competition rather than to present the evidence. This can be seen in Table 6 above and in the Impact Analysis. For example on points (a) and (j) concerning standards, many private bus companies, notably Aircoach, compete with a higher standard coach than the state bus companies in order to persuade people to transfer from car to bus. Vehicle standards are applied by the safety authorities independently of ownership factors and are not being deregulated. In regard to safety it has

been known for some time that bus deregulation in the United Kingdom over the first eight years, 1980 to 1988, led to a larger decline in accident rates for buses than for vehicles as a whole. (*Transport Statistics of Great Britain, 1988*, Table 2.48). The Health and Safety Authority *Annual Report for 2008* in Appendix B, Outcomes of Prosecutions, records that Bus Éireann paid €2 million, arising from the Kentstown crash in 2005, out of a national total of €2.5 million of fines on all employers for breaches of health and safety laws. No independent bus company was prosecuted in that year although these operators owned 78 per cent of the national bus fleet. In February 2009 it was announced that the report on the Wellington Quay bus crash in Dublin five years earlier will not be published. These single vehicle bus crashes with a combined total of ten fatalities call into question the Department's claims that vehicle standards are lower in the independent bus fleet.

Points (b) and (h) deal with integration but do not examine either its benefits or costs. Where the market wants point to point service integration may impose large costs with benefits for only a small proportion of passengers. For example, both Ryanair and Aer Lingus have changed from interline ticketing to point-to-point ticketing. The emphasis in deregulated aviation markets is on point-to-point service rather than hubbing at major airports. Interlining involved both the costs of the clearing house and low yields from transfer passengers compared to point to point passengers. Operators also have to determine how to allocate costs and revenues for transfer passengers across routes. The point-to-point product is simpler to provide. It may be of little relevance to a point-to-point bus passenger whether the same or a different company operates a route somewhere else. For example, if a large number of passengers with bus company A with ongoing journey requirements are due to arrive at a bus station and the market has been deregulated then bus company B has a potential market niche by connecting with bus company A at the appropriate arrival time. Integration does not require monopoly and is not secured by a monopoly.

Points (c) and (k) of Table 6 refer to the deregulated market's concentration on high density routes and neglect of other areas. Many of the low cost independent bus operators already serve without subsidy or investment grants routes which were regarded as too remote for CIE and its successors to acquire them. They perform over half the school bus service as agents of CIE. Again, the evidence from airline deregulation in the Irish market is that the new entrant airlines did not concentrate on Dublin-London but developed new routes and airports including some regarded by analysts as routes from nowhere to nowhere serving places such as Kerry, Knock, Hahn and Prestwick. It is not "... a low risk strategy to focus on high demand corridors" rather than examine all route market opportunities arising from

deregulation. The so-called low risk strategy would result in reduced yields and possible losses thus increasing risk to the operator. The Department's Screening Regulatory Impact Analysis acknowledges in 2009 the role of competition on some intercity markets "... while others require a more regulated approach e.g. services in rural areas or urban areas" but again the evidence is not produced. The Report of the Interdepartmental Working Group on Rural Transport (2001) anticipated a role for independent bus operators in rural areas. It stated that "... in the run-up to wider transport liberalisation and deregulation, it is important that such services be initiated on an open competitive basis and with a level playing field for private operators (6.1)." In regard to urban markets the analysis should have examined why there is substantial independent bus operation in Waterford, some presence in Galway, Dundalk and Naas and services in Dublin by Swords Express, Patton, Aircoach, and others. Rather than impute market failure where the real problem may be its own policies of market prevention, the Department's analysis should have examined the impact of a less draconian licensing system of market entry for both rural and urban bus services.

Point (d) in Table 6 which refers to the Government's fear in 1985 that "... the benefit of cross subsidisation would be eroded" requires analysis. The theory behind cross subsidisation is that the supernormal profits from exemption from competition in profitable routes will be transferred into a fund which will be available to fund part of the cost of loss making routes. Cross subsidisation is thus a tax on some passengers in order to subsidise others. A further problem with cross subsidisation is that the costs in the protected company may rise to absorb the supernormal revenues leaving no surplus for cross subsidisation. This was a feature of the protected European airline sector before deregulation. The lower fares charged by small bus operators in remote areas in Ireland indicate that costs in the protected bus companies rose to absorb the supernormal revenues from protection from competition on busy routes.

Points (e) and (f) refer to CIE having to cut its costs in a competitive market as a case against competition. This is more properly categorised as a major benefit from competition rather than an argument against competition as in the Green Paper.

Point (g) states that output will be lower in a competitive bus market. This view is contrary to both economic theory and how actual markets operate. Government regulation of monopolies is based on the premise that output is lower under monopoly than in a competitive market. The ability to reduce output allows the monopolist to charge higher prices than in a competitive market. In contrast in a competitive market a producer restricting output would attract new entrants. Contrary to the statement that in a deregulated

market the free sale of tickets might be abandoned at times of peak demand the market result would ensure that a bus operator withdrawing capacity from a market at the weekly Friday peak would quickly lose passengers to new entrants on subsequent Fridays.

Point (i) in Table 6 states that in a deregulated market "... fares may rise where there is limited or no competition." On the contrary in a deregulated market the vital role of actual and potential new entrants is to discipline incumbents. Market entry and exit are the mechanisms to keep price at long run marginal cost. (Baumol, 1982). This stance against deregulation ignores the data which the Department supplied to the National Prices Commission over thirty years ago and confirmed subsequently on all the competitive routes, namely, that new entrants reduce bus fares and improve service levels. Concern about "monopoly operators" belies the Department's record of a propping up the CIE group since 1932 and reserving all public bus subsidies and investment grants for this operator alone. That the Department expresses concern over "... the profitable elements of PSO networks" indicates that it is subsidising CIE bus services which it knows are profitable and which it wishes to protect from new market entrants.

The Screening Regulatory Impact Analysis makes further objections to bus competition such as that it "... has clear limitations in terms of achieving broader social and economic policy objectives." Competition will lead to monopoly requiring rulings from competition authorities. Standards will fall, services will be patchy, unstable, fares will rise, and "... unsustainable level of operations or competition could increase the need for State subvention." A further disadvantage claimed by the Department is that "... conflict may arise between operators on the same or similar routes." (p. 6).

An illusion of indispensability is created when the regulatory authorities restrict 78 per cent of a bus fleet from serving a market and heavily subsidise one operator. This is captured by the Department of Transport's consultants Booz Allan Hamilton (2007) in their report on the impact of the Dublin transport subventions.

If Dublin Bus had not received subvention payments over the period of the review, the company would not have been able to offer such a good service. Without subvention there may have been a reduction in the number of routes offered, or the service frequency on routes or hours of operation of routes. Without subvention the improvements in safety may not have taken place. In brief, without subvention there may have been a less attractive, less comprehensive service. This would have resulted in more car use and consequently more congestion. For those without access to a car, travel choices would be less, reducing ability to access education, jobs and other opportunities. (p. 45).

The case against this account might be based on the successes of new entrants where they have been permitted, notably at Dublin Airport and the lack of evidence to support the Department's case against competition in Table 6. The evidence based alternative to The Booz Allan Hamilton report above might read as follows:

If Dublin Bus had not received subvention payments over the period of the review, other operators would have offered a superior service. This is indicated by the Dublin Airport example. There the number of routes offered has increased, frequency has increased and the service no longer concentrates on the inconvenient city terminus at Busarus. There is twenty-four hour service and the quality and attractiveness of vehicles have improved remarkably since it ceased to be a CIE monopoly. The service is now a strong competitor with the car and has thus reduced congestion and environmental costs. The overall competitiveness of the city has been improved by better airport access thus improving job prospects. There is of course no evidence that safety standards of the new bus companies are in any way lower than in the era of monopoly while there have been serious multi-fatality accidents involving the state bus companies. Without subvention to the transport sector exchequer funds are available to reduce public debt and the tax burden and to increase public spending on health, education, and welfare payments. There is no case for reinstating the bus monopoly at Dublin Airport. The competitive model should be extended.

III GOVERNMENT SUBSIDIES TO STATE TRANSPORT COMPANIES

Section 29 of the 2009 Public Transport Regulation Act extends the remit of the Dublin Transport Act nationwide. This includes direct award contracts "... entered into by the Authority without a competitive tendering procedure" as defined in section 47 of the Dublin Transport Authority Act 2008 and covered also by sections 48 to 54.

Table 7 indicates the rapid growth of bus subsidies in Ireland in recent years. While the purported goal of these subsidies is to ensure the provision of socially necessary bus services which the CIE companies are unable to provide on a commercial basis the subsidies have two major economic defects. The subsidies are not subject to cost benefit analysis and no analysis of alternative service providers is undertaken.

While the subsidies in Table 7 are presented by the Department as payments for social benefits from subsidised state bus services no economic analysis is conducted to support this case. The alternative proposition offered here is that the bus subsidies intended for consumers become transformed into producer subsidies. The CIE bus companies are subsidised not to leave routes but these subsidies are not available to other operators. The importance of

freedom of exit is emphasised in Baumol. “Perhaps a bit newer is the emphasis on the importance of freedom of exit which is as crucial a requirement of contestability. Thus we must reject as perverse the propensity of regulators to resist the closing down of unprofitable lines of activity.”

With freedom of exit from the loss making Irish bus routes for the incumbent operator and freedom of entry for the 78 per cent of the bus fleet now excluded from these routes there would be a market discipline on the size of the bus subsidy, if any, required. This system applies to the internal air services subsidy where, for example, the Kerry-Dublin route has been operated successively by Aer Lingus, Aer Arann and Ryanair, with efficiency gains from each change of operator. A prior requirement before a route is put out to tender is that there should be a cost benefit analysis of whether a route subsidy is a net benefit to society as a whole.

Table 7: *Customer Receipts and Operating Subsidies to Dublin Bus and Bus Éireann, 2007-2009 (€ million)*

	<i>Dublin Bus</i>			<i>Bus Éireann</i>		
	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Revenue	200.4	202.4	209.5	282.9	298.8	319.0
Operating costs	286.8	302.1	325.3	323.2	345.0	385.5
Losses	86.4	99.7	115.8	40.3	46.2	66.5
PSO	80.1	85.8	85.2	36.6	36.9	41.5

Source: Deloitte (2009), Tables 1.1 and 1.2.

Table 7 shows at line three above losses of €301.9 million for Dublin Bus and €153 million for Bus Éireann for the years 2007-2009. The total losses for the two State bus companies for the three years are €454.9 million. These losses are reimbursed by PSO payments as noted in Table 7. On past experience all losses are reimbursed by the State in time even where they exceed the PSO allocation. The basis of the PSO is not open to competition by other operators who might wish to operate these routes without any subsidy or with a smaller subsidy. The PSO subsidy allocation thus is both a major barrier to market exit by the incumbent bus companies and a major barrier to market entry by new bus companies. The Dublin Bus submission to the Oireachtas Committee on Transport in September 2009 sought a “direct award contract” for its entire network with only sightseeing tours and airlink seen as commercial routes. In regard to new market entrants Morton and Swords Express the submission stated that “... recent examples in Lucan and Swords led to paralysis of the bus network and cannot be allowed to be repeated.”

A further barrier to exit by the incumbents and barrier to entry by the above mentioned 78 per cent of the bus fleet is the award of capital grants in respect of the 1,200 Dublin Bus and 700 Bus Éireann vehicles while excluding the 6,600 other large public service vehicles owned by the other operators. Deloitte (p. 32) estimates that the amortised capital subvention for Dublin Bus was €13.4 million and for Bus Éireann €5.9 million in 2007. This brings the total assistance by the government in 2007 to €99.8 million for Dublin Bus and €46.2 million for Bus Éireann, a total of €146 million. The subsidy per bus was €82,000 in Dublin and €66,000 for Bus Éireann, an average subsidy of €77,000 per bus in the state fleet.

The *2009 Book of Estimates*, at vote 32, section C, provides €338 million for public service payments, €917 million for a public transport investment programme and €14 million for public transport agencies and expenses. This total of €1.3 billion is a public spending programme with which the independent bus sector has to compete from its own resources to purchase its fleet and operate in the market.

It is important that the subsidies should be subject to a market test with competition between the entire bus fleet rather than the 22 per cent in the CIE fleet. The failure of the Regulatory Impact Analysis to examine its preference for direct award contracts to state bus companies over competitive tendering is a major flaw.

The Regulatory Impact Analysis reports on consultations with other departments and bodies and notes their support for the Act. The Analysis states that "... a number of minor amendments were incorporated in the Bill to meet concerns raised by the Competition Authority to ensure equality of treatment between all service providers in relation to their existing licences during the changeover to the new framework. Otherwise the Authority also welcomed the positive effect the Bill will have as a step towards introducing greater competition in the market." The emphasis is on existing licences rather than new market entry and on "... a step towards introducing more competition in the market" rather than on deregulation is an inadequate response from a body established to promote competition in the economy. Given the infrequency with which governments address the deregulation of any one sector the support of the Competition Authority for "... a step towards more competition in the market" rather than actual competition represents a missed opportunity.

The Regulatory Impact Analysis also states that "... all Government Departments were consulted and either had no view or broadly welcomed the Bill." These responses are disappointing. The Department of Finance, for example, might be expected to have views on value for money in transport subsidies and investment grants at a time of strains in the public finances.

The Department of Employment, Trade and Enterprise and its agencies repeatedly make pronouncements on the need for entrepreneurship, innovation and competitiveness but apparently "... either had no view or broadly welcomed the Bill" which seriously obstructs these goals in inland passenger transport. The Department of Justice in its response to a version of the Bill in 2007 secured the restriction of the exclusive rights for public service operators to existing services only. The Department of Transport had sought to create a capacity to subsidise new services also thus making any prospect of competition by private operators almost impossible. (McDowell, 2009). With this exception the Regulatory Impact Analysis failed to elicit from other departments responses from the perspectives of entrepreneurship, innovation, competition and value for money. These problems compound the failures in the Regulatory Impact Analysis itself to examine market alternatives to monopoly in the market for both commercial bus services and subsidised bus services and the effect of monopoly subsidies on the requirement of value for money in public subsidies.

The Screening Regulatory Impact Analysis stated that "... at present the provision of funding to Bus Éireann and Dublin Bus is based on Memoranda of Understanding between the companies and the Minister. These are not enforceable. They will have to be replaced with contracts before 3 December 2009 in order to comply with the new EU regulation." (p. 2) The Bill was passed by the Seanad on 26 November. The government invoked section 25.2.2 of the Constitution by Seanad resolution to curtail the normal seven days for consideration of a Bill by the President before she signs it into law. The Bill was signed on the following day. The new contracts with the CIE companies were signed on 1 December thus meeting the EU deadline and confirming the view that the protection of the state transport companies was in fact the object of the Bill in the first place.

IV THE NATIONAL TRANSPORT AUTHORITY

The Act provides for the extension of the powers of the Dublin Transport Authority to the entire country and the transfer to it of the bus licensing functions of the Department of Transport plus the taxi licensing functions of the Commission for Taxi Regulation.

The Dublin Transport Authority was signed into law on July 16, 2008. On January 23, 2009 the Public Appointments Service advertised the position of chief executive. On September 1 a chairman designate and chief executive designate were appointed and on September 8 the Dublin Transport Authority was renamed the National Transport Authority. Given that the Dublin

Transport Authority had no track record in its designated local area its elevation to be a national body is remarkable. The National Competitiveness Council Report on *Our Cities: Drivers of National Competitiveness* (April 2009), stated in relation to the Dublin Transport Authority Act 2008, that "... its effectiveness in terms of delivering a coherent and effective approach to land use policy by local authorities and transport policy by the Dublin Transport Authority needs to be monitored and kept under review to ensure that the new arrangements are enabled to operate as intended." Within five months this unmonitored and unreviewed local body became a national body.

The OECD (2008) stated that "Ireland needs to focus on devising a clear rationale for establishing agencies. It needs to prohibit their creation solely for increasing resources and personnel allocated to a new priority. Instead, when a new priority emerges it would be advisable to carry out a review of departmental mandates" (p. 309). The OECD notes that "... the Department of Finance code of practice for the governance of state bodies does not include recommendations on when or how agencies should be established, for what government function and with what government structure" (p. 299). The OECD found that "... no official Irish statistics are available for staff numbers in agencies in Ireland either today or 10 or 20 years ago" (p. 299). Similar concerns were expressed in the McCarthy Report in July 2009 which proposed "... a further 43 rationalisation measures concerning state agencies and other bodies/structures" (p. 25).

The origins of the Dublin/National Transport Authority lie in the report of the Dublin Transport Authority Establishment Team (2006). The report acknowledged that "... it is not deemed to be part of the mandate of the Team to make any recommendations regarding the content of regulatory reform, and for the purposes of this report, the Team has addressed only the status quo in respect of market regulation. However when future legislation to reform the 1932 Road Transport Act is being enacted, the team recommends that it should provide that the Dublin Transport Authority should undertake all market regulatory functions for the Greater Dublin Area" (p. 11).

The Establishment Team's recommendations concerning the transport market include compulsory participation in integrated ticketing, a single brand for all public transport services and direct award rather than competitive award of public service contracts for Dublin Bus and Bus Éireann. The Establishment Group recommended that the DTA should take direct control of any or all of three landmark projects and "... ensure that momentum is maintained in the delivery of Transport 21, launched in late 1995. The landmark projects were underground railways to the airport, and from Docklands to Heuston station with an underground station connecting these at St Stephen's Green.

Transport 21, an investment programme costing €34.4 billion was published without costs for individual projects or cost benefit analyses (Barrett, 2006). The day-to-day function of the Dublin Transport Authority (DTA) was to achieve effective inter-agency co-ordination and co-operation between the several local authorities and public bodies in the greater Dublin area. With this emphasis on engineering and administration the role of market investors in bus transport was overlooked. It remains so. The Establishment Team does however acknowledge the role of the market in setting the pay of the DTA Chief Executive. It recommends that "... the salary and remuneration package of the CEO of the new Authority should not be in any way constrained by the usual controls applied in respect of remuneration for the CEOs of State Bodies. The freedoms currently enjoyed by commercial State Bodies in the recruitment of staff should be afforded to the new Authority, notwithstanding its status as a non-commercial State Body" (p. 40). This seems like the worst of all worlds – paying a transport chief executive a market rate of pay to prevent a competitive bus market from developing.

V SUMMARY AND CONCLUSIONS

The Public Transport Regulation Act 2009 is a flawed piece of legislation from the perspectives of economics and regulation. Some 78 per cent of the national bus fleet is excluded from individual stage carriage bus services. Monopolistic legislation designed in the 1930s to prevent bus competition is redefined as legislation in 2009 to deal with market failure and the issues of market prevention are not addressed. The existing networks, investment grants, and operating subsidies to the state bus companies are protected to benefit the 22 per cent of the bus fleet in state ownership. The majority of the national bus fleet is dismissed from full market participation on the basis of assertions which are not evidence based. The Screening Regulatory Impact Analysis to support the Act is flawed as are the responses to it by other departments and agencies which have in their mandates to promote entrepreneurship, innovation and competitiveness but did not seek these goals in passenger transport. Given the success of transport deregulation in Ireland in aviation, road haulage, taxis and some intercity and airport coach services, the refusal of any government department to accept deregulation of the bus market is a denial of successful market economics, including some spectacular successes.

Since market prevention dominates market failure in Irish transport policy it is not possible to decide which bus services, if any, require subsidisation. A further flaw is that such subsidies are to be paid over to the

state monopoly bus companies without competitive tendering. It is a matter for concern that not one government department is aware of the value for money implications of not implementing competitive tendering at a time of serious exchequer stringency.

The Act adds to the serious Irish problems of agencification by elevating a non-functioning regional transport without a track record to a national transport authority.

The passing of the Act has serious implications for overall Irish economic competitiveness. Where a department does not want competition in a sector in which it has a producer presence general competition policy will be set aside. The bus case is one of several recent examples. Competition has also been successfully opposed in defence of state owned companies and suppliers in the case of competing airport terminals at Dublin, health insurance and refuse removal.

The Department of Enterprise, Trade and Employment (2009) had earlier advised those in charge of public procurement to "... engage with the Market prior to tendering" (p. 10), and to "... under direct tendering procedures ensure that recently established firms, or firms with no previous experience of public contracts, are not excluded from invitations to tender." The advice continued, "Encourage these firms by allowing them to tender for smaller contracts initially and then, subject to satisfactory performance, progressing to larger or more complex contracts." (p. 13). The Department stated that "... given the importance of SMEs to the Irish economy, a level playing field is needed for all economic operators wishing to participate in public tendering. (p. 12).

It is obvious that enthusiasm for this report, *Buying Innovation – the 10 Step Guide to Smart Procurement and SME Access to Public Contracts*, does not extend to the Department of Transport. Given the support of the Department of Enterprise, Trade and Employment for the Public Transport Regulation Act, the Smart Procurement report appears not even to have the support of the department which published it. Competition policy should be able to distinguish between genuine arguments against the social and economic costs of competition and bogus social and economic arguments by the State simply protecting its own suppliers in these sectors.

Lobbying by incumbent producers to prevent new market entrants and to achieve regulatory capture over the State's regulatory functions are normal features of rent-seeking. In this case barriers to new market entrants who wish to compete with the State's inhouse service providers send out strong negative signals to private investors. The cost of these services to the unsheltered sectors of the economy is increased and overall national competitiveness is reduced. The incentives to sectors opposed to new market entrants to engage in lobbying and rent-seeking are increased further distorting resource allocation.

It is remarkable that the independent bus operators have increased their share of the national bus fleet to 78 per cent without subsidies and grants. It is remarkable that the Department of Transport continues to promote a transport policy so completely at variance with what is happening in the market for bus passengers in Ireland. The claim that the Bill is “... a completely new consumer centred regime for bus operators” is not supported by the contents of the Act. Regulatory, operating and investment decisions in Irish transport policy need far greater economic input and a strengthening of that function in the Departments of Transport and Finance.

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