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Converging structures? Recent regulatory change in bus-based local public transport in Sweden and England

Tom Rye [a, b, *], Anders Wretstrand [a, b]

[a] Department of Transport and Roads, LTH, Lund University, Sweden
[b] K2 Swedish National Knowledge Centre for Public Transport, Lund, Sweden

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ABSTRACT

This paper compares the regulatory structures that have developed in local bus regulation over the past 20 years in local public transport in Sweden and England outside London, and their impacts. The paper will attempt to assess how far there are similarities in these structures and whether there is evidence of any form of convergence. It does so with a review of the relevant legislation and structures, and their effects, based on the published and grey literature in the two countries. It uses a theory of the regulatory cycle (based on Needham, 1983) to theorise the relative regulatory positions of the two countries. It pays particular attention to the development of types of cooperative or partnership contract between the public and private sectors in local bus transport in the two countries, and assesses the similarities and differences between these two contracts. It concludes that, whilst the two countries may be at different points on the regulatory cycle, and therefore that in regulatory terms these partnership contracts are the result of very different pressures, in fact they are resulting in some similarities, though not in any way a regulatory convergence.

1. Introduction and structure of the paper

The objective of this paper is to compare the structures that have developed in local bus regulation over the past 20 years in local public transport in Sweden and England outside London. The paper will attempt to assess how far there are similarities in these structures and whether there is evidence of any form of convergence. The analysis will be linked to the theory of the regulatory cycle (Gwilliam, 2008; Needham, 1983) and seek to add nuances to that theory as it applies to the bus industry in these two developed countries.

The structure of the paper is as follows:

- To re-introduce the theory of the regulatory cycle.
- Give a brief re-cap of the British regulatory situation outside London and its impacts.
- To provide some more detailed case studies of the partnerships that have been set up under more recent laws that modify the basic British deregulated model.
- Explain the structure of the Swedish industry prior to the passing of the 2012 law.
- Explain how this has now changed and the new organisations that have been set up as result.
- Challenges and issues that this new structure is throwing up for operators and (public sector) regional public transport organisations in Sweden.
- Present as far as is known the changes that this has so far led to in the pattern of public transport provision “on the ground” in Sweden.
- Draw out the lessons of the British experience for the developing Swedish situation, and vice versa.
- Consider the implications of the experience of these two countries for the regulatory cycle.

It should be noted that van de Velde and Wallis' (2013) paper has compared the recent British and Swedish situation. There is therefore inevitably some duplication between our paper and theirs. There are also other papers to be presented at Thredbo 2013

* Corresponding author. Department of Transport and Roads, LTH, Lund University, Sweden.
E-mail address: tom.rye@tft.lth.se (T. Rye).

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that will cover in some detail the Swedish situation. However, this paper nonetheless adds to these papers and to the work of van de Velde and Wallis in various ways:

- It provides explanations of why powers of greater regulation introduced in Britain in 2000 were not widely used.
- It provides more and more detailed case studies of the use of powers introduced in Britain since 2008.
- It argues that there will be tendencies for the new Swedish system to evolve from mixed local and regional towards strategic regional planning and financing models for local public transport that existed prior to 2012, and considers the implications of these changes.
- It provides a comparison of the two systems including on the ground changes in Sweden since 2012.

2. The theory of the regulatory cycle

Gwilliam (2008) revisited and discussed Needham's (1983) model of the regulatory cycle. This is shown below. For brevity, the reader is referred to the 2008 paper for a full explanation of the cycle and thus a full explanation is not provided here.

The subsequent sections of the paper will show that, arguably, Great Britain outside London has moved to the situation of private sector area monopoly, but that there are some very limited moves towards the regulated private monopoly situation. Since the 1980s, Sweden has sat somewhere on the right hand side of the graphic but the reforms introduced in 2012 make it rather harder to place and indeed call into question somewhat the “neatness” and unidirectional nature of the cycle, as will be explained later.

3. Recent developments in bus regulation in Britain outside London

The basic regulatory framework for local buses in Britain outside London was set up under the 1985 Transport Act and has received much attention in the literature, so only the briefest summary is provided here; the interested reader is referred to Preston (2008) for a much fuller analysis of the process, and its effects. The Act replaced a regulated subsidised public monopoly situation with one where any profit-making operator could register and run a bus service, based on the theory that on-road competition amongst many operators would drive down operating costs, improve service quality, cut fares and subsidy, and attract new ridership. The public sector would not intervene in the market but would just provide “socially necessary” services where these were not provided by the market.

Costs and subsidy were indeed reduced significantly, but on-road competition between many small operators was quickly replaced, through merger and acquisition as well as by tacit agreement, with geographical monopolies or duopolies, leading to imperfect fare and service levels. Ridership has continued to fall in all of England outside London (Transport Statistics Great Britain, 2011), although the degree to which this fall has been caused or exacerbated by deregulation is contested.

The first regulatory modification to this situation was introduced in the Transport Act (2000) (or 2001, in Scotland); this was a response to lobbying of the then new Labour (social democrat) government by local authorities of the same party who were dissatisfied with the bus services provided under the 1985 act and with the very limited influence that they had over them. This legislation allowed local transport authorities (municipalities with transport powers) to do the following:

- Require bus operators to provide a minimum level of information about their services, or charge them and provide that information if it was not provided by the operators.
- Require operators to provide a multi-operator integrated ticketing scheme, although not one that provided fares lower than single operator tickets.
- Require operators to enter into a binding Statutory Quality Partnership (SQP) scheme with the local authority to improve the *quality* of bus services in a designated area. Quality could cover aspects such as vehicle specifications, infrastructure, cleaning, information, driver training, parking enforcement en route and at stops and so on but, crucially, not service levels/frequencies or fares – these latter remained wholly controlled by operators.
- Implement a Quality Contract, or system of franchised bus services, where SQPs had been tried and market failure could be demonstrated.

The use of the last two powers was to be initiated by the local authority but ultimately approved, before implementation, by the national Department for Transport (DfT) or equivalent in Scotland and Wales.

The first power was used widely, the second not at all to the authors' knowledge (it is unclear whether the City of Nottingham Kangaroo ticket is a result of powers used from the Act, or a voluntary agreement), the third resulted in two SQPs and the fourth was never permitted to be used, although there was some pressure from transport authorities in metropolitan areas to use it. Why were most of these powers so little used? In 2005 the Scottish Parliament Local Government and Transport Committee carried out an inquiry into the use of powers in the 2001 Transport (Scotland) Act. In summary, this report found that local authorities were deterred from using the powers due to:

- A lack of obvious benefits stemming from the use of these powers, over and above voluntary agreements with operators, especially for quality partnerships.
- Greater complexity and risk associated with the use of statutory powers.
- A lack of staff and other resources.
- A strong steer from central government that the power on Quality Contracts was intended to be used only when all other options had been shown not to function.

In addition, operators tended to shy away from entering into statutory agreements for fear that these might be judged anti-competitive, since the penalties for anti-competitive behaviour are very large.

Concerned, perhaps, at the lack of take-up of the powers in the 2000 Act, the government then passed the Local Transport Act 2008 (applying in England and Wales only). This includes the possibility for a local authority to specify maximum fares and minimum frequencies in a Statutory Quality Partnership – but only if an operator does not make what is called an “admissible objection”. This is where the operator can show that the requirement for minimum frequencies or maximum fares in the proposed scheme was either not practicable or not commercially viable (or both) for them to comply with. Operators will therefore tend to support a proposal for a SQP where it is clear that the local market has the potential to grow sufficiently to provide a return on the investment required from them for their participation in the partnership – clearly, then, not in every local bus market.

The Act also introduced the Qualifying Agreement (QA), an agreement ‘certified’ by the Local Transport Authority to permit operators to agree to run services on the same route in a