

Public Transport Ticketing Schemes Block Exemption Review

Summary of responses to the OFT's consultation,
and OFT's conclusions and decision document

December 2010

OFT1255res

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1 INTRODUCTION

- 1.1 Section 2 of the Competition Act 1998 (the Act) prohibits agreements which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom and which may affect trade within the United Kingdom, unless they are excluded or meet the conditions for exemption contained in section 9(1) of the Act (the Chapter I prohibition). Section 6 of the Act also provides for the adoption of block exemptions, exempting a category of agreements from the prohibition in section 2.
- 1.2 In 2001, a block exemption was adopted for public transport ticketing schemes that met certain conditions (the Block Exemption). The Block Exemption is set out in the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 (SI 2001 No 319), as amended by the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) (Amendment) Order 2005 (SI 2005 No 3347) (the Amendment Order). The current version of the Block Exemption, which came into force in 2006, is due to expire on 28 February 2011.
- 1.3 Between March and July 2010 the Office of Fair Trading (the OFT) carried out a preliminary review of the Block Exemption and its operation. During the course of the review the OFT met with a number of representative organisations connected to the transport industry to seek their views on the Block Exemption. The OFT also reviewed the materials from its earlier review of the Block Exemption carried out between 2003 and 2005.
- 1.4 Following its preliminary review, and pursuant to sections 8(1) and 8(3) of the Act, the OFT issued a consultation paper in July 2010 (the Consultation).¹ The Consultation sought views from interested parties as to whether the OFT should recommend that the Secretary of State for Business, Innovation and Skills (the Secretary of State) should vary the

¹ OFT 1255, '*Public Transport Ticketing Schemes Block Exemption Review*'

Block Exemption by extending its duration for an additional period of five years until 29 February 2016.

1.5 Views were sought on the following:

- whether the types of integrated ticketing schemes specified in the Block Exemption (the Ticketing Schemes) continue to satisfy the conditions for exemption under the Act, and the extent to which there is a continued need for the Block Exemption
- whether or not there are alternative ticketing schemes that would provide greater benefits than those covered by the Block Exemption, and
- whether it would be premature substantially to change the Block Exemption to accommodate technological changes (such as smart ticketing) given the current relatively early stage of development of the technologies concerned and of their application.

1.6 The OFT received a total of 24 responses to the Consultation.² These were overwhelmingly in support of extending the Block Exemption in broadly unchanged form. A small number of respondents considered that certain changes should be made to the Block Exemption. These views are discussed later in this document.

1.7 This document sets out a summary of the responses to the Consultation, and the OFT's conclusion regarding its recommendation to the Secretary of State. It should be read in conjunction with the Consultation.

1.8 The OFT would like to thank all those who contributed to the consultation process.

² The respondents to the Consultation are listed at Annexe A.

2 ASSESSING WHETHER A BLOCK EXEMPTION REMAINS APPROPRIATE

A. Fulfilling the conditions for exempt agreements – the section 9(1) criteria

2.1 The first set of questions in the Consultation (questions 1 to 5) sought views as to whether the Ticketing Schemes continue to satisfy the conditions for exempt agreements set out in section 9(1) of the Act, as required for a block exemption under section 6(1) of the Act. For the purposes of this assessment, the OFT considers that it is appropriate to invert the order of the second and the third conditions of section 9(1) of the Act and deal with the issue of indispensability before the issue of consumers receiving a fair share of the efficiencies. This is because the analysis of whether consumers are receiving a fair share of the benefits arising from the agreement should not include any benefits arising from restrictions that are not indispensable and accordingly do not meet the conditions for exemption in section 9 of the Act.³

Condition (i) under section 9 of the Act - Efficiency gains

2.2 The first condition for exemption is that the agreement must contribute to improving production or distribution or promote technical or economic progress. The Consultation asked whether the Ticketing Schemes produced such economic efficiencies.

'Question 1: In light of a further period of working with the PTTS Block Exemption since 2006, do you agree that the integrated ticketing schemes indicated above provide economic benefits? Are there any other economic benefits that such schemes provide? Please note if your answers vary according

³ This is consistent with the European Commission's approach in its 'Guidelines on the application of Article 81(3) of the EC Treaty' (now Article 101(3) of the TFEU).

to the different types of ticket covered by the PTTS Block Exemption and explain how they vary.'

2.3 The consultation document set out a number of potential benefits for passengers, including the following:⁴

- better quality bus services and improved transport networks, for example, by offering the ability to travel on the services of several operators on a single ticket, and
- saving passengers time and money through avoiding the need for passengers to purchase separate tickets on different legs of a journey, thereby improving the quality of the service, the accessibility of transport services for passengers and the overall value for money they receive.

2.4 All respondents that commented specifically on this question agreed that ticketing schemes permitted under the Block Exemption represent a category of agreements that continue to provide economic benefits for passengers, operators and other consumers. The vast majority also considered that such benefits were significant.

2.5 The vast majority of respondents also agreed that the key benefits for passengers, operators and other consumers were those identified by the OFT in the Consultation, although they placed different emphases on the scope and significance, in practice, of the benefits identified in the Consultation. So, for example, some respondents considered that time and potential cost savings were the most important benefits, while others considered that the simplicity of being able to purchase one integrated ticket rather than multiple tickets was the key benefit.

2.6 One respondent noted that one of the benefits to operators of multi-operator travelcards (MTCs) is their ease of promotion to consumers,

⁴ OFT 1255, '*Public Transport Ticketing Schemes Block Exemption Review*', at paragraphs 4.11 and 4.12.

given their simplicity and the consequent ease of understanding by consumers; the respondent cited Plus Bus schemes as a practical example of this.⁵ A few respondents stated specifically that, in their view, this simplicity and ease of use constituted a significant benefit in its own right that should not be overlooked.

- 2.7 Another respondent considered that, while overall MTCs potentially reduce the cost of additional journeys to zero as set out in the Consultation, this would not necessarily be the case in all instances. The respondent considered that this was more likely to be the case in relation to one-day MTCs (which are the norm in some parts of the country, rather than MTCs of longer duration). The respondent considered in particular that a one-day MTC of this type will not always provide passengers with cost savings, depending on the extent to which they need to use the services of multiple operators. The respondent also noted that where savings are made on such tickets they are generally not as great as in the case of MTCs of longer duration. While the respondent did not explain the reasons for these views, it may be that the respondent considered that the longer the duration of an MTC, the more scope there is for passengers to make many multiple operator journeys and therefore benefit from an MTC.
- 2.8 One respondent stated that reduced boarding time on buses – resulting from an increase in off-bus ticket sales facilitated by the Block Exemption – provided other benefits in addition to the benefits to passengers and other road users highlighted in the Consultation. In particular, it considered that the faster journey time brought about by the reduction in boarding time helps operators' productivity, which may assist them in dealing with cost pressures, as well as benefiting bus users.
- 2.9 A few respondents considered that there were potential benefits additional to those identified by the OFT in the Consultation. One

⁵ Plus Bus tickets provide a bus add-on to train tickets, allowing unlimited travel in the origin or destination town of a rail journey.

respondent considered that the existence of the Block Exemption encouraged joint working by operators to develop products such as smart card technology, ahead of its application in agreements covered by the Block Exemption, which individual operators might not be willing or able to develop alone.

OFT's view

2.10 Without exception, all those who provided a specific answer to this question agreed that the Ticketing Schemes provide efficiency gains, although there were differing views on the magnitude, weight and relative importance of the different efficiencies identified in the Consultation. Moreover, some respondents also considered that there were potential benefits over and above those identified by the Consultation.

2.11 Having regard to its initial assessment of this criterion and to the Consultation responses, the OFT considers that the Ticketing Schemes continue to provide efficiency gains within the meaning of section 9(1) of the Act.

Condition (iii) under section 9 of the Act - Indispensability of the restrictions

2.12 The third condition for exemption is that the agreement must not impose restrictions that are not indispensable to achieving the benefits arising from the agreement. The Consultation requested views on whether the current Block Exemption contained any restrictions that were not indispensable.

'Question 2: In light of a further period of working with the PTTS Block Exemption since 2006, do you agree that the ticketing schemes indicated above, if they satisfy the conditions in the PTTS Block Exemption, do not impose on the undertakings concerned restrictions unnecessary for the attainment of the benefits described above? In particular, do you agree that fixing the end price for MTCs meets the indispensability condition, or are there

other practical alternatives that would lead to equivalent benefits? For example, would alternative revenue sharing agreements that did not involve fixing a common end price for MTCs achieve this end? If you can envisage other practical alternatives, please describe these in detail.'

2.13 As noted in the Consultation, the Block Exemption sets specific conditions for different types of tickets in order to ensure that the Ticketing Schemes do not impose restrictions that are not indispensable to achieving the relevant efficiencies. The OFT indicated in the Consultation that its preliminary view was that the conditions in the current Block Exemption did not impose any restrictions that were not indispensable to attaining the efficiencies.⁶ In particular noting that:

- a common end price is likely to be indispensable for MTCs only
- revenue sharing for MITs is not permitted as these schemes can generally work by allowing revenue to lie where it falls
- timetable sharing is likely to be indispensable for through tickets only.

2.14 The vast majority of respondents that commented specifically on this question agreed with the general proposition that the conditions set by the Block Exemption are necessary for the attainment of the economic benefits discussed above, in particular noting that they could not envisage any viable revenue-sharing arrangements which would not involve fixing a common end price for MTCs.

2.15 One respondent expressed the view that the Block Exemption conditions were overly restrictive. As regards MTCs, the respondent considered that, whilst the ability to fix the end price was indispensable, agreements for MTCs were difficult to attain because of other conditions in the Block Exemption. The respondent expressed the view that one

⁶ OFT 1255, '*Public Transport Ticketing Schemes Block Exemption Review*', at paragraphs 4.13 to 4.23.

such problem was that MTCs 'must always be priced above that of the highest priced operator specific travel card in the scheme area' (although, as explained in paragraph 2.24 below, this is not in fact the case under the Block Exemption). In this regard, this respondent argued that smaller operators, with smaller overheads, can offer cheaper fares and are therefore not incentivised to join schemes because the high price of the MTC penalises those who make the majority of their journeys on the smaller operators' services. As regards MITs, this respondent considered that the Block Exemption condition for revenue to lie where it falls is not indispensable and that it disincentivises some operators from participating in MIT schemes where passenger journeys and revenues are unequally distributed.

- 2.16 This respondent also considered that there were issues around ensuring revenue-sharing arrangements for MTCs are equitable. It considered that there was an argument that revenue-sharing should be based on the number of passengers carried by respective operators but this would present difficulties in terms of obtaining accurate figures and taking proper account of the distance travelled by passengers on the services provided by different operators.
- 2.17 Another respondent considered that, while there is an argument that fixing a common price is the best solution for MTCs since it provides simplicity, greater differentiation between multi-operator products may be beneficial in certain circumstances providing that they more closely reflected individual marginal costs. For example, lower cost operators could price lower than a common price while still agreeing to share a proportion of that revenue with other operators, although the respondent noted that it was difficult to see why larger operators would wish to agree to such an arrangement. The respondent also noted that a group of smaller operators might also wish to agree to sell a lower priced MTC in an attempt to compete with larger operators, although it should be noted that this is not prevented under the Block Exemption. The respondent concluded, however, that consideration of any new provisions should not undermine the operation of MTCs as the risk of not having MTCs would outweigh the potential benefits of greater price competition.

2.18 The vast majority of respondents that considered fixing a common end price for MTCs was indispensable agreed that alternatives were unlikely to be workable irrespective of whether alternative revenue-sharing mechanisms might technically be available. This is because alternative revenue-sharing mechanisms were unlikely to be successful without the ability to fix a common end price. Specific comments made by respondents included the following:

- a lack of price-certainty would be very unpopular with, and cause confusion for, passengers
- minimum access pricing would be likely to disadvantage some consumers where operators whose customers could not switch decided to charge higher prices
- if differential pricing resulted in operators no longer receiving an adequate return, they would be likely to withdraw from participating in the MTC or even from providing the service at all
- without a common price some retailers could discount without financial risk to themselves whilst causing loss to operators running the services covered (and operators would be likely to withdraw)
- alternative mechanisms would be complex to administer and difficult to promote clearly to consumers
- variable pricing in areas with little competition would cause problems, as if a large operator serving one suburb charged less than a smaller operator serving a different suburb, this could be seen as abusing the former's monopoly position.

2.19 One respondent commented that revenue allocation mechanisms where earnings per operator are a function of miles travelled using that operator's services do not diminish competition for custom.

2.20 Another respondent commented that revenue sharing is, in general, unattractive as it can require complex arrangements to provide fair

reimbursement. This respondent considered, therefore, that it is preferable that revenue should lie where it falls.

- 2.21 One respondent also considered that, whilst schemes ought not to place unnecessary restrictions on operators, it is necessary that appropriate and auditable mechanisms should be established for determining the end price of MTCs, though operators should be free to set fares for their own services. The same respondent provided an example of a currently functioning council-sponsored pay-as-you-go smart card scheme in which operators set their own prices for use of the card without the need for revenue-sharing. However, the OFT understands that this is a stored value card that can be used instead of cash to pay for bus travel, rather than a 'full function' MTC entitling the holder to make three or more journeys on three or more specified local public transport services operating on three or more routes.
- 2.22 Another respondent agreed with our view that a common price for MTCs was indispensable but considered that this could have the unintended consequence of allowing larger participating operators to resort to predatory pricing in relation to smaller operators by offering their own single-operator daily, weekly or monthly tickets at a particular discount to the MTC price.

OFT's view

- 2.23 The OFT has considered carefully respondents' views on whether conditions in the Block Exemption are indispensable, and in particular whether a common price for MTCs meets this test.
- 2.24 The OFT notes that the vast majority of those who responded specifically to this question agreed that the Block Exemption did not impose restrictions that were not indispensable. In particular, they considered that theoretical alternatives to a common price for MTCs were unlikely to be workable in practice.
- 2.25 Although one respondent took the view that some restrictions were unnecessary, the OFT notes that their concerns regarding revenue sharing mechanisms and the pricing of MTCs are not actually

requirements of the Block Exemption. While in practice it is unlikely that operators will agree to a common MTC price that is lower than their own individual operator travelcard (they would be making their own product for which they receive all the revenue less attractive), this is not a restriction imposed by the Block Exemption. Similarly, the Block Exemption does not mandate a particular revenue-sharing mechanism for MTCs; it allows any mechanism that does not result in an incentive for operators to set their own fares higher than they would have been set in the absence of the MTC, or significantly reduce the incentive for each of the operators to compete for passengers.

2.26 As regards the concern expressed about predatory pricing, the OFT does not consider that the use of MTCs itself creates a greater likelihood of predatory pricing than already exists and, in any event, the OFT would be able to investigate suspected predatory pricing under the Act.

2.27 The OFT has had regard to the OFT's initial assessment that the Block Exemption does not contain any restrictions that are not indispensable, and in particular that a common price for MTCs was indispensable. The OFT notes also that because services covered by MTCs are complementary (they may not overlap over a substantial part of the routes in question), common pricing is likely to have a lesser impact on competition than for substitute services.⁷ Given all these factors, the OFT continues to believe that the Block Exemption does not impose any restrictions that are not indispensable to achieving the associated efficiencies.

2.28 The Consultation also asked whether there were additional features that should be regarded as indispensable.

'Question 3: Are there additional features of these ticketing schemes that should be regarded as indispensable and without which the schemes could not deliver

⁷ See paragraphs 4.5 to 4.9 of the OFT's ticketing guidance. In particular, these note that a minimal overlap between services, for example where bus routes have a few stops in common, will be permitted by the Block Exemption.

the benefits described above? Please note if your answers vary according to the different types of ticket covered by the PTTS Block Exemption and explain how they vary.'

- 2.29 The majority of respondents who commented specifically on this question considered that there were no additional features that should be regarded as indispensable.
- 2.30 However, one respondent considered that in the vast majority of cases fixing a common price for MITs would meet the indispensability test. They also considered that, at the very least, the requirement for revenue to lie where it falls is overly restrictive as a general rule. This respondent expressed the view that this is because in a sufficiently high proportion of cases revenue and passenger journeys are distributed unevenly across operators involved in the scheme and revenue distribution is required, and should therefore be allowed, as being indispensable, by the Block Exemption.
- 2.31 The respondent noted that the OFT itself accepted in the Consultation that revenue may sometimes be distributed unevenly, for example where one operator runs a commercial service in the day and another operator runs a subsidised service in the evening. The respondent did not consider it sufficient that the OFT's ticketing guidance⁸ contains a statement to the effect that – so long as it is restricted to what is required for the scheme to work – revenue sharing for MITs is likely to meet the section 9(1) criteria and benefit from individual exemption even if it falls outside the Block Exemption.
- 2.32 Another respondent agreed that the requirement for revenue to lie where it falls for MITs was overly restrictive and considered that revenue sharing should be considered as indispensable. The same respondent took the view that the true benefits of MTCs could only be realised if accompanied by coordination agreements that provide for regularly

⁸ OFT 439, '*Public transport ticketing schemes block exemption*' (November 2006), at paragraph 4.43.

spaced, attractive services. This respondent also argued that it is misplaced to suggest that coordination of timetabling in the form of equal headways⁹ along routes that compete is damaging to passengers.

- 2.33 This view of equal headways on competing routes was echoed by two other respondents, both of whom considered that the benefits of equal headways to passengers would outweigh the negative implications and were therefore desirable if not necessarily indispensable.
- 2.34 One respondent expressed the view that the Ticketing Schemes are defined mainly by reference to schemes involving two or more bus operators and that there is a need to widen the scope of the Block Exemption to promote inter-modal ticketing by bus, rail and ferry (as applicable) in order to reflect developments that have already happened and to encourage further progress.¹⁰ This respondent also considered that some of the definitions in the Block Exemption were specific to bus industry regulation and cannot be applied in the same way to rail journeys, for example the definition of a long distance service in terms of a 15 mile threshold.
- 2.35 One respondent suggested the following additional features that **might** be considered indispensable:
- establishment of minimum service standards
 - development of new technology (for example. smart cards; real-time passenger information systems)
 - investment in infrastructure.
- 2.36 Whilst acknowledging that such features could prevent some operators from participating, the respondent commented that the Block Exemption

⁹ A situation where services run at equally spaced intervals.

¹⁰ The respondent also made this point in relation to question 7 in the Consultation. We have discussed the issue in this section only.

would not apply to schemes imposing such requirements unless the reason for inclusion was objective, transparent and non-discriminatory.

- 2.37 Another respondent commented that whilst it could not immediately identify any additional features that should be considered indispensable, it thought it likely that some changes would be required in the future if smart card technology is to fulfil its maximum potential in providing customer benefits in the integrated transport market.

OFT's view

- 2.38 The OFT notes that only a small number of respondents consider that additional features of Ticketing Schemes may meet the indispensability test and should be included in the Block Exemption. The OFT notes that it is not clear that all of the features identified by respondents would constitute a restriction on competition within the meaning of section 2 of the Act. For some of the other features, there is insufficient evidence that they should be regarded as being likely to meet the indispensability test in every case, in particular given that the vast majority of respondents considered that there were not additional features that were indispensable. This does not preclude the possibility of operators including such features in individual schemes if their self-assessment concludes that the feature does not breach the prohibition in section 2 of the Act or the conditions for exemption in section 9(1) of the Act are met in that particular case.
- 2.39 As regards price fixing for MITs, the OFT considers that – in contrast to the position with MTCs – a common price is not required to make an MIT scheme workable. This is evidenced by the significant number of MIT schemes in operation without a common price, in which the price of the MIT ticket is set independently by each individual operator. Given this, it seems unlikely that a provision allowing operators to agree on a price for MITs would meet the indispensability condition of section 9(1) of the Act. In particular, the OFT notes that no transport operator has responded to the Consultation suggesting that the ability to agree the price of an MIT is indispensable.

- 2.40 Also, the OFT notes that the potential restrictive impact of MITs – schemes involving operators with substitute services – is greater than for MTCs, which involve complementary services that do not overlap over a substantial part of the routes in question. In particular, as incentives to collude may be greater between competitors (that is, where operators provide substitute services), retaining the prohibition on MIT schemes fixing the price of the ticket reduces the risk of anti-competitive collusion.
- 2.41 With respect to revenue sharing, the OFT has considered carefully these respondents' views on revenue sharing but, on balance, is not persuaded that the Block Exemption should be changed to allow MIT agreements containing revenue sharing arrangements to benefit from the Block Exemption. In particular, the OFT notes that these respondents have not provided sufficient evidence that revenue lies where it falls is not indispensable to obtaining the efficiencies from an MIT scheme and that the majority of respondents stated that the conditions listed in the Block Exemption (including revenue lying where it falls in relation to MITs) were indispensable (see paragraph [2.14] above). That said, the OFT reiterates that – as specifically stated in the OFT's ticketing guidance – there may be circumstances in which a MIT scheme based on a revenue sharing arrangement meets the conditions for individual exemption set out in section 9(1) of the Act and therefore may benefit from exemption even though it does not meet all the conditions in the Block Exemption.
- 2.42 An example used in the OFT guidance on the Block Exemption and the consultation is an MIT scheme where one operator mainly runs the services on a route on a commercial basis during the day and another operator mainly runs services during the evening. It may be that more journeys are made in the evening than the day so that the revenue falls unequally between the operators' services. In such a case, the evening operator might be unwilling to agree to a 'revenue lies where it falls' scheme and a mechanism for apportioning revenue on a fairer basis would need to be included in the ticketing scheme. As noted in the OFT's published guidance on the Block Exemption, we consider that such arrangements are likely to satisfy the conditions in section 9(1) of the Act for individual exemption, provided that the revenue distribution

method is limited to what is indispensable to achieve the benefits of the MIT scheme and does not result in the operators agreeing the price of the MIT.¹¹

- 2.43 In terms of timetable coordination, the OFT has considered respondents' views carefully. However, the OFT remains of the view that such coordination is unlikely to be indispensable for schemes that involve competing services. Agreements between competitors on timetables, particularly in the form of agreements leading to equal headways, has the potential to be damaging to passengers, as it can restrict the entry of new operators and discourage competition between existing operators. A significant number of schemes have been in operation since the Block Exemption has been in place, in which timetables were not coordinated between operators. The OFT considers that this is evidence that an agreement on timetables is not indispensable for the operation of a Ticketing Scheme.
- 2.44 In line with this consideration, the OFT notes that no transport operator has responded to the July consultation suggesting that timetable coordination is indispensable to operate a Ticketing Scheme. In addition, the OFT also notes that agreements leading to such coordination would be unlikely to meet the fourth condition of section 9(1) of the Act, requiring that an exempt agreement does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question. This is because the coordination of timetables could remove the commercial freedom of the parties to a ticketing scheme to set the services and timetables of the

¹¹ We also note in this context that it is important to carry out a careful assessment of whether in an example like this one services are in fact substitute services and therefore whether the scheme actually falls within the definition of an MIT contained in the Block Exemption. Factors to be taken into account when assessing the substitutability of services may include, but are not necessarily limited to, the direction of travel and the extent to which services of different operators overlap in time. Even if it is not an MIT for the purposes of the Block Exemption, the scheme may fall within other categories of the Block Exemption.

services they provide individually, which is essential for transport operators to compete for passengers.

2.45 In reaching this conclusion, the OFT notes that the Transport Act 2000 as amended (TA 2000) may allow local authorities and operators to create schemes and conclude agreements allowing equal headways for buses. Such schemes and agreements are lawful only if the relevant competition test is met in relation to them.¹²

2.46 The OFT notes that one respondent considered that the Block Exemption is defined mainly by reference to bus services and that its scope should be widened to promote inter-modal services. The OFT does not consider that changes are necessary in this respect as the OFT considers that the scope of the Block Exemption already covers inter-modal travel to a sufficient extent, so that operators are free to make inter-modal schemes where they wish to do so. Specifically, the OFT notes that the Block Exemption covers tickets giving entitlement to make journeys on a 'local public transport service'. The Block Exemption defines this term as follows:

'local public transport service' means:

(a) a bus service; or

(b) a scheduled public transport service (other than a bus service) using one or more vehicles or vessels for the carriage of passengers by road, railway, tramway or inland waterway at separate fares other than a long distance service, a chartered service or a tourist service...

(Emphasis added).

¹² In broad terms, the TA2000 – as amended by the Local Transport Act 2008 – permits Local Authorities to make certain schemes to improve local bus services, subject to a competition test ('the Part 1 test'). It also inserts a new competition test (the 'Part 2' test), applying to voluntary partnership agreements and certain other agreements, and makes specific provision for investigation and enforcement action to be taken by the Office of Fair Trading in relation to such agreements. The two competition tests are to some extent similar (although not identical) to the exemption test in section 9 of the Act.

- 2.47 The OFT notes this respondent's view that some of the definitions in the Block Exemption are of limited applicability beyond the bus industry. The OFT does not consider that this is necessarily the case; in particular, the OFT notes that this point was not made by any other respondent.
- 2.48 As regards the other suggestions for features that might be indispensable, the OFT notes that these appear to be no more than suggestions or speculation and, on balance, the OFT does not consider that there is sufficient evidence for these to be included in the Block Exemption.
- 2.49 The OFT is also influenced by the fact that the vast majority of respondents did not consider that there were additional features that be regarded as indispensable. For these reasons the OFT considers that, at the present time, there are no other features that should be regarded as indispensable within the meaning of the section 9(1) criteria.

Condition (ii) under section 9 of the Act - Fair share for consumers

- 2.50 The second condition for exemption is that consumers must receive a fair share of the benefits generated by the restrictive agreement. The Consultation asked whether a fair share of benefits arising from the Ticketing Schemes was passed on to consumers.

'Question 4: In light of a further period of working with the PTTS Block Exemption since 2006, do you agree that a fair share of the economic benefits provided by the integrated ticketing schemes indicated above are passed on to consumers? If you have identified any additional economic benefits in your answer to question 1 above, do you consider that they are passed on to consumers? Please note if your answers vary according to the different types of ticket covered by the PTTS Block Exemption and explain how they vary.'

- 2.51 The Consultation set out the OFT's initial view that consumers were likely to receive a fair share of benefits arising from the Ticketing Schemes, in particular the improved quality, flexibility and convenience

and potentially lower prices of transport services that flow from integrated ticketing, as discussed above.¹³

2.52 A substantial majority of respondents that commented specifically on this question felt that a fair share of the economic benefits was passed on to consumers.

2.53 Most respondents pointed to the wide variety of benefits being passed on to consumers, in particular:

- travel cost savings
- increased travel options, flexibility and convenience, including increased ability to purchase tickets online ticket
- faster journey times and
- wider environmental, social and economic benefits to all consumers, whether or not using tickets permitted under the Block Exemption.

2.54 Two respondents felt that there might be some doubt, in the light of steep rises in fares, as to whether consumers continue to receive a fair share of the gains operators derive from the Ticketing Schemes. Both respondents added that, notwithstanding this doubt over whether or not passengers were receiving a reasonable share of operators' associated financial gains, they considered that a more equitable outcome would not be possible without some form of statutory fares control.

OFT's view

2.55 The OFT notes that the majority of respondents commenting specifically on this question considered that consumers would receive a fair share of the benefits of the Ticketing Schemes. This is in line with the OFT's identification of specific passenger benefits in terms of flexibility,

¹³ OFT 1255, '*Public Transport Ticketing Schemes Block Exemption Review*', at paragraph 4.24.

convenience and potentially lower prices in some instances. The OFT also notes that the Block Exemption also preserves competition between operators so cost savings resulting from the schemes are more likely to be passed on to consumers in the form of lower fares.

2.56 For these reasons the OFT continues to believe that consumers receive a fair share of the benefit and that this criterion of section 9(1) of the Act is met.

Condition (iv) under section 9 of the Act - No elimination of competition

2.57 The fourth condition for exemption is that agreements must not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question. The Consultation asked whether any ticketing schemes in the Block Exemption were likely to eliminate competition.

'Question Five: In light of a further period of working with the PTTS Block Exemption since 2006, do you agree that the ticketing schemes indicated above, 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? Please note if your answer varies according to the different types of ticket covered by the PTTS Block Exemption and explain how it varies.'

2.58 The Consultation set out the OFT's initial view that the Block Exemption did not allow operators to eliminate competition in respect of a substantial part of the services in question because it contains conditions to ensure that new entrants are entitled to join any schemes benefiting from the Block Exemption, and that they have the commercial freedom to set fares, services and timetables on the services they provide individually.¹⁴

¹⁴ Ibid., at paragraphs 4.25 to 4.27.

- 2.59 Of those respondents that responded specifically to this question, several commented that they had no evidence of competition being harmed. Moreover, no respondents disagreed with the OFT's preliminary view that the Block Exemption did not allow operators to eliminate competition in respect of a substantial part of the services in question.
- 2.60 One respondent expressed the view that the Block Exemption had the effect of encouraging or increasing competition as the existence of a well-structured multi-operator scheme was likely to encourage smaller operators to enter the market as such schemes allow them immediate access to a revenue 'pot' in addition to their individual operator service. This respondent commented further that schemes could raise standards across the network covered, delivering benefits to smaller, less experienced, operators.
- 2.61 In a similar vein, another respondent felt that multi-operator schemes helped to grow the market and thereby encourage new entrants, as they then have an equal opportunity to acquire a share of the market.
- 2.62 One respondent commented that, although it was not aware of any reduction in competition due to the Block Exemption, it felt nevertheless that competition was patchy and did not always seem to work to the consumer's advantage.

OFT's view

- 2.63 Having regard to the vast majority of respondents' agreement with the OFT's preliminary assessment that the Block Exemption does not eliminate competition in respect of a substantial part of the services in question, the OFT remains of the view that this criterion of section 9(1) of the Act continues to be met.

B. Additional cumulative criteria

- 2.64 The Consultation also set out the OFT's views in relation to the other cumulative criteria which the OFT considered should be met for the Block Exemption to be extended and questions 6 and 7 sought views on two of these criteria.

Enhanced need for cooperation

- 2.65 The Consultation set out the OFT's initial view that the need for cooperation in relation to Ticketing Schemes is greater than in other sectors because, most fundamentally, integrated ticketing schemes would not work without cooperation between different transport operators (for example, between train and bus operators or between bus operators). Also, specific elements required for integrated ticketing schemes to operate require cooperation (for example agreeing a common price in the case of MTCs, having interoperable tickets and distributing revenue).¹⁵
- 2.66 Comments from a number of respondents provide support for this assessment. In particular, a large number of operators recognised that cooperation with fellow operators was a crucial feature of the Ticketing Schemes, so much so that even with the Block Exemption in place operators remained cautious about certain features of cooperation such as price fixing.
- 2.67 Having regard to its initial assessment and the responses of operators the OFT therefore remains of the view that this criterion is met.

Risk that ticketing schemes will not be entered without the PTTS Block Exemption

- 2.68 In order to justify a sector-specific block exemption, there should be a significant and real risk that the category of agreements covered will not be entered into in the absence of the Block Exemption. The Consultation requested views on whether the ticketing schemes covered by the Block Exemption would be likely to continue without the Block Exemption.

'Question 6: In light of a further period of working with the PTTS Block Exemption since 2006, do you agree that there is a risk that without the PTTS

¹⁵ Ibid., at paragraphs 4.28 to 4.30.

Block Exemption operators would not choose to participate in the above ticketing schemes, and especially in the establishment of new schemes? If so, do you have any evidence to support this view? Please note if your answers vary according to the different types of ticket covered by the PTTS Block Exemption and explain how they vary.'

- 2.69 The OFT considered in the Consultation that there is a significant and real risk that the Ticketing Schemes may not be entered into and that existing agreements may be terminated, to the detriment of consumers, if the Block Exemption were to expire. This was owing to the fact that benefits to consumers from ticketing agreements are typically substantial but benefits, in particular revenues, to some operators through participating in the scheme may in some instances be relatively small and operators may be concerned about the risk of sanction under competition legislation in the absence of the Block Exemption.¹⁶
- 2.70 The vast majority of respondents that commented specifically on this question considered that there was a very real risk that without the Block Exemption operators would not choose to participate in or establish the ticketing schemes currently permitted by it.
- 2.71 Many respondents commented that the costs of setting up schemes could be significant, with commencement representing a substantial commitment. In these circumstances, respondents commented that the risks of participation, and of challenge under the Competition Act, were too great to undertake participation without the certainty and comfort provided by the Block Exemption. Another respondent considered that there is a trend towards increasing market concentration and that it was conceivable that larger operators will see increasingly less advantages in supporting multi-operator tickets. In this context, this respondent considered it was critical that the regulatory framework does not provide added barriers to integrated ticketing such as removing the Block Exemption.

¹⁶ Ibid., at paragraphs 4.31 to 4.34.

- 2.72 A significant proportion of respondents felt that if the Block Exemption was withdrawn, non-participation in the ticketing schemes covered by the Block Exemption was not just a risk but a virtual – and in the view of some respondents, absolute – certainty.
- 2.73 As regards the possibility of individual exemption for ticketing scheme agreements, respondents generally thought that the time and expense of having to justify proposals under s. 9(1) would in practice act as a bar to transport operators implementing schemes.
- 2.74 A small number of respondents expressed the view that, even with the Block Exemption in place, some operators were wary of participating in Ticketing Schemes. Without the Block Exemption, the problem would be worse as some operators feared that the cost of responding to any investigation by the competition authorities would seriously harm their business even if there was no finding that they had breached the law.
- 2.75 One respondent felt that operators might continue to enter into agreements for the biggest selling multi-operator tickets even in the absence of the Block Exemption, but that it would be unlikely that most of the smaller schemes would exist without it.

OFT's view

- 2.76 The OFT has considered carefully respondents' views on this criterion. The OFT notes that the overwhelming majority of respondents considered that the ticketing schemes currently provided by operators would be unlikely to continue, or at least not to the same extent, if the Block Exemption was withdrawn. The OFT considers that this is consistent with our initial view that, owing to the features specific to ticketing agreements between multiple travel operators set out in the Consultation document, a sector-specific block exemption continued to be justified. The OFT therefore continues to believe that this criterion is met.

More appropriate alternatives not available

2.77 In order to justify a sector-specific block exemption, it must be the case that alternative, reasonable and practicable arrangements cannot be concluded which would create even greater benefits to consumers or which would otherwise be more appropriate. The Consultation queried whether there were other arrangements that would benefit consumers more than the current Ticketing Schemes.

'Question 7: Since the PTTS Block Exemption was extended in 2006, have any alternatives to the ticketing schemes covered by the PTTS Block Exemption developed that you think would provide greater benefits to consumers (leaving aside the issue of so-called 'smart cards', which are discussed in chapter 5 below)? If so, please describe these schemes and explain why they would provide additional benefits.'

2.78 Most respondents that commented specifically on this question said they were unaware of any alternatives to the Ticketing Schemes having been developed since the last extension of the Block Exemption. Indeed, two respondents thought that the reverse had occurred, with the trend being towards a narrower variety of schemes being used, as evidenced by the fact that there are now fewer, if any, carnet schemes in existence.

2.79 One respondent thought that the development of operator-specific mobile phone ticketing could, in future, be extended for use within a multi-operator ticket format with a relatively simple form of revenue apportionment. This might allow the sale of through or multi-operator tickets specific to certain journeys and/or operators, which might also attract a discounted fare. The respondent considered that the existing Block Exemption would not allow for such a possibility.

2.80 One respondent mentioned a scheme in relation to which it had previously requested advice from the OFT. The scheme involved the sale of MTCs to employers, with a bulk purchase discount, so that the employers could offer discounted tickets to their staff as an alternative to driving to work. This respondent suggested that the advice given by

the OFT might usefully be incorporated in guidance accompanying the re-issued Block Exemption.

2.81 One respondent, whilst unable to identify any current alternatives that have been developed, foresaw, hypothetically, the potential for development of alternatives in the following contexts:

- As a result of the bus specific competition provisions relating to Quality Partnerships and ticketing schemes within Voluntary Partnership Agreements, under the Local Transport Act 2008.
- Quality Contract schemes, outside the scope of competition law concerns enforced by the OFT, allowing Local Transport authorities to set fares.¹⁷
- New technology, for example mobile phones, iTicketing and internet purchased eTicketing, although at present, whilst allowing a discount, they tend not to alter underlying fares and their structures.

OFT's view

2.82 The OFT notes that respondents did not identify any alternatives to the Ticketing Schemes that have developed since the OFT's last review of the Block Exemption and which would provide passengers with even greater benefits. The OFT is unaware of any new ticketing schemes of this sort. On this basis, and having regard to the responses to question 6 above, the OFT does not consider that there are more appropriate alternatives to the ticketing schemes currently contained in the Block

¹⁷ The TA 2000 also allows local authorities to make certain other arrangements – called quality contract schemes – under which they can determine what local services should be provided (including the routes, the timetable and the fares) and let contracts with bus operators, including granting them exclusive rights to provide services to the authority's specification. There is no evidence that this has been used widely. See www.parliament.uk/briefingpapers/commons/lib/research/briefings/snbt-00624.pdf, at section 2.1.

Exemption. For these reasons the OFT continues to believe that this criterion is met.

3 PROPOSED CHANGES TO THE BLOCK EXEMPTION

Issues raised by the OFT in the Consultation

3.1 The OFT noted in the Consultation the need for the categories and conditions in the Block Exemption to be appropriate, and sufficient, to adequately encompass ongoing and future developments in transport ticketing, in particular smart technologies. The OFT asked for views on our preliminary assessment that developments were not sufficiently advanced to warrant changes to the Block Exemption at this time.

'Question 8: Do you agree with our assessment that it would be premature substantially to change the PTTS Block Exemption to accommodate new modalities of ticketing based on smart technologies while the way in which the commercial application of smart technologies operates is still relatively undeveloped and smart ticketing technologies are not widespread? If you disagree, please: (i) explain why you disagree; and (ii) describe the specific changes you consider should be made to the PTTS Block Exemption.'

3.2 The vast majority of respondents agreed in principle with the OFT's assessment, set out in the Consultation,¹⁸ that it would be premature substantially to change the Block Exemption to accommodate new modalities of ticketing based on smart technologies given the early stage of their development.

3.3 Many respondents expressed the view that the existing Block Exemption is largely effective in covering smart ticketing schemes, insofar as they have currently developed, as such schemes tend to change only the method of ticketing and of collecting payment, rather than the underlying nature of the ticketing scheme or tickets provided. So, for example, a single ticket on a smart card would be the same as a paper single ticket.

¹⁸ OFT 1255, *'Public Transport Ticketing Schemes Block Exemption Review'*, at paragraphs 5.15 to 5.22.

- 3.4 Of those that agreed in principle that it was premature to change the Block Exemption to accommodate smart ticketing, a significant proportion qualified their agreement with some or all of the following points, each of which was referred to several times in the responses:
- the OFT should be prepared to give informal guidance or advice to smart card scheme developers and promoters, as and when they need it, and to help them use the general s.9(1) exemption where necessary and appropriate
 - the OFT should provide a commitment to periodic review of the Block Exemption to take account of the extent and impact of smart card ticketing initiatives, rather than a reactive review of issues or a review only at the expiry of an extended Block Exemption
 - the OFT should now commit to an early review of smart card ticketing schemes, and/or
 - the OFT should be prepared to make proposals to the Secretary of State for changes to the Block Exemption, on an ad hoc basis as and when such changes are required, rather than waiting until the expiry of the five-year extension period to consider doing so.
- 3.5 Such qualifications were thought, by respondents, to be necessary as it was envisaged that future development of smart card and similar technologies was expected to take place within the proposed five-year extension period that could well require operators to coordinate in ways not currently permitted under the existing terms of the Block Exemption.
- 3.6 One respondent gave as an example of such potential development models similar to the London zonal fares model, which it considered could not be used within the framework of the existing Block Exemption.
- 3.7 Another respondent gave the example of pay-as-you-go capping (based on stored value e-purse technologies), with the mobile phone tariff model offering one charging possibility, with differential pricing offered to users based on travel patterns. This respondent considered that this would effectively eliminate the concept of fixed single fares for journeys

against which the benefit of integrated ticketing might be compared and would need to be reflected in the conditions relating to the availability of independent single and return fares outside of an exempt scheme.

- 3.8 A third respondent referred to the potential development of flexible agreements allowing multi-operator travel without the need for consumers to decide in advance which ticket product will best meet their needs (these were noted as features of schemes such as Oyster pay-as-you-go in London).
- 3.9 One respondent commented that the legal certainty provided by the current Block Exemption was essential to help facilitate joint development of pre-pay technology in circumstances where there is as yet no underlying ticket scheme, in order to share costs of such development. Without changes to the Block Exemption this certainty, and hence the encouragement of developmental cooperation, might gradually be eroded. For that reason this respondent felt that the OFT should provide guidance in respect of ticketing agreements involving new technology where they do not clearly fall within the Block Exemption. This respondent also suggested that there was a need, in addition, for the OFT to review its guidance on the application of the Block Exemption in the light of the new technology.
- 3.10 Three respondents said that they disagreed with the OFT's proposal to extend the Block Extension without change for a further five years rather than making amendments now to accommodate new developments in ticketing technologies.
- 3.11 One respondent who disagreed with our initial view considered that, if the existing Block Exemption is extended for five years without specific provision for smart ticketing such as pay as you go with a cap, it should be reviewed sooner than just prior to its expiry. This respondent noted in particular that smart ticketing was developing at a faster pace than the OFT proposal takes into account, and the extension period should reflect this. The respondent considered that it would be appropriate to consider whether the Block Exemption should be extended for a shorter duration to facilitate reconsideration of the issue in 2012, which would also allow

the Competition Commission's recommendations following its investigation into the bus industry to be taken into account.

- 3.12 The respondent also considered that, while the OFT is able to recommend to the Secretary of State amendments during the lifetime of an extension of longer duration, this was a 'second-best' approach.

OFT's view

- 3.13 The OFT has considered carefully the views received, and concerns raised, in relation to this question but the OFT remains of the view that it is inappropriate to amend the Block Exemption to accommodate new modalities of ticketing based on smart technologies at this stage.
- 3.14 The OFT notes that the vast majority of respondents agreed that it was premature to change the Block Exemption now given the relatively early stage of development of smart technology which to date largely replicates existing paper tickets rather than creating new types of ticket. A number of these respondents qualified their view by saying that the OFT should however be prepared to reconsider the position in relation to smart technology within the lifetime of an extended Block Exemption if changes appeared to be happening more quickly.
- 3.15 Of the three respondents that disagreed with the view that it was premature to change the Block Exemption to take account of smart ticketing at this stage, it appears that the views of two of these respondents were based on a misunderstanding that our proposal was to extend the current Block Exemption on terms that would exclude schemes that use smart card ticketing technologies. This is erroneous. The OFT believes, as stated above, that the existing Block Exemption is largely effective in covering smart ticketing schemes, so far as they have currently been developed, with the possible exception of pay as you go with a cap, which has not yet rolled out beyond the Oyster scheme in London. The OFT notes that the London Oyster scheme is outside the

scope of the Chapter I prohibition as it is made in order to comply with a legal requirement under the Greater London Authority Act 1999.¹⁹

- 3.16 As set out in the Consultation, the OFT considers that the innovations brought about by smart ticketing relate primarily to the physical support or format of the tickets rather than the transport entitlement as such. The smart format does not relate to a specific type of transport ticket in particular. In fact, smart cards may carry different types of tickets, including the ticket types currently envisaged by the Block Exemption. Therefore, for the purposes of the review of the Block Exemption, the OFT regards smart cards merely as electronic instruments allowing advanced handling and use of information. To the extent that smart cards allow passengers to carry credit that can be used to purchase the right to use public transport, they may also be considered as payment methods.
- 3.17 The OFT agrees that it may be warranted for us to consider the implications of smart technology for the Block Exemption during the lifetime of an extended Block Exemption if it develops in a way which does not fall within the scope of the Block Exemption. As the OFT stated in the Consultation, if strong evidence emerged that developments in smart ticketing made it appropriate to revise any extended Block Exemption before it expired, the OFT would consider making such a recommendation to the Secretary of State.
- 3.18 A number of respondents also considered that the OFT should be prepared to provide guidance or informal advice to companies where ticketing agreements involving new technology do not clearly fall within the Block Exemption. It is crucial to recall that where an agreement falls outside the Block Exemption, there is no automatic presumption that it falls foul of competition law. Where agreements meet the criteria of section 9(1) of the Act because they generate efficiencies which are shared with consumers and do not contain unnecessary restrictions or

¹⁹ Paragraph 5 of Schedule 3 to the Act provides an exclusion from the Chapter I prohibition to the extent to which an agreement is made in order to comply with a legal requirement.

eliminate substantially competition for the services in question, they will benefit from individual exemption under the Act without the need for a decision from the OFT.

3.19 Since the end of the notification system in 2004, businesses have been required to self-assess whether their agreements comply with competition law, including whether they would meet the section 9(1) criteria. The OFT's ticketing guidance²⁰ should provide transport operators with significant assistance in making this assessment where agreements potentially fall outside the Block Exemption. Moreover, the OFT is currently trialling a new Short-form Opinion process under which it can provide guidance on prospective horizontal agreements between competitors that raise novel or unresolved questions of competition law, clarification of which would benefit a wider audience.²¹ The OFT considers it likely that questions about the competition law assessment of proposed arrangements involving new types of multi-operator ticketing schemes falling outside the Block Exemption would in principle be capable of meeting the criteria for the OFT to provide guidance under a Short-form Opinion, although a resourcing decision would need to be taken as to whether such a request met the OFT's Prioritisation Principles at the time.²² Such an opinion would be published for the benefit of other operators.

3.20 For these reasons, the OFT remains satisfied that it is not appropriate to make changes to the Block Exemption because of smart technology at the present time. The OFT is also of the view that there are appropriate

²⁰ OFT 439, '*Public transport ticketing schemes block exemption*' (November 2006), at paragraph 4.43.

²¹ Further details of the process are available on the OFT website at: www.offt.gov.uk/OFTwork/competition-act-and-cartels/short-form-opinions.

²² OFT 953, '*OFT Prioritisation Principles*' (October 2008), available on the OFT website at: www.offt.gov.uk/shared_offt/about_offt/offt953.pdf.

mechanisms in place to assist businesses with their self-assessment of any agreements that fall outside the Block Exemption and for us to reconsider whether developments in smart technology necessitate a change to the Block Exemption at any time and, if the OFT considers this to be appropriate, to make a recommendation to the Secretary of State to that effect.

'Question 9: Do you agree with our proposed recommendation to extend the duration of the PTTS Block Exemption for five more years, which takes into account the likely timescale for the developments in smart ticketing? If you disagree, what would in your view be the appropriate duration and why?'

3.21 All but one respondent that expressed a view in relation to this question agreed in principle with the proposal to extend the Block Exemption for a further five years. The respondent that disagreed considered that a shorter extension was appropriate in order to assess the position of smart ticketing in less than five years' time. Only one respondent did not express a view in relation to this question.

3.22 A small number of respondents qualified their agreement as they considered there was the potential for considerable developments in smart technology and consequential changes to ticketing arrangements. The qualifications given were the same as those given in relation to question 8 and noted above. The OFT does not therefore summarise them again here, although the OFT reiterates that respondents' key points were that the OFT should consider periodic review of the Block Exemption during its lifetime and, if necessary, recommend that the Secretary of State amend the Block Exemption to accommodate technological changes prior to expiry of a new five-year term for the Block Exemption.

OFT's view

3.23 The OFT has considered respondents' views carefully and it considers that it would be appropriate to recommend that the Block Exemption be extended for an additional five years. The OFT notes that the overwhelming majority of respondents agree with this assessment. As

regards their qualifications, the OFT notes that these are the same as those made in response to question 8 above. Consequently, our response to these is already set out in the section on OFT's view under question 8.

C. Other issues

3.24 A few respondents suggested changes to the Block Exemption other than those proposed by the OFT and have already been discussed above under the relevant questions (allowing a common price and revenue sharing for MITs, discussed under questions 2 and 3 above; and allowing timetable coordination/ equal headways, discussed under question 3 above).

3.25 One respondent also suggested that a number of changes should be made to clarify the definitions of certain tickets that qualify for the Block Exemption. First, the respondent suggested that the definition of MTC in the Block Exemption should be amended to match the definition of a similar ticketing scheme under section 135(4)(a) of the TA 2000., which states:

'...(4) The descriptions of tickets which may be covered by a ticketing scheme are—

(a) 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),..'

(Emphasis added).

3.26 This suggestion had two aspects. The first point made was that the TA 2000 definition is broader than the MTC definition in the Block Exemption, the relevant part of which for present purpose provides:

'...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...'

(emphasis added).

- 3.27 The respondent noted in this context that consistency between the definitions in the two pieces of legislation would be beneficial, as it would avoid confusion to operators and authorities. The second point queried why two journeys, services or routes in competition with each other could not be considered as an MTC.
- 3.28 On the first point, the OFT considers that the difference between the definitions reflects the nature of the instruments in question. A stricter test is in our view appropriate for the Block Exemption as it provides a 'blanket' automatic exemption from competition law, without a case-by-case assessment. In contrast, making a TA 2000 ticketing scheme involves a case-by-case assessment of specific local needs, including the consideration of whether the schemes meet the applicable competition test contained in Part 1 of Schedule 10 to the TA 2000.
- 3.29 On the second point, the OFT notes that one key reason for the difference between MITs and MTCs is the fact that the former involves substitute services while the latter involves complementary services. The OFT considers that the potential impact of multi-operator services on competition is greater with substitute services than with complementary services. It follows that it is therefore appropriate to have more restrictive conditions for MITs than for MTCs. In these circumstances, the OFT considers that it would be inappropriate for two journeys, services or routes in competition with each other to be regarded as an MTC. Even if the services were complementary rather than substitute services, the OFT considers that the requirement for at least three journeys, services and routes is appropriate for a Block Exemption which provides blanket protection from competition law compared to the TA 2000 test which is subject to a case-by-case assessment.

3.30 The second suggestion from this respondent was that the criterion in the Block Exemption that usage must demonstrate that an MTC is not an MIT or TT be removed. The respondent considered that this could create revenue allocation problems if a passenger purchased an MTC but in fact used it as an MIT (that is, users are not obliged to use the full capability that a purchased ticket entitles them to). Without the possibility of more sophisticated ticketing information that may flow from smart technology, a decision on revenue sharing is made at the point of sale. If a ticket was sold as an MTC but used as an MIT, problems could in theory arise as the two tickets have different revenue allocation rules.

3.31 The OFT considers that this is unlikely to be problematic in practice. The OFT notes that the MTC usage criterion in the Block Exemption states the following:

'...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...'²³

(Emphasis added).

3.32 The OFT considers that the words emphasised in the quotation above demonstrate that the requirement is actually to create a framework for – where this is necessary – investigating whether the tickets sold under the scheme as a whole are MTCs rather than requiring a demonstration that each and every ticket sold is an MTC. This may be important, for example, if there was a need to ensure that operators were not intentionally masquerading MIT schemes as MTC schemes. In all the circumstances, the OFT does not consider that the Block Exemption requires amendment to address the concerns raised by the respondent.

²³ Article 3 of the Block Exemption.

- 3.33 The third suggestion was that the treatment of carnets under the Block Exemption be clarified. Currently, the Block Exemption does not mention carnets specifically although the OFT's ticketing guidance notes that a carnet is likely to be either an MTC or an MIT. The respondent expresses the view that a carnet might also be a TT.
- 3.34 In the OFT's view, the key point to note is that a carnet is simply a book of a particular type of tickets. It follows that the classification of a carnet under the Block Exemption will depend on the type of ticket that operators are selling and it will be a question of fact for a given carnet what type of ticket it is. Given this, the OFT does not consider that it is necessary or appropriate to change the Block Exemption to address this issue.
- 3.35 Finally, the OFT notes that a small number of respondents considered that operators should provide passengers with more in the way of fares information in advance of their travel. The OFT considers that this issue does not directly relate to the Block Exemption or its operation. Consequently, the OFT has not considered this issue further as part of this review.

4 CONCLUSIONS

- 4.1 In accordance with sections 8(1) and 8(3) of the Act, the OFT has published in the Consultation details of its proposed recommendation and considered carefully the representations made by respondents in relation to this.
- 4.2 The OFT has decided to recommend to the Secretary of State under section 6(1) of the Act that the Block Exemption be extended for an additional period of five years until 29 February 2016.
- 4.3 Although there are potentially a number of issues relating to smart ticketing, the OFT is not persuaded that it is necessary or appropriate to change the Block Exemption at this stage, given that smart ticketing across the UK is still in the relatively early stages of development. The OFT notes that the majority of respondents agreed with this assessment.
- 4.4 As set out in the Consultation, there are risks associated with changing the Block Exemption too early, in particular that doing so may chill innovation and push operators towards a certain form of agreement, when something different may be more desirable or efficient.
- 4.5 It is also noted that if the Block Exemption is extended the OFT will keep the development of smart technology under review and, if prior to the next review it appears that the technology is developing in a way that is unlikely to be covered by the Block Exemption, but which merits protection under a block exemption, the OFT will consider whether changes are necessary and appropriate in relation to smart ticketing and whether the OFT should make another recommendation to the Secretary of State as appropriate. The possibility for a Short-form Opinion in appropriate circumstances and the existence of the OFT's ticketing guidance should also be noted.

ANNEXE A – GLOSSARY OF TICKET TYPES COVERED BY THE BLOCK EXEMPTION

GLOSSARY OF TICKET TYPES

Ticket types

Public transport ticketing schemes covered by the PTTS Block Exemption involve the following ticket types:

- **multi-operator travelcards (MTCs)** which entitle ticket holders to make multiple journeys on a number of different operators' services across a number of different routes, provided those routes and services are not substantially the same – bus zonal tickets and travelcards, for example, are likely to be types of MTC
- **through tickets (TTs)** which entitle ticket holders to make a particular journey using two or more services run by different operators where those operators do not compete with one another over a substantial part of the route covered by the ticket in question
- **multi-operator individual tickets (MITs)** where two or more different operators provide services which can be used to make a particular journey and ticket holders can choose whichever service they like to make part or all of that journey
- **short distance add-ons** which allow passengers to purchase an MTC as an extension to a ticket on an individual **local** route, and
- **long distance add-ons** which allow passengers to purchase a single-operator local service ticket, MTC or TT as an extension to a ticket on an individual **long distance** route.

Definitions

The definitions of these ticket types are set out in Article 3 of the Block Exemption, in the following terms:

'Multi-operator travel card' means 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.

'Through ticket' means a ticket (or tickets) entitling the holder to make a particular journey on two or more local public transport services provided that such a journey is made on complementary services.

'Multi-operator individual ticket' means a ticket (or tickets) entitling the holder, where a particular journey could be made on local public transport services provided by any of two or more operators, to make that journey or any part of it on whichever service the holder chooses.

'Short distance add-on' means a multi-operator travelcard purchased as an add-on to a ticket (or tickets) entitling the holder to make a particular journey on a local public transport service pursuant to an agreement which provides for onward travel connections for passengers on complementary services.

'Long distance add-on' means:

- a) a ticket (or tickets) entitling the holder to make a journey solely on the local public transport services of any one operator
- b) a multi-operator travelcard or
- c) a through ticket,

each being purchased as an add-on to a ticket (or tickets) entitling the holder to make a particular journey on one or more connecting services.

ANNEXE B – LIST OF RESPONDENTS TO THE CONSULTATION

- Association of Transport Co-ordinating Officers
- Association of Train Operating Companies
- Campaign for Better Transport
- The Chartered Institute of Logistics and Transport (UK)
- Cheshire Integrated Transport Service
- City of York Council
- Confederation of Passenger Transport (UK)
- Department for Transport
- East Coast Main Line Company Limited
- Exeter City Council
- FirstGroup Bus Division
- Go-Ahead Group plc
- Hampshire County Council
- Journey Solutions partnership
- National Express
- The Office of Rail Regulation
- Passengerfocus
- Passenger Transport Executive Group
- Reading Borough Council
- Stagecoach Group Plc
- Transport for London

- TravelWatch East Midlands
- TravelWatch NorthWest
- TravelWatch SouthWest