
Recommendation to vary the public transport ticketing schemes
block exemption

Consultation response

November 2005

OFT817

CONTENTS

Part		<i>Page</i>
1	Introduction	3
2	Issues covered in the consultation	4
3	Summary of responses to the consultation	6
4	Next steps	13
Annexes		
A	Consultation respondents	14
B	List of consultation questions	15

1 INTRODUCTION

- 1.1 This report is a summary of the responses to the consultation on the *Proposals to recommend varying the public transport ticketing schemes block exemption* (the consultation paper)¹ which was published in April 2005². The Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 (SI 2001 No 319) (the block exemption) came into force on 1 March 2001, with retrospective effect from 1 March 2000, and is due to expire on 28 February 2006. It allows operators to agree particular public transport ticketing schemes,³ subject to certain conditions, without breaching the Chapter I prohibition contained in the Competition Act 1998 (the Act).
- 1.2 The consultation paper requested views from interested parties as to whether the OFT should recommend that the Secretary of State for Trade and Industry make certain changes, outlined below, to the block exemption. In addition views were sought as to whether the types of integrated ticketing schemes under consideration continue to satisfy the conditions for exemption under the Act and the extent to which there is a continued need for a block exemption.
- 1.3 The consultation paper was sent to 276 public transport operators and organisations with an interest in public transport. The OFT received a total of 22 responses, mostly from bus operators, groups representing bus operators and local authorities (see Annexe A for a list of respondents). The responses are summarised below.
- 1.4 We would like to thank all those who contributed to the consultation process.

¹ A copy of the consultation paper is available from: www.offt.gov.uk/NR/rdonlyres/056D25EE-7C59-4759-896B-720763073525/0/oft784.pdf

² Section 8(1) of the Competition Act 1998 requires the OFT to publish details of its proposed recommendations to vary a block exemption and consider any representations on its proposals.

³ These are multi-operator travelcards (MTCs), through tickets (TTs), multi-operator individual tickets (MITs), short distance add-ons and long distance add-ons.

2 ISSUES COVERED IN THE CONSULTATION

2.1 Following a review of the block exemption, the OFT issued a consultation paper in April 2005 setting out its proposal to recommend that the Secretary of State vary the block exemption, as required under sections 8(1) and 8(4) of the Act. OFT also sought views as to whether the types of integrated ticketing schemes under consideration continue to satisfy the conditions for exempt agreements set out in section 9(1) of the Act⁴ and on whether, given the move to a legal exception regime,⁵ it remains appropriate to have a block exemption. Views were also sought on whether the conditions contained in the block exemption, and the proposed amendments to those conditions, are required in order to deliver the benefits of the block exemption.

2.2 The consultation paper indicated that the OFT proposed to recommend to the Secretary of State that the duration of the block exemption be extended for an additional five years, and that the following three substantive changes should be made to the conditions in the block exemption:

- replace the requirement that revenue from multi-operator travelcard schemes be distributed on the basis of 'passenger miles, as far as reasonably practicable' with a less prescriptive approach, allowing any method provided (a) it does not create an incentive for operators to increase their own fares, and (b) it preserves the incentive for operators to attract passengers
- provide a condition that the prices of multi-operator travelcards must not be fixed by reference to the ticket prices of any of the parties (although they may be fixed by reference to the ticket prices of all of the parties), and
- replace the requirement for operators to sell their own single and return tickets concurrently with multi-operator individual tickets (MITs) valid on one

⁴ The conditions for exempt agreements set out in section 9(1) of the Act are that the agreement

'(a) contributes to–

(i) improving production or distribution, or

(ii) promoting technical or economic progress,

while allowing consumers a fair share of the resulting benefit; and

(b) does not–

(i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; or

(ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.'

⁵ This means that an agreement that falls within the Chapter I prohibition but satisfies all the conditions set out in section 9(1) of the Act shall not be prohibited, with no prior decision to that effect being required.

route with a requirement that they offer their own ticket allowing the same journey to be made as the MIT.⁶

Reasons for proposing these changes are discussed in detail in the following section.⁷

⁶ For example, if the multi-operator ticket sold is a return, then the operator should make available their own return ticket for the same journey.

⁷ The OFT also included in the consultation paper proposals to make some minor changes to the block exemption principally to reflect changes resulting from the *Competition Act 1998 and other enactments (Amendment) Regulations 2004* and to the replacement of the Director's rules with the OFT's rules.

3 SUMMARY OF RESPONSES TO THE CONSULTATION

A continued role for the block exemption

3.1 The first set of questions in the consultation paper⁸ sought views as to whether the ticketing schemes under consideration continue to satisfy the conditions for exempt agreements set out in section 9(1) of the Act,⁹ as required for a block exemption under section 6(1) of the Act.

Fulfilling the conditions for exempt agreements

3.2 The responses to the consultation indicated that the types of integrated ticketing schemes under consideration continue to satisfy the conditions for exempt agreements and that it remains appropriate to have a block exemption.

Improving production or distribution, or promoting technical or economic progress

3.3 As indicated in the consultation paper¹⁰ all ticketing schemes are primarily designed to increase patronage on public transport, particularly for travel on integrated networks. Specifically, all ticketing schemes deliver the following benefits:

- benefits to consumers through better quality bus services and improved transport networks
- benefits to operators through increased patronage on public transport, increasing the profitability of operators and the viability of public transport networks, and
- benefits for other road users and other consumers through reductions in congestion and noise and air pollution.¹¹

3.4 Respondents agreed with the benefits arising from ticketing schemes outlined in the consultation paper.¹² One respondent noted that with the advent of Smartcard technology consumers using travelcards benefited from the fact that fares are

⁸ A full list of the consultation questions is contained in Annexe B.

⁹ See footnote 4.

¹⁰ Paragraph 4.3 of the consultation paper.

¹¹ The OFT takes the view that the wording of section 9(1) is wide enough to allow the OFT to take account of the benefits described above. However, the OFT believes that the main thrust of the analysis under section 9(1) relates to economic efficiencies that are directly or indirectly passed on to consumers and that wider benefits to society would not normally be sufficient on their own for section 9(1) to apply.

¹² Responses to question 1 of the consultation paper.

capped to provide best value as a default so that passengers can travel without the need to consider tariffs and can be certain that they will not be overcharged. Another respondent said that effective integrated ticketing schemes are a step towards devising solutions to traffic congestion, environmental pollution and transport capacity problems as well as assisting in the achievement of social objectives such as greater inclusiveness.

Fair share of benefits to consumers

- 3.5 The first question in the consultation paper also asked whether consumers would receive a fair share of the economic benefits of the ticketing schemes. Respondents agreed that they would. Consumers benefit from improved quality and lower prices of bus services and reductions in congestion and pollution. In addition, tickets issued as part of a scheme will also be cheaper if cost savings and reductions in losses due to fraud are passed through to consumers. The block exemption also preserves competition between operators so these cost savings are more likely to be passed on to consumers in the form of lower fares. Pre-paid tickets also have benefits in that they reduce the amount of cash which passengers need to carry. Responses to the consultation indicated that the benefits that arise from these types of ticketing agreements are likely to outweigh any negative effects on competition.

Indispensability

- 3.6 The block exemption sets out different conditions for different types of tickets in order to ensure that none of the schemes impose restrictions that are not indispensable. The most important of these conditions relate to the ability to fix prices, share revenues and coordinate timetables. The consultation paper asked whether ticketing schemes that satisfy the conditions of the block exemption will not impose restrictions unnecessary for the attainment of the benefits. Respondents agreed that ticketing schemes that satisfy the conditions of the block exemption will not be unduly restrictive of competition.¹³

No elimination of competition

- 3.7 The block exemption is designed to facilitate pro-competitive agreements. The conditions of the block exemption ensure that new entrants are entitled to join any schemes benefiting from the block exemption, and that operators are free to set fares, services and timetables on the services they provide. Respondents to the consultation considered that it was unlikely that these ticketing schemes

¹³ Responses to question 2 of the consultation paper.

would eliminate competition.¹⁴ One respondent explained that as long as there is open access to the schemes and that operators are free to issue their own tickets, ticketing schemes will not be used to eliminate competition. Two other respondents indicated that the revenue from MTCs is generally so low compared to the revenue from own brand tickets that it is not possible to eliminate competition using an MTC.

3.8 In conclusion, the responses to the consultation confirmed that ticketing schemes under consideration continue to satisfy the conditions for exempt agreements and that the benefits of these types of agreements are likely to outweigh any negative effects on competition.

Case for extending the block exemption

3.9 With the introduction of the legal exception regime one of the reasons for introducing the block exemption (the need to avoid large numbers of notifications of benign agreements caught by the Chapter I prohibition) no longer applies. However, the OFT considers that there are a number of factors that should be taken into account in deciding whether the block exemption should be extended.

3.10 The consultation paper asked whether there is a risk that without the block exemption operators would not choose to participate in these ticketing schemes, and especially in the establishment of new schemes. The majority of respondents agreed that without the block exemption there is a risk that operators would not choose to participate in existing ticketing schemes and some considered this risk was high.¹⁵ All respondents agreed that without the block exemption there would be a risk to the establishment of new schemes. One respondent pointed out that the benefits to operators from entering into integrated ticketing schemes may not be great enough to overcome barriers to participation, either actual or perceived.

3.11 The consultation paper asked whether there are any alternatives to the ticketing schemes covered by the block exemption that would provide greater benefits to consumers. Most respondents indicated that they could not think of any alternative schemes that could provide greater benefits to consumers.¹⁶ However one respondent did identify some other ticketing schemes that could also provide some benefits to consumers, albeit to a smaller more specialised group.

3.12 There are two further factors that OFT has taken account of in deciding whether to recommend to the Secretary of State that the block exemption be extended. Firstly, OFT was concerned that not extending the block exemption may

¹⁴ Responses to question 3 of the consultation paper.

¹⁵ Responses to question 4 of the consultation paper.

mistakenly be regarded by operators as an indication that the OFT considers that these types of ticketing schemes are no longer appropriate. Secondly, OFT considered that removal of the block exemption would make it difficult for the OFT to convey the change in approach to how the OFT considers ticketing arrangements should satisfy the section 9(1) conditions. This could lead to significantly greater resources being expended by the OFT in providing informal guidance to local authorities and operators regarding these ticketing agreements than would be required if the block exemption were varied.

Proposed changes to the block exemption

3.13 In the consultation paper the OFT sought views on the proposal to extend the duration of the block exemption and introduce certain substantive amendments to conditions set out in the block exemption. Responses to these questions are set out below.

Duration of the block exemption

3.14 The majority of respondents agreed with the OFT's proposal to extend the duration of the block exemption for a further five years.¹⁷ Three respondents took the view that the proposed duration is not long enough and the block exemption should be renewed for a period in excess of five years. The reason given was that schemes tend to be open ended, although for most current schemes an operator is able to withdraw after giving notice.¹⁸ No operators suggested that the block exemption should not be extended or should only be extended for a shorter period.

3.15 The OFT's view is that the proposed extension to the duration of the block exemption for a further five years is appropriate. The OFT considers that this period is sufficient to provide the legal certainty needed to encourage operators to undertake investment in ticketing schemes, while allowing for the opportunity for subsequent review to consider changing circumstances.

Revenue distribution for MTCs

3.16 Respondents to the 2003 review of the block exemption indicated that the condition that revenue should be distributed for MTCs on the basis of 'passenger miles, as far as reasonably practical' had increased the cost and complexity of operating such schemes. Hence the OFT set out in the consultation paper a

¹⁶ Responses to question 5 of the consultation paper.

¹⁷ Responses to question 6 of the consultation paper.

¹⁸ Responses to question 7 of the consultation paper.

proposal to change this condition to indicate that operators '*shall not distribute between themselves the revenue received by virtue of the operation of that scheme in such a way that provides the parties with an incentive to set their own fares higher than they would have been in the absence of the multi-operator travelcard, or significantly reduces the incentive for each of the parties to compete for passengers*'.¹⁹

3.17 There was strong support for the OFT's proposed change to the method of distribution of revenue arising from MTCs.²⁰ Respondents agreed that the OFT's flexible approach to the method in which MTC revenue is distributed would not incentivise operators to increase their own single and return fares, while still enabling operators to share revenue on an efficient and equitable basis.

Price fixing for MTCs

3.18 While operators are allowed to fix MTC prices the OFT consulted on a proposal to include a condition to provide greater clarity concerning how this can be done. The OFT proposed including a condition which would have required operators to not set MTC prices by reference to the price of any single operator's ticket or the ticket prices of a sub-group of operators.²¹

3.19 The majority of respondents agreed that it was helpful to provide some clarification as to the way that the MTC prices could be set. However, a number of respondents indicated that the proposed condition might not be sufficient to ensure a competitive outcome in all circumstances. In particular, two respondents commented that where a few operators have market power there is no incentive for those operators to ensure that the MTC is competitively priced. Instead, these respondents argued, the MTC could be priced at a premium and aimed at the few passengers that have complex journeys. Another respondent suggested alternative wording to allow for a situation where one operator operates long-distance routes within an MTC while competitors run shorter routes.

3.20 The OFT has considered the consultation responses and looked at alternative approaches to drafting this condition. However, the OFT considers that, rather than include a condition in the block exemption which may not be appropriate in all circumstances, it would be better to cover these issues in revised guidance (which would be issued if an amendment order is made). Hence it is proposed that any revised guidance should provide explanatory text and examples setting out what operators should avoid doing when setting MTC prices.

¹⁹ Paragraphs 5.11-5.12 of the consultation paper.

²⁰ Responses to question 8 of the consultation paper.

Requirement for operators providing MITs to also provide own tickets

3.21 The consultation paper proposed relaxing the requirement for operators to sell their own single and return tickets concurrently with a MIT, and only require them to offer and publicise their own ticket allowing the same journey to be made as a MIT.²² However, operators strongly disagreed with any requirement for operators to offer their own tickets, considering it overly restrictive.²³ Operators generally took the view that demand will determine whether an own brand ticket is required and that the provision of such a ticket may confuse passengers and result in unnecessary administration costs. One respondent pointed out that it is not necessary for an operator to offer an own brand ticket since there will be competition between operators to provide the lowest priced MIT.

3.22 The OFT considers that it is not necessary to have a requirement that operators must offer their own ticket allowing the same journey to be made as a MIT. The rationale for requiring operators to provide their own single and return tickets was to provide an additional constraint on the price of the MIT. However, the result of the consultation and the OFT's analysis indicates that competition between operators on the price of the MIT should provide a sufficient constraint. The combination of the conditions in the block exemption that revenue lies where it falls and that the price of MITs cannot be agreed amongst operators provides operators with an incentive to compete. Moreover, the OFT considers that if a MIT is priced above the competitive level then it would be open to operators to introduce their own tickets priced at a level below the price of the MIT. Therefore, the potential for individual operators to offer their own tickets provides an additional constraint on the price of MIT. The OFT therefore proposes changing Article 15 of the block exemption so as to remove the requirement for operators to sell their own single and return tickets concurrently with a MIT.

Impact of proposed changes on benefits

3.23 The final consultation question asked whether the proposed changes might affect the benefits identified in the consultation paper. Respondents were generally positive about the changes proposed, except for being strongly opposed to the requirement for operators to offer their own tickets concurrently with a MIT.²⁴ One respondent noted that the proposed changes would make it easier to administer ticketing schemes, which should result in more schemes being established and a consequent increase in benefits for consumers. One respondent

²¹ Paragraphs 5.15-5.17 of the consultation paper.

²² For example, if the MIT sold is a return, then the operator should make available their own return ticket for the same journey.

²³ Responses to question 10 of the consultation paper.

²⁴ Responses to question 11 of the consultation paper.

mentioned that, given the relatively low level of take up of ticketing schemes across the country, still more may need to be done to encourage operators to set them up.

4 NEXT STEPS

- 4.1 In light of the responses received to the consultation paper the OFT has decided, in accordance with section 8(3) of the Act, to recommend that the Secretary of State varies the block exemption. The OFT will recommend, as proposed in the consultation paper, extending the duration of the block exemption by five years and changing the condition relating to revenue distribution for MTCs. In addition, the OFT will recommend removing the requirement for operators providing MITs to also provide their own tickets. Finally, the OFT will not recommend adding a condition relating to how the prices of MTCs should be set (instead this issue will, if the Secretary of State varies the block exemption, be addressed in revised guidelines).
- 4.2 If the Secretary of State agrees to the proposed changes to the block exemption and makes an order to this effect, the OFT will then consult on and publish a revised version of the Public Transport Ticketing Schemes Block Exemption guidelines reflecting these changes.

ANNEXE A – Consultation respondents

Arriva plc

Association of Local Authority Bus Company Managers

Association of Train Operating Companies

Association of Transport Co-ordinating Officers

Blackpool Transport Service Ltd

Chartered Institute of Logistics and Transport (UK)

City of York Council

Confederation of Passenger Transport (UK)

FirstGroup plc

Go-Ahead Group plc

Greater Manchester Passenger Transport Executive

Local Government Association

London Transport Users Committee

Lothian Buses plc

Mr P W Neville

PTEG pre-paid ticketing group

Rosendale Transport Ltd

South Yorkshire Passenger Transport Executive

Stagecoach UK Bus

Strathclyde Passenger Transport Executive

The Public Transport Consortium

Transport for London

ANNEXE B – Consultation questions

Question 1: Please answer the following question in relation to each of the following types of integrated ticketing scheme:

- a) Multi-operator travelcard (MTC)
- b) Multi-operator individual ticket (MIT)
- c) Through ticket (TT)
- d) Long distance add-on
- e) Short distance add-on

Do you agree that the integrated ticketing schemes indicated under (a) to (e) provide economic benefits, of which consumers receive a fare share, as described above? Are there any other economic benefits that such schemes provide, and if so, are these benefits passed on to consumers?

Question 2: Please answer the following question in relation to each of the following types of integrated ticketing scheme:

- a) Multi-operator travelcard (MTC)
- b) Multi-operator individual ticket (MIT)
- c) Through ticket (TT)
- d) Long distance add-on
- e) Short distance add-on

Do you agree that the ticketing schemes indicated under (a) to (e), if they satisfy the conditions in the block exemption, will not impose on the undertakings concerned restrictions unnecessary for the attainment of the benefits described above? Are there additional features of these ticketing schemes which should be regarded as indispensable and without which, such schemes could not deliver the benefits described above?

Question 3: Please answer the following question in relation to each of the following types of integrated ticketing scheme:

- a) Multi-operator travelcard (MTC)
- b) Multi-operator individual ticket (MIT)
- c) Through ticket (TT)
- d) Long distance add-on
- e) Short distance add-on

Do you agree that the ticketing schemes indicated under (a) to (e), if they satisfy the conditions in the block exemption, are unlikely to allow the undertakings concerned to eliminate competition in respect of a substantial part of the services in question?

Question 4: Please answer the following question in relation to each of the following types of integrated ticketing scheme:

- a) Multi-operator travelcard (MTC)
- b) Multi-operator individual ticket (MIT)
- c) Through ticket (TT)
- d) Long distance add-on
- e) Short distance add-on

Do you agree that there is a risk that without the 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?

Question 5: Are there any alternatives to the ticketing schemes covered by the block exemption that you think would provide greater benefits to consumers? If so, please describe these schemes and explain why they would provide additional benefits.

Question 6: Does the proposed extension of 5 years to the duration of the revised block exemption strike the right balance between providing legal certainty for the bus industry for a sufficiently long period of time while allowing for the need for subsequent review and modification to meet changing circumstances?

Question 7: What is the typical duration of ticketing agreements for the following different ticket types in practice?

- a) Multi-operator travelcard (MTC)
- b) Multi-operator individual ticket (MIT)
- c) Through ticket (TT)
- d) Long distance add-on
- e) Short distance add-on

Question 8: Does the proposal regarding revenue distribution methods for MTCs strike the right balance between ensuring that parties to an agreement are not incentivised to

raise prices of their own single and return fares while still enabling the bus operators to share revenues on an efficient and equitable basis?

Question 9: Is the requirement that the price of the MTC cannot be fixed by reference to the ticket prices of any of the parties, except by reference to the ticket prices of all the parties, as explained above, sufficient to ensure that these tickets provide a competitive discipline on the price of the MTC?

Question 10: Does requiring operators to offer their own ticket, concurrently with a MIT, allowing the same journey to be made as with the MIT but only on their own services, provide an adequate competitive discipline on the price of the MIT?

Question 11: How do you think the proposed changes to the block exemption will affect the benefits (described in Chapter 4) that these schemes provide?