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Think piece

Analysing public transport governance

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Introduction

With the expansion of bus franchising across Europe and globally, a wide variety of contracting and tendering arrangements have emerged. Experience shows that there is no one-size-fits-all approach; instead, contracting and competitive tendering strategies have developed and evolved in response to policy goals, past experiences, challenges, and local practices. This means that when designing a bus franchising approach and evaluating implementation choices, simply copying another model is seldom a good idea. Several key factors should be taken into account. Assessing the initial conditions is crucial in choosing a model and adapting it to local circumstances. For example:

- where knowledge is located (with operators or authorities) and the maturity of that expertise;
- the characteristics of the existing supplier market;
- the nature and potential of demand;
- feasible governance arrangements;
- policy ambitions and available budgets.

Many trade-offs will be necessary, and simplistic distinctions – such as “gross-cost vs net-cost models” – should be avoided. Critical factors for successfully steering the market to deliver public value include establishing a balanced relationship between the authority and operators and developing contracts that are adaptable and flexible based on local circumstances. This process should be informed by practice-based experience, while also recognising that conditions are likely to evolve over time, requiring further refinement of the model later on. The frameworks and concepts presented in this paper aim to support the diagnosis and evaluation of local circumstances to develop an approach that responds to that context.

To inform the ongoing discussions about the Bus Bill in Wales and its forthcoming secondary legislation, this paper introduces the Strategy, Tactics, and Operations (STO) framework to compare various models that have emerged, illustrate the role of contracts and competition within these models, and clarify key success factors.

This paper has several objectives:

- To provide a broad overview of the existing contracting and competitive tendering models.
- To outline and explain the key choice ‘dimensions’ that need to be carefully considered in public transport contracting.

- To identify some of the main challenges and success factors associated with these models in practice.

Overview of models

The organisation of local public transport has undergone considerable change over the past 30 to 40 years. Until the 1980s, area monopolies operated by public companies dominated the sector in many European cities and regions, while in rural areas, subsidised private local (often family-run) operators often played a role under route authorisation regimes. Since then, a different landscape has emerged. Multinational private operators appeared, operating alongside regional mid-sized operators, municipal urban operators, and a decreasing number of local family businesses in rural areas (van de Velde, 2016). At the same time, operators affiliated with state-owned railway companies have increasingly played a role in local and regional bus and rail transport outside their country of origin.

Much of this transformation was driven by the rise of neoliberalism and New Public Management in the 1990s, which led to competition playing a growing role in public transport service provision and organisation. This was primarily achieved through the competitive tendering of contracts (“franchising”) or via deregulation. Later, European legislation on “Public Service Obligations” in public transport (EU Regulation 1370/2007 PSO) further encouraged the adoption of competitively tendered contracts or free-market approaches.

A closer observation of international experience reveals that reforms vary widely in both nature and motivation. These reforms occur at legal, governance, and contractual levels, leading to the creation and reform of authorities (and their internal governance); the reorganisation or privatisation of operators; and different approaches to the governance of operators and the services they provide. Understanding the choices made requires recognising that reforms are often based on different causes and motivations, such as a dissatisfaction with transport services provided, concerns about cost inefficiencies, or policy devolution leading to revisiting how public transport policy is embedded into wider policy objectives. Furthermore, reforms are rarely one-off events. Minor or even major tweaking usually takes place in the shorter and longer run after the first reform round. Good and bad experiences lead to learning and improvement, resulting in amending contracting details, risk allocation or awarding mechanisms. As a result, various change paths appear, some moving slower, some faster.

In some cases, major reforms can be observed like those currently underway in Wales and the wider UK, which involves transitioning from an open, deregulated market (‘competition on the road’) to competitive tendering (‘competition for the road’), and indeed also with the nationalisation of railway contracts. Changes both towards and away from competitive models also occur in other countries. For example, over the past decade, several French urban public transport networks have abandoned franchising and have been remunicipalised (Desmaris and Van de Velde, 2024).

Identifying who has the right of initiative

To better distinguish, analyse, and compare public transport models, it is crucial to first understand who has the “right of initiative” in creating passenger transport services. Two main families, or branches, exist (Van de Velde, 1999):

1. **Authority initiative:** Transport authorities have the legal monopoly on service creation, making autonomous market entry legally impossible. All services result from authority initiative to either produce services in-house or to request services through contracting and tendering (as seen in the Netherlands and France).

2. **Market initiative:** Transport services result from autonomous market entry (as in the British deregulated bus model). This process can involve varying degrees of regulatory oversight at the point of market entry. For example, the German model is characterised by strong market guidance.

Wales is currently on the verge of moving from a deregulated 'market initiative' regime towards a regime based on 'authority initiative'.

A hybrid model can also be part of the setup. Under an authority initiative approach, contractual rights may be partial, allowing for the possibility of regulated competition through autonomous market entry. An example of this is open-access services in the British rail sector, which operate alongside existing rail franchises but are subject to oversight by the Office of Rail and Road (ORR). Additionally, in-house public transport provision can be kept 'disciplined' by keeping the option of competitive tendering, serving as a safeguard against inefficiencies. This was previously used in Dutch urban public transport and, to some extent, in certain Swiss bus services.

Various arrangements fall under the 'authority initiative' categorisation. What distinguishes the arrangements outlined below is the relationship between the authority and the operator – specifically, the extent to which the management of the services and the provision and ownership of assets rest with the authority or with operators:

- **Private concessions:** The operator provides the assets and operates the transport services.
- **Delegated management:** The operator uses publicly owned assets to deliver transport services.
- **Public management:** Services are provided in-house by the authority or directly awarded to a public operator.

A combination of these arrangements can sometimes be observed at the local level, depending on the characteristics of the services and the outcome of various trade-offs. For instance, a city might use private concessions for bus services, while tramways run under delegated management, and underground services run under public management.

The distinctions presented in this section alone do not fully capture the different ways in which public transport services are contracted and tendered across Europe and beyond. A more comprehensive understanding requires examining how contracting and awarding is governed and how roles and responsibilities are shared across key partners.

Understanding the strategic, tactical, and operational levels

Public transport provision requires decisions being made with different time horizons. The STO framework distinguishes three levels of decision-making to clarify what decisions are made, who makes them, and how they are made (Van de Velde, 1999).

- **Strategic:** Formulation of general aims and main means to attain these ("What do we want to achieve?").
- **Tactical:** Designing transport services and determining the necessary means ("What services can contribute to achieving these aims?").
- **Operational:** Defining concrete production and sales plans, as well as related management and maintenance activities ("How do we produce these services?").

Figure 1: STO Framework

Decision level	General description	Decision	
		“Software”	“Hardware”
Strategic Long term (5 years)	<i>What do we want to achieve?</i>	<u>General goals</u> Transport policy Market share Profitability <u>General service characteristics</u> Areas Target groups Intermodality	
Tactical Medium term (1-2 years)	<i>Which services can help to achieve these aims?</i>	<u>Detailed service characteristics</u> Fares Image Additional services Vehicles Routes Timetable	
Operational Short term (1-6 months)	<i>How to produce these services?</i>	<u>Sales</u> Selling activities Information to the public ...	<u>Production</u> Infrastructure management Vehicle rostering and maint. Personnel rostering and mngrt

Source: Van de Velde (1999)

These three levels cover various items that need to be decided upon whatever the legal and competitive setup. Key decisions include policy goals, service areas, routes, timetables, fares, vehicle types, sales, promotion, and production activities. However, the entities responsible for these aspects, as well as the incentives and decision mechanisms used, vary substantially according to the specific legal and institutional framework. Where does the right of initiative lie? How is the authority organised? What type of governance is envisaged for the transport networks? What kind of contracting will be used with operators? Perceiving and understanding these differences is key to understanding the functioning of experiences when comparing approaches to bus franchising used elsewhere.

An important but often overlooked aspect of international comparisons is that of understanding the ‘internal’ setup on the side of the authority, mainly governing the Strategy-Tactic relationship. Is cooperation between various layers of local and regional government envisaged? (Wales is considering a cooperative approach involving local authorities, the Welsh Government, Transport for Wales, and Corporate Joint Committees). How is the authority organised internally and governed? Has a separate public transport bureau been established alongside the political authority? (Transport for Wales, as a service planning body, operates under specific framework documents and the Companies Act, with remit letters issued by the Welsh Government). Governance arrangements in other jurisdictions vary widely. Some prove very powerful and conducive to rapid adaptation to changing circumstances, while others prove less effective. Key determining factors include the number of jurisdictions involved, local taxation powers, and voting rights.

Examining the contracts with the operators

The contract between the authority – whatever its internal setup – and the operator(s) will steer and shape the market. It determines the Tactical-Operational relationship but can do so in many different ways. While one can observe a substantial variance in contracting approaches to bus franchising globally, there are key areas that each model must address, such as planning responsibilities, risk

allocation, incentive mechanisms, environmental considerations, asset ownership, awarding mechanisms, and transition issues.

Building on the STO framework outlined previously, there are two main purposes for which contracting can be used in authority initiative models:

- **Contracting for ‘doing the thing right’** (primarily focused on productive efficiency): This is exemplified by the ‘complete’ contracting regime of London’s buses, also known as the ‘Scandinavian model,’ which is widely used in Northern Europe. These are contracts in which routes, stops, frequencies, timetables, and fares are set by the authority based upon both commercial and social goals. The operator has to provide those services as specified, while being monitored and incentivised for delivering all services as punctually as possible and according to pre-defined quality standards. Such contracts are typically ‘gross-cost’ in nature, where the operator bears the production cost risk, while the authority assumes the revenue risk.
- **Contracting for ‘doing the right thing’** (primarily focused on allocative efficiency): This approach is exemplified by ‘functional’ (or ‘intermediate’) competitive tendering regimes in France and the Netherlands. Importantly, such contracting includes the definition of ‘public service obligations’ forcing the operator to provide services in locations and at times that may not necessarily be served if the operator were to consider only its commercial interest. These are usually contracts in which the service level to provide (such as the basic frequency) and the level of coverage and accessibility of the network (such as the maximum walking distance to the nearest bus stop for the major part of the inhabitants of the contracting area) is pre-defined by the authority, while the operator must design services that fulfil at least those ‘functionally defined’ service levels. These contracts are also where various forms of ‘collaborative contracting’ have been tested, allowing both the authority and the operator to contribute service design proposals at tendering or during the contract period, as seen in France and the Netherlands. These contracts are usually ‘net-cost’ in nature, with the operator assuming both production cost risk and revenue risk.

In reality, these two contractual tendencies do not always fit neatly into distinct categories. The dichotomy between them oversimplifies the wide variety of approaches to the allocation of network planning prerogatives, incentive regimes, and financial risk allocation between the authority (or its planning body) and operators. For example, risk and profit-sharing agreements with various thresholds also exist between authorities and operators. In all cases, many decisions must be made when designing a contracting regime, which primarily relate to two main fields: the contract itself and the procurement procedure. A full list of the choices that need to be made when designing a contracting regime is provided in Table 1, below.

Table 1: Key choices in designing a contracting regime

Procurement procedure	Contracting
<p>How to divide the services in contractual units</p> <ul style="list-style-type: none"> • Choosing the allotment: from one route to a bundle of routes or a whole network • Choosing the duration of contracts: linked to asset amortisation or shorter • Optimising the periodicity of competitive opportunities: frequent opportunities (monthly), yearly to every 15 years <p>How to choose the winner</p> <ul style="list-style-type: none"> • Choosing the type of awarding procedure (competitive dialogue, negotiated procedure, simple procedure, direct awarding, etc.) • Composing the awarding model items (price, quality guarantees, improvement proposals on costs and revenues,...), choosing the scoring and weighing of each item <p>How to manage the competitive market</p> <ul style="list-style-type: none"> • Market creation / management (depending on the local starting position) • How to invite potential competitors (pre-selection, qualification system, framework agreement) within the procurement regime • How to control competition (control of dominant positions) 	<p>Assets (vehicles, garages, IT systems)</p> <ul style="list-style-type: none"> • Specifications • Ownership, investment and transfer regime <p>Personnel</p> <ul style="list-style-type: none"> • Skills • Transfer of personnel <p>Service definition</p> <ul style="list-style-type: none"> • Service development responsibilities • What incentives? What works? • Flexibility of the order during the contract <p>Revenues</p> <ul style="list-style-type: none"> • Fare definition • Revenue management <p>Allocation of contractual risks</p> <ul style="list-style-type: none"> • Costs, revenues, investments, external factors • Mitigating clauses (indexation, risk sharing) <p>Quality management system</p> <ul style="list-style-type: none"> • Categories of incentives • Incentive regime (monitoring and continuous improvement procedures, contract management attitude, evaluation meetings, penalty calibration etc.)

The shaping of the procurement procedure:

- **How to divide services into contracting batches:** This will strongly influence the market of potential bidders (such as the opportunities for SMEs and the attractiveness of the contract to international groups). This should be carefully considered in balance with the other choices made.
- **How to choose the operator:** Various options exist, all depending on what is allowed by the local legal context. This can vary from in-house or direct awards (i.e., no competition) to various forms of compulsory competitive procurement (as in many European countries), although this is sometimes made to be contingent upon passing a benchmark on past performances (as in negotiated performance based contracts in Australia). Competitive procedures, while obviously having to comply with local legal requirements, can include multiple phases of consultation or negotiation between the tendering body and potential operators. Negotiations are integral to many competitive contracting models, such as those in Scandinavia and France, but are absent in others, such as the Netherlands, where complex contracts are awarded without negotiations, while giving a larger space for prior consultations and later service adaptation. When using competitive tendering, the awarding model is key and needs to be in line both with contracting aims and with current operators' skills.
- **How to manage the competitive market:** Avoiding monopolisation and ensuring a healthy level of competition, both in the short and long term, is crucial when designing a procurement model.

The shaping of the contract:

- **Assets:** Deciding which party is responsible for providing buses and depots significantly affects the range of operators able to submit bids. Specific attention should be paid to fleet electrification and evolving technology.
- **Personnel:** Ensuring that skilled personnel are available or can be transferred is another determinant of the level of competition that can be expected.
- **Service definition:** Determining the respective roles of the authority and operators in relation to both the definition at contract start and the evolution of services during the contract period determines the main contractual purpose (see above). This should be accompanied by fair payment mechanisms allowing for the necessary contractual flexibility.
- **Revenues:** Mechanisms should be established to manage revenue collection and set boundaries on fare determination by the operator (in contracts where this is part of to the operator's responsibilities).
- **Allocation of contractual risks (investment risk, cost risk, revenue risk):** This central contractual feature should be carefully designed to ensure balanced and effectively manageable risks for both parties to the contract.
- **Quality management system:** Defining monitoring procedures and contractual incentives with respect to the quality of the services provided constitute further essential contractual features. Importantly, this needs to be contingent upon realistic monitoring and management capabilities, while bearing in mind that these will evolve as a result of the contractual incentives themselves.

Importantly, most of these choices require making trade-offs between the various items, ensuring total coherence between the contractual choices made and the overarching transport policy goals (such as mobility, accessibility, affordability, and environmental sustainability).

Key insights and reflections on contracting and awarding

Approaches to contracting have been dynamic, and substantial evolutions can be observed over time. Some models, such as more 'specified' contracting based on pre-specified service definition, tend to be more stable than others. 'Functional' contracting (i.e. where the operator is involved in service planning) often presents greater challenges for both the authority and the operator, leading to more frequent changes, as seen in Sweden.

Regardless of the model chosen and the extent to which planning responsibilities are delegated to the operator, experience shows that it is essential to have an appropriately equipped authority. Investing in knowledge development and maintenance is crucial. However, the opportunities for this, and ways to realise this, will strongly depend on the model chosen. Some approaches will allow for faster learning loops, others less so. In relation to this, some approaches will typically be more dependent upon hired external knowledge than others (such as when authorities tender infrequently large concessions, e.g. their whole network every 10 years).

A recurring issue in many models is that of the balance of power between politicians and professional planners. A lack of a clear and well-balanced relationship at this strategic-tactical level – above that of the contract with the operators – is a common source of conflict and dysfunction with as main risk that the planners end up being perceived by the politicians as an uncontrolled state-within-the-state.

The contract with the operators should serve to align the operator's goals with those of the authority. In this regard, it is important to set realistic ambitions and ensure contractual targets are achievable. This

requires the allocation of risks to those able to manage them, and it requires an awarding model that prevents situations leading to ‘the winner’s curse’.

The danger of excessive formalism in contractual setup and management is another issue that requires particular attention. Fair treatment of operators, fostering partnerships where possible, and balancing understanding for hardships when necessary with the avoidance of complacency are important to creating a trusting relationship.

The adaptability of the contractual relationship is both a long-term and a medium-term issue. In the long term, the contracting approach should be improved over time, while in the medium term, services must adapt to meet changing demand. These aspects should be carefully considered within the contract itself. The services ordered will need to be amended during the contract period, particularly in longer contracts. Inappropriate payment adaptation clauses are a common source of tension and poor service delivery. Ensuring fair treatment of operators is essential and this requires devising payment clauses that are in line with fair costs, which includes defining appropriate cost indexations clauses for the payments made to operators.

Conclusion

Approaches to competitive tendering do not need to remain fixed indefinitely. What is optimal at one point in time, might need to be revised later. Learning from mistakes should take place and lead to amendments. More importantly, it should be recognised that implementing a specific regime will by itself lead to changes on the side of suppliers and authorities. Over time, new skills will develop with experience, in reaction to incentives included in the initial regime. This, in turn, will generate opportunities for improvement of the regime. A clear example of this is the need for a gradual development of quality management, in line with the growth of skills at the local level. Attempting to implement from day-one the sophisticated system that has emerged overtime elsewhere is likely to result in failure.

To support with the examination of other models and the design of the Welsh approach to competitive tendering, Appendix 1 builds on many of the key points made in this paper. The table provided in Appendix 1 (see Van de Velde, 2019, 175-196) outlines the main themes, questions, and related legal or regulatory issues that need to be critically reflected on while developing the governance and contractual arrangement between the authority and operator.

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Appendix 1

The following themes (closely related to the STO framework and based on Van de Velde, 2019) link to main discriminating questions and issues that are useful to bear in mind when studying (or designing) alternative configurations of governance and contractual arrangements between authority and operator.

Main themes	Main questions	Related legal/regulatory issues
Theme 0 The right of initiative to create services	<ul style="list-style-type: none"> • Do transport authorities have all property rights on the market to create passenger transport services or do autonomous market actors have the right to create public transport services? • Is hybridity between both configurations foreseen? 	<i>Basic legal setting (fundamental choice between authority initiative and market initiative): how fixed is this?</i>
Theme 1 The setup of the (transport) authority(ies)	<ul style="list-style-type: none"> • What type of authority is responsible for the public transport system? • Are several authorities involved? • Do they cooperate or divide responsibilities? How? On all relevant policy domains or only on public transport? 	<i>Additional legal setting and choice for a institutional setup within that setting (layered or not): how fixed or flexible is this?</i>
Theme 2 The governance arrangement of the authority	<ul style="list-style-type: none"> • How is the authority organised: as an internal administrative service, as a separate public sector company, otherwise? • What is the nature of its relationship with the political level: e.g. direct political steering through a politically appointed board, an ‘at arm’s-length’ organisation under contract, otherwise? 	<i>The internal setup of authority and its governance: how is this regulated, monitored and secured?</i>
Theme 3 The division of marketing responsibilities	<ul style="list-style-type: none"> • How are marketing responsibilities divided between ‘the authority’ and operators? (marketing is defined in the broad sense as the development of product-market combinations, the sales and promotion of services) • How is coordination between actors organised? 	<i>The involvement of the authority and the operators into service planning (at contracting and during contract): how fixed is this (in time and space)? How is the necessary knowledge secured on the authority’s side?</i>

Main themes	Main questions	Related legal/regulatory issues
Theme 4 The type of relationship with the operator(s)	<ul style="list-style-type: none"> • What is the nature of the relationship with the operators: contractual, regulatory, otherwise? • Is competition used to select operators or not? How? (competitive tendering, negotiation, benchmarking, ...) (What type of operators are allowed?) • How are goals defined? • How is performance monitored? 	<i>The role of contracting and the role of competition: How much freedom is there for the authority to organise this relationship (are the public procurement rules adequate)?</i>
Theme 5 The assets with a long lifespan	<ul style="list-style-type: none"> • How are long-term assets managed? (infrastructure, vehicles, stations, etc) • Which actor finances/owns/maintains which assets? • Which actor is responsible for the adequacy of investments? 	<i>The positioning of assets in the institutional setup: How much flexibility is there for the authority to organise this?</i>