

## **PUBLIC TRANSPORT TICKETING SCHEME BLOCK EXEMPTION – OFT CONSULTATION**

### **1.**

Our opinion is that the integrated ticketing schemes referred to in the question do provide economic benefits.

### **2.**

We agree that fixing the end price for Multi-Operator Travel Cards (MTCs) meets the indispensability condition, and cannot envisage another practical alternative that would lead to equivalent benefits.

However, there are other features of the ticket types permitted under the Block Exemption that we believe impose unnecessary restrictions on undertakings, for example the (restrictive) revenue allocation arrangements permitted for MITs and the restrictions on cooperation on timetabling, which we discuss in response to question three.

### **3.**

In the case of Multi-Operator Integrated Tickets (MITs), we are of the opinion that in the vast majority of cases, fixing the end price would meet the indispensability condition, and that the Block Exemption should reflect this. At the very least, we consider that the requirement for revenue to lie where it falls to be over-restrictive as a general rule.

Paragraph **15(b)** of the *Public Transport Ticketing Schemes Block Exemption* prohibits the distribution of revenue among the parties to a ticketing scheme that covers a MIT; paragraph **4.22** of the *Public Transport Ticketing Schemes Block Exemption Review* explains that this is as these schemes can function with prices that are set independently and with revenue allowed to ‘lie where it falls.’” The *Review* offers the caveat that this may not always be the case, if for example, “one operator runs ... services on a commercial basis during the day and another operator runs them on a subsidised basis in the evening.” Paragraph **4.42** of the OFT November 2006 guidance, *Public transport ticketing schemes block exemption: Understanding competition law*, picks up the same point. A similar issue could arise if one operator had more/more easily accessible retail outlets.

The principle that these examples illustrate is that where a MIT would cause revenue taken and passenger journeys to be distributed unevenly across constituent services, revenue distribution is indeed indispensable to the attainment of the objectives of the ticketing scheme. We are of the opinion that this is so in a sufficiently high proportion of cases as to warrant particular allowance in the PTTS Block Exemption. While it is true that some PTTS involving MITs exist without revenue redistribution, it is obvious that the circumstances necessary for this arrangement to be satisfactory are unusual rather than commonplace. Consequently, requiring that a MIT involving revenue redistribution obtain individual exemption is not an appropriate solution.

We suggest, then, that the Block Exemption be amended to reflect this principle: that revenue and passengers are generally shared unevenly, and that in such circumstances, revenue distribution is indispensable. In order to reduce the risk that decisions relating to multi-operator tickets are largely determined by incumbent operators (thus potentially deterring smaller operators from participating in the schemes), appropriate governance arrangements would be necessary.

Paragraph **4.23** of the *Public Transport Ticketing Schemes Block Exemption Review* states that,

*“coordination, in the form of agreements leading to equal headways, on routes that do compete is likely to be damaging to passengers as it can restrict the entry of new operators and discourage competition between existing operators”*

We disagree that the above should be automatically considered the case, and believe that from the passenger perspective, the benefits of more equal headways would in most cases outweigh the negative implications.

Authorities may avoid the restrictions of the Block Exemption by using the Transport Act 2000 (as amended) to make a statutory Quality or Voluntary Partnership Scheme, and operators may likewise avoid the restrictions by entering into a Qualifying Agreement; it is nonetheless desirable that it is as straightforward as possible for authorities and operators to negotiate competition law.

It would be preferable to introduce conditions to the Block Exemption requiring amendment of a scheme to account for a new market entrant, rather than to prevent all cooperation on timetabling between competitors.

#### **4.**

We agree that a share of the economic benefits provided by the integrated ticketing schemes indicated is passed on to consumers. Whether or not this constitutes a *fair* share is rather difficult to assess.

#### **5.**

We agree that the ticketing schemes indicated, if they satisfy the conditions in the PTTS Block Exemption, are unlikely to allow the undertakings concerned to eliminate competition in respect of a substantial part of the services in question.

#### **6.**

We agree that without the Block Exemption, there would be a serious risk that operators would not choose to participate in ticketing schemes. Additionally, we believe it would be preferable to clarify the definitions of tickets that qualify for the Block Exemption in order to increase participation further, (as currently, multi-operator tickets tend to account for a relatively low market share).

Reasons why we think it preferable to clarify the definitions are **(a)** that there is some conflict between the definitions of a ticketing scheme that may be created under the Transport Act 2000 (as amended) and a ticketing scheme as defined by the Block Exemption, and **(b)** that there is a lack of clarity in the Block Exemption definitions of ticket types that may be covered by a Public Transport Ticketing Scheme.

**(6a)**

The Transport Act 2000 (as amended) allows local transport authorities to make a ticketing scheme, and proceeds to define four types of ticket which may be covered by a ticketing scheme. The first type is given as follows:

*“tickets entitling the holder to make more than one journey on particular local services or on local services of a class specified in the scheme (whether or not operated by the same person)”*

The difficulty is that this definition is relatively broad, and encompasses tickets that would not satisfy the narrower definitions of ticket type in the Block Exemption. A multi-operator ticket allowing the passenger to make two journeys on different routes, for example, would be permissible under the terms of the Transport Act 2000 (as amended) but not under those of the Block Exemption, where the comparable definition reads:

*“a ticket (or tickets) entitling the holder to make three or more journeys on three or more specified local public transport services operating on three or more routes provided that*

- a) these routes are not substantially the same*
- b) these local public transport services are not substantially the same; and*
- c) for each of these routes and local public transport services, the passenger usage and revenue received from the ticket and other such tickets purchased as a result of the relevant agreement, demonstrate that the ticket is not, in practice, a multi-operator individual ticket or a through ticket”*

Although the tickets that lie within one group of definitions but not the other are currently of relatively minor importance, we consider it beneficial to have consistency between the two ways in which a ticketing scheme may be established; contradictory legislation is undesirable and can cause confusion to operators and authorities. If the definitions of ticket types which can be exempted under the Block Exemption could be widened to incorporate the permutations permissible under the Transport Act 2000 (as amended), then this would clarify what is acceptable (see comments under 6b).

**(6b)**

It is proposed that the *“passenger usage and revenue received”* from a Multi-operator Travel Card (MTC) must *“demonstrate that the ticket is not, in practice, a multi-operator individual ticket or a through ticket.”* The inclusion of *usage* as a criterion in determining to what category a ticket should belong is, in general, problematic (unless in reference to smart pay-as-you-go with capping). If a ticket is sold as a MTC, valid on three or more journeys, services and routes, in a non-smart world a decision on revenue allocation must be made at point of sale. However, a MTC purchased could subsequently be used as a MIT ticket, i.e. users are not obliged to use the full

capability that a purchased ticket entitles them to. This is problematic if the revenue from each ticket type must be allocated on a different basis.

It is also unclear as to why a ticket valid on any two journeys, services or routes, where the services in question are in competition, cannot be considered a MTC. This effectively precludes a town with only two operators from obtaining an exemption for a MTC-type product.

The place of carnets in the PTTS Block Exemption is similarly obscure. The definitions given by the BE make no explicit mention of carnets, although paragraph **4.10** of the OFT guidance, *Public transport ticketing schemes block exemption: Understanding competition law* states that “a ‘carnet’ will be either an MTC ... or a MIT”. If a given carnet could be used as a block of MITs or a MTC, the aforementioned issues with these ticket types will apply. It is conceivable too, using the BE definitions, that a given carnet could be best classed as a block of Through Tickets.

It is common understanding that the entitlement represented by a MTC is limited by a fixed period of time, and that the entitlement represented by a carnet is limited by the number of journeys it is valid for. The Block Exemption definition of a MTC does not reflect this, and consequently simultaneously describes a ticket that is both like a MTC (as it is conventionally understood) and a multi-operator carnet.

We believe that uncertainty of any kind around the definitions within the Block Exemption can act as a deterrent and prevent operators from wishing to participate in a ticketing scheme. Indeed we understand that some operators have incurred high costs in obtaining legal advice to support their interpretation of competition law. For a smaller operator such costs may not be viable.

## 7.

We do not think that since 2006 any alternatives to the ticketing schemes covered by the PTTS Block Exemption have developed that would provide greater benefits to consumers, other than those aspects that have already been discussed in our response.

## 8.

We disagree that it would be premature to change the PTTS Block Exemption to accommodate new ticketing arrangements enabled by smart technologies.

The statement in paragraph 5.18 of the *Public Transport Ticketing Schemes Block Exemption Review*, that “it seems likely that smart ticketing will be in use in a significant number of urban areas of the UK by 2013”, rather underestimates the position. The infrastructure to support smart ticketing has already been rolled out across Scotland and Wales, and is now in place in many areas of England too. In fact two of the major bus operators have already announced plans to equip their fleets with smart readers within the coming months, and much of this roll-out programme has been achieved already. These operators have plans to run their own commercial ticketing schemes as well as reading the statutory concessionary bus passes smartly. Furthermore, plans to roll out smart ticketing in many of the PTE areas (and some

other towns) are relatively advanced and multi-operator smart schemes are being developed.

We agree that often, smart tickets replicate existing paper ticket types, and there should therefore be no significant difference in the way they are treated within the Block Exemption. However, smart ticketing also enables new, innovative, integrated products to be developed, which offer significant consumer benefits. In this area, the primary issue in sight is that of multi-operator pay-as-you-go tickets that can be capped at an interval-defined maximum value (PAYGC). Their introduction is the aspiration of many transport authorities. Capped PAYG is offered in London and is in development for other single-operator services in England, demonstrating its technical feasibility. Multi-operator PAYGC tickets will certainly require changes to the Block Exemption. The current requirement that MIT revenue lies where it falls seems to be one of the changes that would be made necessary (if it is not so already) by the introduction of multi-operator PAYGC tickets: in a ticketing scheme covering PAYGC, it is not appropriate to maintain two different reimbursement mechanisms, since a single journey might look like a MIT in isolation, but if considered alongside other journeys, could become part of a MTC. It is difficult to see how revenue could lie where it falls if specific ticket products are not identified up front.

While at present operators tend to resist multi-operator PAYGC ticketing, we are aware of at least one PTE that has reasonably advanced plans in this direction, and the informal agreement of the dominant operator in the region. There may also be national developments that expedite these plans.

## 9.

Our view is that if the existing PTTs Block Exemption is rolled over without specific provision being made for multi-operator PAYGC, it should be re-evaluated sooner than in the proposed five years. Leaving aside the amendments that we have suggested are appropriate in current circumstances, the consideration that is most likely to require future re-examination of the evidence is the development of multi-operator PAYGC ticketing. This, in our opinion, is further advanced and moving at a faster pace than the OFT proposal takes into account, and the extension period should reflect this. It might be appropriate therefore to extend the current Block Exemption until April 2012, by which time more will be known about the framework needed to support the smart products in development. This would also allow consideration of any relevant recommendations from the Competition Commission's investigation into the bus industry.

We are pleased that the OFT notes its ability to recommend that the Secretary of State open the Block Exemption to mid-term revision, although we hope that the existence of this back-up does not discourage the OFT from considering the full range of options open at the present. We see use of a mid-term recommendation as a second-best approach, not a desirable alternative to immediate action.