

IRISH BUS COMPETITION AND THE SWORDS EXPRESS CASE

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Eoin Marsh explores the issue of Irish bus competition, a sector which is heavily regulated and dominated by state-funded players. He demonstrates the inefficiencies of Dublin Bus and how state authorities have prevented competition from entering the market, making a convincing argument for a radical overhaul of the sector.

Introduction

The issue of bus competition is one which has attracted growing attention in Ireland in recent years. The dominant state-funded player has had difficulties in providing cost-effective services while some private sector operators have been able to run services competitively. This paper will examine the role of the Department of Transport in favouring state-sponsored provision of bus services and the rationale presented in support of this. The competition on existing routes in Ireland, particularly on intercity services, will be scrutinised. Furthermore, the degree of bus competition in Dublin will be compared and contrasted with the scenarios in other cities such as London, Denver and San Diego where liberalisation has been introduced. The issue of regulatory capture will also be examined.

In addition, the recent case of Swords Express will be discussed and the extent to which state authorities have prevented competition from taking place on the market will be explored. This essay will provide an analysis of costs, with respect to both the public and the private supplier, and will also highlight the trends regarding subsidies within CIÉ.

The Context in Ireland

Strict regulation of the bus sector has prevailed in Ireland for almost eighty years; since 1932 Córas Iompair Éireann (CIÉ), which comprises of Bus Éireann and Bus Átha Cliath (Dublin Bus), has effectively run a monopoly. In contrast to transport sectors in which deregulation has been successfully introduced, such as aviation and taxis, the bus sector still experiences many obstacles that prevent competition and contestability. It is argued that the regulatory capture of the Department of

Transport by CIÉ is emphasised by the fact they are the sole recipient of public transport subsidies (Barrett, 2004).

The rationale for regulating the bus sector and preventing extensive competition from occurring is presented in a report which was undertaken by Steer Davies Gleave (SDG) in 2002. Though their paper does outline some potential advantages of bus competition, such as lower fares overall and increased frequency, these are outweighed by the problems that competition would bring. The report makes a strong argument against competition insofar as service levels may be reduced from intermediate towns and remote areas which have low demand and are loss-making. In addition, the point is made that fares might increase on routes where there is little or no competition, especially in the case of tendered routes (Steer Davies Gleave, 2002).

The report can be questioned in some respects however; it finds that the integration of services might be affected by new competitors. The market success of low cost point-to-point routes somewhat undermines the argument that the integration of routes should be prioritised. Also, requiring competing transport operators to integrate services runs the risk of encouraging collusion. The SDG paper also makes the case that, with the onset of competition, bus standards would become variable and that competitors would focus on high demand routes. These findings go against the experience of airline deregulation; standards such as punctuality, ease of booking and frequency have been improved with deregulation and services have extended beyond hub routes to more provincial destinations (Barrett, 2004). Overall, an examination of the SDG report indicates that there are at least as many reasons to favour competition as there are to deter it.

Evidence shows that bus competition in Ireland has been quite successful. The deregulation of certain intercity routes in recent years has exemplified this:

‘Competition on Dublin-Belfast increased frequency from 7 to 39 services per day in each direction and reduced the fare from €19 to €12. Competition between Dublin and Cork reduced the fare from €20.50 to €7 and frequency increased from 6 to 14’ (Barrett, 2008, p.595).

Similar findings are in evidence on other contested routes such as those between Dublin and both Galway and Waterford. Frequency of service per day is considerably higher and fare per mile much lower on these routes than on comparable uncontested routes (Barrett, 2004). In addition, data also suggests that despite restrictions on the ability of the private sector to operate services which compete with state-sponsored companies, this sector has outperformed each of the CIÉ operators. In 2003 it was found that the private sector bus fleet has passenger receipts which were 77% more than those of Dublin Bus, 41% more than Bus Éireann and 124% more than the state railways (Barrett, 2008).

For private sector operators in Dublin, contestability has been difficult to bring about. The notable exception in recent years has been Aircoach. Established in 1999, this company has expanded to operate five routes linking Dublin Airport with the south part of the city and runs a twenty-four hour service (Aircoach, 2011). The company must compete with Dublin Bus, however, which receives state subsidies. Aircoach has also had its licences restricted. Barriers to entry such as these hinder the ability of potential entrants to penetrate the market in Dublin.

In contrast to the case in Dublin, cities in a number of countries have introduced bus liberalisation. In the US for example, cities such as Denver and San Diego have introduced competitive tendering on urban bus services. The dominance of ideology in motivating policy-making in the US, in this instance with the Republican Party espousing privatisation, can be problematic and can bring about the shortcomings of market forces (as mentioned above), such as uncontested fares being increased and low demand routes being neglected. The benefits of liberalisation can be identified to a considerable extent however; for example, in Denver, competition has meant that the overall bus service has expanded and managerial and general in-house efficiency has been greatly improved. Similarly, San Diego also initiated tendering for routes; overall costs have been greatly reduced and the level of bus services increased (Richmond, 2000).

Additionally, when one examines the situation in the UK, it is evident that bus competition has existed in London since the mid-1980s. Bus services which were previously operated by London Transport were put out to competitive tender, as this body was broken up into a number of companies that were subsequently privatised. Though the formation of a large bureaucracy (Transport for London) and a recent rise in government subsidies can be seen as deficiencies in this model, important improvements in the bus system are in evidence; passenger numbers in London have grown since liberalisation. In addition, bus operating costs have fallen and bus services have increased (Compecon, 2003).

Notwithstanding the experience of cities abroad, the case for avoiding contestability in the bus sector seems to be prevailing to an increasing extent in Dublin. The establishment of the National Transport Authority (NTA) in December 2009 has allowed for the continuance of central service provision by the CIÉ operator Dublin Bus. Operating subsidies and capital grants for Dublin Bus have increased further as the company's exclusive right to provide its services is enshrined in the *Dublin Transport Authority Act 2008* (DTAA, 2008), which sets out the provisions for the NTA's functioning (NTA, 2011). This legislation does require that all new licences for state-sponsored routes are put out to tender, which means private operators will for the first time be able to apply to win the right for these services. This provision has yet to be put into practice however as demonstrated when Dublin Bus was recently unchallenged in changing its No. 63 service to operate a new route between Dún Laoghaire and Kilternan.

Lessons from Swords Express

Evidence presented from both the domestic market and from overseas emphasizes that efficiencies attained by private sector bus operators can often be significant and generally eclipse the deficiencies of market forces. This paper will now examine further the potential for lower cost operations, as well as the regulatory capture of policy makers and regulators with reference to one such private bus company, namely Swords Express. This company is an example of a competitive bus operator which has been affected by obstacles to contestability in the Irish bus sector. Since the company first applied for a licence to operate in April 2005, it has had to initiate court proceedings in order to facilitate its expansion, through the attainment of a further licence, and also to prevent unfair competition from being allowed in the market, in the form of illegitimate state subsidies being granted to its competitor, Dublin Bus.

Swords Express was awarded a licence in October 2007 and commenced running services a short time later. At the start of 2008, the company made an application to the Department of Transport for a second passenger licence, encouraged by its success to date. Subsequently, Dublin Bus made contact with the then Minister for Transport, Noel Dempsey, urging a re-routing of their No. 41X service, which served Swords, to a course via the Dublin Port Tunnel which mirrored that of the new operator. Under Irish Law, the *Transport Act 1958* (TA, 1958) requires that ministerial consent is obtained when a state-sponsored service provider wishes to initiate or alter an existing passenger road service which competes with another licensed service. Effectively, the granting of state subsidies on a route which has competition is not permitted because of its anti-competitiveness. However, the Department of Transport by-passed the Minister, having found that no competition existed on the route in question, despite the fact the two companies operated an almost identical route. As a consequence the 41X received subsidies, thereby allowing Dublin Bus to charge a fare of €2.30 on the route, whereas Swords Express, in receipt of no subsidy, was forced to charge customers between €3 and €4 (The Courts Service of Ireland, 2011).

As a result, judicial review proceedings were initiated later in 2008 with Swords Express contesting that competition did exist on the route which it operated and that Ministerial consent would be required. Consultants were engaged to adjudicate on the matter and it was found that competition was indeed existent and that the Department had erred. The Minister for Transport soon confirmed the continuance of the 41X but the service would no longer be allocated state funding. In the meantime, the Minister had yet to decide on the second licensing application of Swords Express, despite this having been agreed during judicial proceedings (*Irish Times*, 2010).

However, the victory for Swords Express in face of the anti-competitive behaviour of the State authorities proved to be short-lived. In 2009, another consultants' report was carried out on behalf of the Department of Transport. The findings indicated that the removal of one bus stop from the 41X's current route would eliminate any competitive advantage it had. Dublin Bus and the Department agreed that the revised route involved no competition and altered its service accordingly. Consequently, Swords Express began further court proceedings against the Minister for Transport in

December 2009. The company questioned this blur between competitive advantage and competition itself. McMahon J. found in their favour, stating that competitive advantage was not of statutory concern and that the Minister's decision to permit the altered route was made in error. It was also declared that the applicant's submission for a second licence had been unlawfully delayed, having been put on hold for almost thirty months. The extent to which a state-sponsored company was favoured illegitimately over a competitive private operator which was obstructed is evidenced by Mr. Justice McMahon's criticism of the approach of the Minister and that of his Department. The judge reprimanded them for their inconsistency in considering applications and for ignoring their own guidelines (Courts Service, 2011).

Data suggests that bus operators in the private sector can provide services more cost-efficiently than companies which are publically funded. A pre-budget submission to Minister for Finance Brian Lenihan in October 2010 by Antoin O'Lachtnain, Director of Swords Express, underlines the scope for greater cost effectiveness in the bus sector by allowing greater service provision in the private domain. The paper presents figures showing that the cost per bus per year of Dublin Bus is €316,000, an amount over twice that of Swords Express whose cost is €153,000. In addition, Dublin Bus has a total of 936 buses in its fleet compared with just 6 in use by Swords Express. Therefore, the costs of the publically subsidised company are quite striking given the potential for economies of scale when running such a large operation. It also points out that Swords Express is operating a more expensive and higher quality fleet of buses which would work against the company in an analysis of costs (O'Lachtnain, 2010).

O'Lachtnain's pre-budget submission paper also indicates CIÉ's growing level of inefficiency with regard to allocation of capital. It stated that, despite overall passenger numbers falling by roughly twenty million in the period between 2002 and 2009, CIÉ has increased its capital employed by over two-fold, with figures adjusted for inflation. This translates into a rise from €4.78 in capital required per passenger journey in 2002 to €11.12 per passenger in 2009. Moreover, subsidies have grown significantly, which suggests that there has been no improvement in operating efficiency in spite of the considerable capital investment. The inflation adjusted figures show an increase in subsidies from €338 million in 2002 to €451 million in 2009, an approximate one-third increase. This represents an extreme upsurge in subsidy per journey, from €1.25 to €1.79 in the seven year period. These increases in subsidies come at a time when CIÉ passenger services are worsening with significant cutbacks in operations being enforced (O'Lachtnain, 2010).

Conclusion

In conclusion, this paper firstly examines the dominance of CIÉ in the Irish bus sector and the regulatory capture the company has had over the Department of Transport. The cases for and against competition are presented. These are juxtaposed with evidence of predominantly successful competition on several bus routes across Ireland. In addition, the resistance to establishing

liberalisation on routes in Dublin is identified and compared with the largely positive experiences of foreign cities which have introduced competitive tendering for services. Furthermore, the likely continuance of protectionist policies is predicted with the establishment of the National Transport Authority, though the future practice of tendering for new routes is now written in law.

The implications of the recent Swords Express case are significant, in that the anti-competitive behaviour of state authorities with regard to bus competition is now in the public domain, after court proceedings in 2010. Furthermore, the criticism of the presiding judge directed at the Minister for Transport underlines their improper practices. Finally, an analysis of the costs of both Dublin Bus and Swords Express indicates the efficiencies that could be gained as a result of increased private sector provision of bus routes. Moreover, the evidence presented above reinforces the fact that, despite considerable growth in subsidies, CIÉ has become increasingly costly to run. Ultimately, while the reconfiguration of services in Dublin ought to allow new entrants to compete on new routes, it appears that obstacles to contestability will prevail for some time.

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