

# Bus Enhanced Partnerships: Advice for Local Transport Authorities

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# 1. Introduction and background

- 1.1 The Competition and Markets Authority helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour. We are an independent non-ministerial department responsible for merger control, antitrust and consumer enforcement as well as conducting market studies and investigations to address sector-wide issues.
- 1.2 The CMA has a role in providing advice and recommendations to government and public authorities through its markets and advocacy functions. The CMA's advice and recommendations are made with a view to ensuring that policy decisions take account of the impacts on competition and on consumers.
- 1.3 Improved public transport networks benefit passengers through improved choice, service and better value fares. They benefit residents through improved air quality and reduced congestion, and they benefit the local economy driving wider economic growth and productivity. The CMA works with national and local bodies to provide competition and consumer advice to inform policy making across all modes of transport. The CMA recognises bus transport as a crucial part of the UK's transport infrastructure, particularly for those on low incomes, those without access to private transport and those in vulnerable circumstances.
- 1.4 The UK Government's National Bus Strategy ('Bus Back Better') has led local transport authorities (LTAs) in England to develop and implement Enhanced Partnerships (EPs) between themselves and local operators.<sup>1</sup> Under the relevant legislation LTAs must satisfy themselves that their partnership arrangements comply with a bespoke competition test.
- 1.5 The CMA has a dual role in relation to EPs: first it is a statutory consultee to any proposed new EP or variation – this applies to both EP plans and schemes (each LTA's EP plan can have multiple schemes).<sup>2</sup> The second role is that "if at any time the Competition and Markets Authority considers that [an EP] may not meet the competition test, it may conduct an investigation."
- 1.6 This advice follows previous CMA input into the Bus Services Act 2017 ("BSA 2017") which amended the Transport Act 2000 ("the Act") and gave new powers for local authorities in England to improve local bus services through EPs, Advanced Quality Partnership Schemes (AQPSs), franchising or Advanced Ticketing Schemes. It also reflects more recent developments such

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<sup>1</sup> Department for Transport (2021), [Bus Back Better: national bus strategy for England](#).

<sup>2</sup> While LTAs must consult the CMA, the CMA is not legally obligated to provide views to the consulting LTA.

as the 2021 National Bus Strategy for England, which has led to the widespread adoption of EPs.

- 1.7 This advice has been written to be relevant to LTAs considering measures which we consider likely under the respective frameworks in England, Scotland and Wales. The primary audience for this document is LTAs who plan to put in place or vary an EP in the future.
- 1.8 When making or varying EPs (as well as quality partnership schemes and ticketing schemes), LTAs need to conduct a competition test, set out in Part I of Schedule 10 of the Act (as amended) (hereafter referred to as the “Test”).
- 1.9 As part of the consultation process for introducing EPs, LTAs must both consult the CMA and conduct the Test. The Department for Transport (DfT) has issued guidance (the “DfT Guidance”) which explains the consultation process and the application of the Test in relation to EPs.<sup>3</sup> LTAs should continue to refer to the DfT Guidance regarding the application of the Test.<sup>4</sup>
- 1.10 To date, the CMA has reviewed over 50 draft EP plans and schemes, providing both aggregated and bespoke high-level feedback on competition issues.
- 1.11 This advice aims to consolidate competition insights and reflections from our reviews to date and to assist LTAs as they develop, monitor or vary their plans and schemes over time. This paper is not intended to be prescriptive, or exhaustive and we recognise that any assessment of competition issues is likely to be a dynamic process, consistent with the changing bus market in which LTAs and operators engage – it is also not intended to identify the circumstances in which the CMA would choose to open an investigation. The CMA cannot provide legal assurances on whether schemes and plans comply with competition law. It is for LTAs to apply the Test and make any relevant competition law assessment themselves.
- 1.12 Section 2 summarises the general principles of the Test covering significantly adverse effects on competition, justifications and proportionality, and broader reflections and advice on competition issues and cross-cutting mitigations.
- 1.13 Section 3 provides further information on how the CMA has undertaken its role to date and reflections on specific measures based on EPs we have reviewed to date. Specific topics that are covered include: multi-operator

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<sup>3</sup> [The National Bus Strategy Delivering Bus Service Improvement Plans using an Enhanced Partnership Guidance \(2017, as amended in 2021\) \(DfT Guidance\)](#), page 32, 42, 51.

<sup>4</sup> DfT Guidance, Section 8.

ticketing schemes; price caps and flat fares; transition periods; removal of single operator tickets; refund guarantees and passenger charters; common branding and livery schemes; flexible business models; exemptions; governance; municipal bus operators; and advantaging incumbents.

- 1.14 The CMA recognises the legitimate policy aims of EPs. This advice does not constitute formal guidance but intends to help LTAs in developing their EPs and self-assessing them against the Test. It should be considered in conjunction with:
- (a) [Department for Transport Guidance \(2017\): The National Bus Strategy Delivering Bus Service Improvement Plans using an Enhanced Partnership](#);
  - (b) [Office of Fair Trading \(2009\): Guidance on the application of competition law to certain aspects of the bus market following the Local Transport Act 2008](#); and
  - (c) [OFT guidance on The Transport Act 2000, and the Transport \(Scotland\) Act 2001](#).<sup>5</sup>
- 1.15 The purpose of our advice is to enable good policy, and to ensure that LTAs are not discouraged from pursuing new and innovative policies. LTAs and operators should not interpret this advice as ruling out any potential EP measures – the appropriateness of a particular proposal will vary across EP areas and will depend on the local context, the other EP measures and the objectives being pursued, and the specific design of that proposal. We hope that this advice, together with the explicit consideration of the competition test, aids LTAs’ thinking in making effective policy choices for businesses, people, local economies and the UK economy at large.

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<sup>5</sup> This guidance has been formally superseded in England and Wales by “*Office of Fair Trading (2009): Guidance on the application of competition law to certain aspects of the bus market following the Local Transport Act 2008*” though it remains in place in respect of Scotland at the time of publication of this advice. This advice draws on some of the most relevant and illustrative content for LTAs pursuing EPs from across these guidance documents.

## 2. Competition and Enhanced Partnerships

### Overview of the Competition Test and the scope of this advice

- 2.1 The Test is a key part of the assessment that LTAs have to perform when making or varying EPs.
- 2.2 The DfT Guidance explains that the Test requires a three-step analysis<sup>6</sup>:
- (a) Is there likely to be a significantly adverse effect on competition? If yes:
  - (b) Is the exercise of the function being done with a view to securing one or more of the three purposes specified (known as 'bus improvement objectives'), either:
    - (i) To secure improvements in the quality of vehicles or facilities used to provide local services,
    - (ii) To secure other improvements in local services of benefit to users of local services, or
    - (iii) To reduce or limit traffic congestion, noise or air pollution; and
  - (c) Is the effect on competition proportionate or likely to be proportionate to the achievement of that purpose?
- 2.3 The DfT Guidance provides guidance on the application of the Test in EPs, it recommends that all EP plans and schemes should include a section in their documentation that deals with the Test, and which sets out:<sup>7</sup>
- (a) What elements of the scheme may give rise to competition issues and what those issues are;
  - (b) How the LTA has addressed or proposes to address those issues to ensure that restrictions are appropriate; and
  - (c) Any competition issues from individual operators that remain unresolved – for example because they were not sufficient to meet either of the criteria of the operator objection, as set out in the DfT Guidance, that otherwise prevent a plan or scheme being made or varied.

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<sup>6</sup> DfT Guidance, paragraph 8.38.

<sup>7</sup> Department for Transport (2017), [Bus Services Act 2017: Enhanced Partnerships \(2017\)](#), page 51.

- 2.4 The CMA does not want LTAs or bus operators to be deterred from introducing partnership arrangements that benefit customers by unfounded concerns that they might breach competition law.<sup>8</sup> We aim to support LTAs as they consider the trade-offs of new measures, for EPs and ticketing schemes to achieve their purposes, whilst at the same time mitigating unintended consequences on effective competition – preserving new entry and preventing avoidable exits of otherwise viable operators.
- 2.5 As the impact of EPs becomes evident, LTAs can and should reflect upon and improve their understanding of the likely impact of future amendments to EPs. LTAs should develop plans to monitor whether EPs as implemented are having the anticipated impacts on local bus markets that formed the basis of their assessment, taking into account the new evidence and information which becomes available.

### **Stage 1: Identifying significantly adverse effects**

- 2.6 In applying the Test under the Act, as a first step, LTAs must assess whether making or varying the EP is likely to result in a significantly adverse effect on competition. The consideration is not simply whether the effect on competition is adverse, but whether it is likely to be *significantly* adverse.
- 2.7 In practice, a *significantly* adverse effect is likely if the scheme entrenches existing operators by shielding them from competitive constraints they would normally be subjected to, in a competitive market.
- 2.8 The CMA's competition impact assessment guidelines<sup>9</sup> are a useful starting point to identify and monitor competition issues - testing whether and how plans may limit:
- (a) The number or range of suppliers;
  - (b) Suppliers' ability and incentive to compete; and
  - (c) Choice and information available to passengers.
- 2.9 Generally, there is a risk of a significantly adverse effect in circumstances where operators who are part of the scheme have high market shares, face limited threats from new entry, and passengers have limited opportunity to switch or seek alternatives. Measures which entrench advantages of existing operators may harm competition, and for some measures the restriction to

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<sup>8</sup> Department for Transport (2017), [Bus Services Act 2017: Enhanced Partnerships \(2017\)](#), page 45.

<sup>9</sup> CMA50 (2015), [Competition impact assessment: guidelines for policymakers](#).



competition may be more direct than in others (for example fixing prices directly prevents price competition amongst competitors, whereas raising minimum vehicle standards is not limiting competition in such a direct way).

2.10 With the above principles in mind, and the caveat that case-by-case assessments will differ, it is helpful to consider specific circumstances under which a significantly adverse effect on competition is likely. Examples which have previously been considered as likely to have a significantly adverse effect on competition include:<sup>10</sup>

- (a) Direct or indirect fixing of fares by members of the scheme;
- (b) Sharing of markets, by, for example, allocating particular routes or frequencies to particular operators, by members of the scheme;
- (c) Limiting the scope of operators to determine independently the services that they provide, including restricting the tickets they offer, the routes they serve, or the frequencies they operate;
- (d) Raising barriers to entry by, for example, preventing one or more operators from taking part in a ticketing scheme without objective, transparent and non-discriminatory reasons,;
- (e) Raising barriers to entry by, for example, setting the standards of a quality partnership at a level that deters or prevents a significant proportion of current or available bus operators from providing bus services;
- (f) Facilitating of exchanges of commercially sensitive information between operators that may enable price-fixing; and
- (g) 'Bundling' a significant proportion of tendered services so that smaller operators may be unable to tender for the services.

2.11 The effect of different measures on competition is also likely to depend on broader market conditions, including the shares of existing operators, and the possibility of new entry introducing competition.<sup>11</sup>

2.12 A finding that a scheme has or is likely to have a significantly adverse effect on competition does not mean the Test is failed. The second and third stages

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<sup>10</sup> These examples are drawn from OFT393 (2003), [The Transport Act 2000, and the Transport \(Scotland\) Act 2001: guidance on the competition test](#). While this guidance has been formally superseded in England and Wales, the CMA nonetheless considers these helpful illustrations of what a significantly adverse impact on competition could be.

<sup>11</sup> OFT452 (2009), [Guidance on the application of competition law to certain aspects of the bus market following the Local Transport Act 2008, page 18 \(for example\)](#).

of the Test examine whether any significantly adverse effects that have been found are justified and proportionate. The CMA's expectation is that many well-designed schemes could give rise to one or more significantly adverse effects on competition, but could nevertheless be deemed to pass the Test since those adverse effects are justified and proportionate.

### ***Stage 2: Justifications***

- 2.13 The second stage is to assess whether the exercise of the function is being done with a view to securing one or more of the three bus improvement objectives, namely:
- (a) Securing improvements in the quality of vehicles or facilities used for or in connection with the provision of local services;
  - (b) Securing other improvements in local services of benefit to users of local services; and
  - (c) Reducing or limiting traffic congestion, noise or air pollution.
- 2.14 In practice, EPs often include measures made with a view to securing more than one of the bus improvement objectives including but not limited to fostering innovation, improving affordability, frequency, network co-ordination and reliability. For example, stricter vehicle standards may secure improved quality of vehicles and at the same time, reduce or limit air pollution and benefit users of local services through providing more comfortable and convenient services. A measure will be 'justified' provided it is rationally connected to the bus improvement objective(s) in question. It is therefore generally straightforward to demonstrate that a requirement or proposed requirement has been made with a view to achieving one or more of the bus improvement objectives.

### ***Stage 3: Proportionality***

- 2.15 The third stage is to ask whether the effect on competition is proportionate or likely to be proportionate to the achievement of the bus improvement objective(s) pursued. Assessing the proportionality of schemes which have or are likely to have significantly adverse effects on competition requires balancing benefits to passengers against the detriment to competition. In this balancing exercise, potential considerations include, for example:
- (a) Whether there are less distortive measures that can achieve equivalent benefits;

- (b) Whether reasonable measures have been implemented to mitigate significantly adverse effects on competition; and
- (c) Whether the benefits produced for passengers outweigh the detriments to competition, so that, overall, passengers and the wider community are better off.

A key question that the LTA must ask itself is whether a less intrusive measure could have been used without unacceptably compromising the bus improvement objective(s) pursued.<sup>12</sup> In answering this question, the LTA may exercise a margin of appreciation as to the choice of the means of pursuing the relevant bus improvement objective(s), provided that the means chosen are not inappropriate.

## **An illustration of competition issues**

- 2.16 Following the above, step-by-step consideration of the Test, we next discuss in more detail significantly adverse effects on competition, and proportionality. This focus is consistent with previous guidance which states that LTAs should explain what elements of the scheme may give rise to competition issues and what those issues are, as well as how the LTA has addressed or proposes to address those issues to ensure that restrictions are appropriate.<sup>13</sup>

### *A smooth service*

- 2.17 By introducing EP measures LTAs often aim to address over and under-provision on particular routes, and to improve timetable frequency, reliability, and wider network co-ordination.
- 2.18 When exercising their powers to achieve these objectives LTAs should implement these measures carefully, and strive to mitigate any unintended impacts on competition.
- 2.19 As an example, common branding or livery schemes may work well to demonstrate a more joined up system, particularly when there is limited differentiation in service across operators. However, these measures are likely to have significant competition implications (a single brand ‘mutes’ the perception and visibility of different competitors), so it is important for operators’ brands to remain visible, particularly in areas where operators are competing on overlapping routes and there is differentiation in service across

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<sup>12</sup> *R (Lumsdon) v Legal Services Board* [2015] UKSC 41, paragraph 105.

<sup>13</sup> Department for Transport (2017), [Bus Services Act 2017: Enhanced Partnerships \(2017\)](#), page 51.

operators. LTAs might also want to consider the impact of common branding and livery schemes within the remit of their EP, on operators of cross-border routes (where branding schemes may be different).

- 2.20 Similarly, multi-operator tickets can improve the service indirectly by permitting customers to use different operators across routes in a way that provides value for money. Moreover, multi-operator tickets are a potentially flexible lever to smooth the service as they can be implemented in different ways (for example as part of a new offer when travelling across zones or targeted at different age groups).
- 2.21 However, to limit unintended impacts on competition, it is important that multi-operator tickets do not impede operators' ability or commercial incentive to introduce competitive, single-operator products. LTAs should engage with operators to discuss ticketing plans and mitigate that risk. Provided they do not exclude other single operator offers, multi-operator tickets can increase choice, whilst simplifying travel, and transparency of fares for passengers.

#### *Choice and transparency*

- 2.22 Transparency is an important foundation for competition to function effectively, and LTAs have a range of options to improve this via their EP schemes. Measures to improve signage or real time information at bus stops for example can make information and choice easier for passengers. When LTAs implement these improvements, costs are unlikely to fall disproportionately on operators, and therefore the impact on competition is more likely to be mitigated to manageable levels.
- 2.23 Other plans to improve transparency, including new apps, websites or other digital products could also have a beneficial impact on competition by improving passenger choice and information availability. It is important that different operators and passengers gain easy access and visibility on these platforms, and that any costs to achieve this do not constitute a prohibitive barrier for new entry or expansion for operators of different sizes.

#### *Innovation*

- 2.24 Improved vehicle standards, including CCTV, USB charging and requirements for new vehicles to comply with stricter environmental standards, can bring direct passenger benefits, improving passenger safety, and customer experience, and reduce negative externalities such as pollution, noise and congestion.
- 2.25 Requirements that necessitate the introduction of new vehicles with better environmental standards or other specifications often entail substantial capital

investment, so it is crucial for LTAs to consult with operators to mitigate any adverse effect. Linked to this, LTAs should seek to preserve operators' ability and incentive to remain competitive, giving them sufficient time (and where necessary financial support) to adapt to the stricter requirements.

- 2.26 At the same time, and especially in markets with less active competition, LTAs should review the effectiveness of policy measures on a regular basis. For example, if upgraded standards only apply when fleets are refreshed with new vehicles, some operators may delay upgrades or continue using older vehicles to avoid the capital investment required to comply with the new standards. This could clearly undermine the intended purpose of introducing higher environmental standard requirements for new vehicles, and delay associated passenger benefits. If, upon review, the LTA judges that a policy is not adequately furthering the bus improvement objective that it was introduced to achieve, then the LTA should consider amending, replacing or revoking the measure. However, the affordability and financeability of improvements should be considered, and whether some operators might be less able to comply with an accelerated timetable for implementation.

### *Affordability*

- 2.27 In the context of rising cost of living and declining passenger numbers in the aftermath of the pandemic, price control measures (such as capped fares) are sometimes seen as a direct way to reduce costs to passengers, potentially enabling higher bus use amongst vulnerable people and incentivising new passengers (who would have opted to use different means of transport at the higher bus fare) to use buses.
- 2.28 At the same however, price control measures have the potential to restrict the scope of competition, so it is important to design these measures carefully, and ensure they are proportionate. In the case of universal flat fares on a given route, corridor, or EP area, operators are required to charge the flat fare and so cannot compete on price to attract new passengers by offering a lower fare. If the flat fare is set too low, there are further potential risks from exits, reduced quality or frequency and reduced investment.
- 2.29 Capped fares are in principle less restrictive than flat fares – competition below the cap may continue. However, they are still likely to restrict competition to some degree.
- 2.30 Subsidy support for operators from LTAs is a common element of measures that control fares and this may mitigate some potential negative impacts, such as operator exit where a flat fare might be too low to enable continued

operation of a route to the required frequency and quality standard. It is important however, to consider the design of the support, because subsidies could still distort the way in which operators compete (for example if support is exclusively available to existing operators).

- 2.31 Overall, directly controlling fares on certain routes will increase the risk of significantly adverse effects on competition, so whether in a context of an EP it is important to consider justifications and the proportionality of such measures.
- 2.32 Measures should be designed to avoid undermining the viability of new entrants or existing operators, which would have knock on impacts on capacity, passenger choice and other dimensions of competition (such as beyond price). If controls aim to bring fares towards a more competitive level and avoid entrenching existing operators by discouraging entry, careful design and mitigations are crucial.
- 2.33 Section 3 of this paper gives further detail on price control measures, including design considerations for LTAs. On subsidy design, LTAs should also consider available statutory guidance and advice on subsidy control.<sup>14</sup>

### **Advice on cross-cutting mitigations**

- 2.34 Across EP measures and objectives, it is important that different operators' views are heard, to ensure that entry of new operators or expansion of existing operators is not precluded, and to preserve the commercial viability of existing and new operators
- 2.35 Inclusive governance arrangements (whereby a range of operators are included) provide an important mitigation to the risk that incumbent operators become entrenched. Voting arrangements within EP mechanisms should not award a disproportionate share of votes to any group of operators and particularly not to existing large operators to the exclusion of potential challenger operators. Instead, voting could be based on contestable objective criteria (like mileage) with thresholds and number of votes, so that new and established operators can participate.
- 2.36 Measures which have the greatest significant adverse effects on competition, should ideally be time limited and regularly reviewed, to ensure they do not

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<sup>14</sup> [UK subsidy control regime: Guidance and information.](#)

interfere with incentives for new entry or current operators' commercial viability in the long term.

### 3. CMA reflections on Enhanced Partnership measures

#### CMA role and approach to reviewing EP measures

- 3.1 LTAs are required to consult the CMA when preparing, varying or revoking an EP plan or scheme in line with the CMA's statutory role in the Act. The Act does not require the CMA to provide an opinion on whether an EP plan or scheme meets the requirements of the Test. Should the CMA consider that a partnership does not meet the Test, the CMA is able to open an investigation.<sup>15,16</sup>
- 3.2 The CMA has, to date, reviewed EP plans and schemes from over 50 LTAs. In practice, the CMA has provided high-level feedback to all LTAs on common topics and provided, as deemed necessary, specific commentary on less common topics that may merit consideration under the Test.
- 3.3 Our approach, including this document, is in recognition of the use of EPs in response to the DfT 2021 National Bus Strategy, which has led to the widespread proposed adoption of EPs for the first time since the BSA 2017. The CMA's intention is to help LTAs with their self-assessment of the Test (both on the EP plan and schemes under consultation) and this document aims to provide guidance on how to approach potential future schemes or variations. Where the CMA has asked further questions to LTAs which have consulted the CMA, the intention has been to better understand the aims and mechanisms for delivering certain proposals and understand the LTA's consideration of potential implications for competition in their local market.
- 3.4 Some LTAs have sought informal advice from the CMA around more novel or ambitious EP measures. This has been welcome, and the CMA is open to such discussions with LTAs that are trying to think through the competition implications of a particular measure.
- 3.5 The CMA expects to continue with this overall approach that tailors engagement with individual LTAs on the basis of the nature of proposals, but will also refer LTAs to this advice as they develop future EPs or variations.

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<sup>15</sup> The CMA would not expect to open an investigation without first closely engaging with the relevant LTA on its concerns.

<sup>16</sup> The CMA's ability to open an investigation is not limited by the consultation period. For example, it may be that after the implementation of an EP plan or scheme, concerns emerge that merit consideration in the context of the Test. Operators with such concerns are able to contact the CMA, but they are expected to first explore their concerns either in the relevant forum or confidentially with the relevant LTA (for more information see paragraphs 8.47-8.49 of the DfT Guidance).



- 3.6 In developing those future EPs and variations we would encourage LTAs to engage fully with the Test and include and explain their reasoning, especially where more novel or ambitious measures are proposed.
- 3.7 Best practice involves:
- (a) Identifying clearly which specific measures have (or are likely to have) the greatest impact on competition and (of those measures) which are considered by the LTA to qualify as having (or being likely to have) a significant adverse effect on competition;
  - (b) Providing clear reasoning as to why the measures identified under paragraph (a) have or have not been judged to have a significantly adverse impact on competition;
  - (c) (If a significantly adverse effect on competition has been identified) providing clear reasoning explaining why they have been judged to be justified and proportionate. This involves setting out clearly the bus improvement objective(s) pursued, why the measure furthers these objectives, and which other alternatives were considered; and
  - (d) Describing any mitigations that have been included in the design of the measure or any intended monitoring of the potentially harmful effects which may result from the measure.
- 3.8 This approach helps ensure LTAs identify and engage with potential issues rather than adopt a cursory and formalistic tick box approach. This is likely to lead to a better design of measures and mitigations and more competitive bus markets. If the above approach is followed, the CMA is less likely to need to ask questions or seek clarifications about the LTA's underlying reasoning in relation to each of the three stages of the Test, when it is consulted on an EP.
- 3.9 The following section provides further detail on specific topics that have appeared in EP plans and schemes reviewed to date.

## **Comments on EP measures**

### **Multi-operator ticketing**

#### ***Relationship between the ticketing block exemption and EPs***

- 3.10 Rivalry between suppliers encourages efficiency, lower prices and better services. Therefore, agreements between companies that serve to align their pricing or services are normally prohibited by Chapter I of the Competition Act

1998 (CA98) ('Chapter I Prohibition'). However, some agreements can benefit to consumers and so are exempt from the Chapter I prohibition under section 9(1) of the CA98.

- 3.11 Multi-operator public transport tickets enable passengers to use a single ticket to travel on several operators' services. Such ticketing schemes can produce significant benefits for passengers and others. In recognition of this the law provides a **ticketing block exemption** for schemes meeting certain specified rules and restrictions.<sup>17</sup> The ticketing block exemption allows bus operators to enter into ticketing schemes with each other (which may or may not directly involve the LTA) whilst giving them a high degree of assurance that their scheme will be competition law compliant.
- 3.12 Ticketing schemes established by LTAs under an EP, including virtual tickets and multi-operator fare capping measures (to the extent they apply to bus operators), are subject to the Test, and are **not** subject to the conditions of the ticketing block exemption. In practice, this means LTAs have greater discretion as to the design of ticketing schemes than that which is afforded under the ticketing block exemption. Whilst the CMA considers that any new or existing ticketing scheme which fulfils the criteria of the ticketing block exemption will automatically pass the Test, ticketing schemes introduced under an EP need **not** abide additionally by the rules and restrictions of the ticketing block exemption.
- 3.13 Operators which comply with ticketing schemes established under an EP will not be subject to action by the CMA.<sup>18</sup>

### ***EPs providing for multi-operator ticketing schemes***

- 3.14 The CMA expects many LTAs to introduce ticketing schemes through EPs. Whilst it is open to LTAs to design them in line with the ticketing block exemption, they need not necessarily do this. Where an LTA decides to introduce a ticketing scheme outside the scope of the ticketing block exemption, the CMA considers that best practice generally involves ensuring that ticketing schemes:

- (a) Have open-door policies and do not prevent operators from joining the scheme without good reason;

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<sup>17</sup> The Public Transport Ticketing Schemes Block Exemption (SI 2001 No 319) (as amended) (the 'ticketing block exemption'). For guidance on the operation of the ticketing block exemption, see the [Public transport ticketing schemes block exemption guidance: CMA53](#).

<sup>18</sup> See Department for Transport (2017), [Bus Services Act 2017: Enhanced Partnerships \(2017\)](#), Page 19, paragraph 3.47

- (b) Avoid overly prescriptive approaches relating to how operators run their operations (eg choice of route, individual fare pricing, areas of operation) unless special reasons require this; and
  - (c) Are preceded by appropriate consultation with operators, so that operators who are uncertain about the legal framework or otherwise unfamiliar with multi-operator ticketing are not excluded.
- 3.15 These are not requirements for a ticketing scheme to be able to pass the Test, instead they are a non-exhaustive list of design points that are likely to ensure that schemes are less distortive of competition in the market and therefore more likely to be proportionate under Stage 3 of the Test. They may therefore warrant closer consideration by the LTA when applying the Test and explaining its conclusions.

## **Price cap and flat fare proposals outside multi-operator ticketing**

### ***Overall comments on price cap and flat single fare proposals***

- 3.16 The CMA has noted proposals in EPs to control the fares charged by operators including for single fare products. These measures are less familiar in bus markets than standardised fares for certain types of multi-operator ticketing.
- 3.17 Price control measures (such as capped fares) intend to directly reduce costs to passengers, potentially enabling higher bus use amongst vulnerable consumers and incentivising new passengers (who would have opted for alternative means of transport at the higher bus fare) to use buses. They may also form part of fare simplification plans, intended to reduce confusion and increase confidence among potential bus users. However, they carry risks, and they are likely to restrict the scope for competition along individual routes and corridors.
- 3.18 In the case of universal flat fares on a given route, corridor or EP area, competition below the flat fare will cease, and so operators cannot compete on price to attract passengers. However, less restrictive price controls such as capped fares, where competition below the cap may continue, can also risk distorting competition.
- 3.19 If the price control is set too low it could lead to:
- (a) Operators exiting the market, withdrawing from routes that are no longer commercially viable, or modifying their routes to mitigate the impact of the price control (for example splitting up longer routes);

- (b) Reduced frequency on routes to increase passenger loading; or
  - (c) Reduced ability to invest in the quality of services.
- 3.20 If the price control is set too high, passengers could face higher fares than they would have absent the price control. There is also a potential risk that operators charging below the cap gravitate towards the price control (in the case of a cap). Overall, directly controlling fares on certain routes will increase the risk of incurring significantly adverse effects on competition, so whether in a context of an EP it is important to consider justifications, alternatives, and mitigations and the proportionality of such measures (including duration), and whether potential benefits outweigh adverse effects on competition.
- 3.21 As noted in Section 2, subsidy support for operators from LTAs is a common element of such measures. While this may mitigate some potential negative impacts, such as operator exit where a flat fare is set too low, this will depend on the design of the support and the price control measure will still impact the way in which operators compete. The subsidy support itself may also introduce competitive distortions (for example if only available to existing operators).
- 3.22 The effect of any price control measure should be not to undermine the viability of new entrants or existing operators. A well-designed policy will avoid deterring or preventing entry and innovation and the benefits that can bring such as on capacity, passenger choice and other dimensions of competition (beyond price).

***Suggestions to LTAs considering price cap or flat fare proposals***

- 3.23 Price control measures, and any associated subsidy support for operators, should therefore be considered carefully under the Test. The assessment of the potential impact on competition of the measure should be clearly set out and take into account the local context. This should help the LTA:
- (a) Satisfy itself that the proposal passes the Test, either because the proposal is not likely to have a significantly adverse effect on competition or (more likely to be the case) because it pursues the bus improvement objectives and is proportionate; or
  - (b) Identify mitigations or changes to the design of the measure so that it passes the Test.

3.24 Questions that LTAs are likely to find it helpful to consider in such an assessment include:<sup>19</sup>

- (a) How would the cap proposal interact with viability of existing operators or the entry/expansion of potential future routes or operators?
  - (i) Will there be a mechanism to consider routes that the cap might otherwise prevent (by making them commercially unviable)?
  - (ii) Is the cap likely to prevent competition on particular routes, particularly those with fares currently above the cap?
  - (iii) Will any associated subsidy support apply to new entrants/routes?
  - (iv) Could a new route qualify for subsidisation if the operator would otherwise intend to charge a fare above the cap, and how would an operator demonstrate this?
  - (v) How is the appropriate cap level being set and how has the assessment of the local market informed this?<sup>20</sup>
  - (vi) Has there been any assessment of the commercial viability of existing operators and how this may be impacted by new cap measures? Will the cap cause operators to exit the market (or fail to enter) due to the cap (and any associated reimbursement scheme)?
  - (vii) Has there been any assessment of what proportion of routes may fall below and above the cap?
- (b) Will the cap be assessed/reviewed periodically (for example to test whether bus use increases following introduction)?
  - (i) How will the measures be reassessed or varied if they do not meet their intended objectives?
  - (ii) How long will the cap be in place and how will the level of the cap be reassessed?

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<sup>19</sup> While this list presents the questions from the perspective of a price cap, they can generally also be applied to a flat fare.

<sup>20</sup> We would generally expect LTAs introducing a fare cap to be intending to set it high enough to ensure commercial viability of operators and potential competition below the cap, but low enough so that it does not eliminate competition below the cap with operators' fares gravitating towards the higher cap.

- (iii) Do the governance arrangements confer any competitive advantage on particular operators in respect of the periodic review of pricing (ie will some operators have a greater 'say' over pricing than others?)
  - (iv) Do the governance arrangements enable (or require) the LTA to periodically review the measure and assess if the cap is not working as expected (eg previously low fares bunching upwards at the cap level)?
- 3.25 The CMA would generally expect fare measures that apply only to a narrowly defined group of bus users (for example children, students, or jobseekers) to be much less likely to have a significantly adverse effect on competition than wider schemes. A lighter-touch assessment of such measures may therefore be adequate.
- 3.26 Similarly, the CMA would generally expect measures intended to simplify fares that do not control prices to be less likely to have a significantly adverse effect on competition than price control measures. Such measures might include standardised geographic zones, standardised concession groups or fewer fare types.

## Reflections on other EP measures and approaches

- 3.27 The CMA has provided comments to LTAs on the following measures and approaches via our role as a statutory consultee. The below collates and builds on those comments to further support LTA consideration of potential competition issues.
- 3.28 **Transition periods** – there is a risk that if certain measures are required too quickly (for examples vehicle emission standards or payment technologies) they will negatively affect the ability of operators to compete in the market. This is of particular concern where it might lead to the exit of otherwise viable operators that are able to adapt to the new requirements but need time to do so. LTAs should consider the impact of new requirements on operators and consider whether transition periods may mitigate potential negative effects. This will be highly dependent on the local context, for example the extent to which operators differ in their existing compliance with the new requirements or their ability to adapt quickly to comply.
- 3.29 **Removal of single operator tickets** – the removal of single operator tickets, although it may simplify fares, could have a potentially significant impact on the incentives and ability of operators to compete against each other. This could lead to higher fares or reduced quality or frequency of service. LTAs

should consider the objective being pursued and whether there may be less restrictive measures to achieve that objective.

- 3.30 **Refund guarantees and passenger charters** – such proposals may have a helpful role in raising standards and providing clarity on passenger expectations, including when things go wrong. The CMA has seen positive examples of such charters, and many EPs set out intentions for such measures but with the detail to be confirmed. We would encourage consultation with operators on the detail of such measures and for LTAs to consider any potential unintended consequences of providers not wanting to service particular routes (for example where operators have less control over meeting the obligations) and any reasonable mitigations (such as reviewing costs incurred outside of the control of operators).
- 3.31 **Common branding and livery schemes** – many authorities have looked to develop local common brands or livery schemes. These can have the positive outcomes of demonstrating a more joined up system and complementing other measures in their EPs. They can, however, reduce the visibility of different competitors, which could reduce the incentives for bus operators to compete with each other on price and quality of service and may also lead to passenger confusion on the fares and ticket types they can expect. This will depend on the local context and is particularly relevant where operators compete on overlapping routes and there is differentiation in service across operators. Less prescriptive schemes, which allow operator brands to remain visible, may reduce these risks. Attention should be given too to the impact on operators of cross-border routes (where branding schemes may be different).
- 3.32 **Flexible business models** - some EPs include proposals for encouraging flexible business models, like Demand Responsive Transport (DRT) which can provide lifeline routes in rural areas and fill gaps in provision. LTAs should consider how DRT might complement and compete with other modes of transport such as taxis and Private Hire Vehicle markets. The level of thinking and evidence base that has gone into flexible business model proposals across the EP plans varies; we encourage authorities to explore existing trials of these models and learn from best practice in other authorities, where it exists.
- 3.33 **Governance** – in designing bespoke EP governance arrangements, authorities should be alert to the risk of particular operators ‘capturing’ the decision-making processes or having undue influence to the benefit of themselves and to the detriment of other existing or potential operators (and ultimately passengers). A mix of representation and wide visibility of the decision-making fora will help mitigate this. We recommend that:

- (a) where governance arrangements do not include individual representation for each bus operator, there is some form of shared representation (or similar arrangement) for smaller operators that might otherwise be excluded. This should not exclude operators who are not affiliated to particular groups such as trade associations. In general, we place more emphasis on the visibility of decision making for all operators over the exact voting arrangements. This is so that operators can identify and voice competition concerns while retaining flexibility for LTAs and partnerships in determining appropriate governance arrangements for their context;
- (b) where larger operators have greater representation in governance arrangements, this should be defined by contestable criteria (eg total mileage) rather than fixed, named operators.

3.34 **Exemptions** – there is a risk that vaguely defined exemptions could lead to operators ‘gaming’ the system and avoiding compliance. Where EPs include exemptions, we recommend that they are clearly defined with objective criteria to mitigate this risk and give confidence that the exemptions will be applied appropriately. The use of open-ended exemptions (for example ‘any other service as decided by the EP forum’) reinforces the need for appropriate governance arrangements – if such exemptions are considered necessary, they should be transparent and visible to all operators.

3.35 **Municipal bus operators** – authorities in which there are authority-owned operators should adhere to the principle of competitive neutrality (public sector trading operations should not enjoy a commercial advantage solely because of their ownership by or association with government). Any decisions taken by the LTA should be taken at appropriate distance from the authority owned operator. This is to mitigate the risk that the council owned operator is protected from competitive forces, reducing the pressure on them to keep fares low and service quality high and reducing the opportunity for other operators to compete for passengers. LTAs which have a council owned operator should be aware of relevant CMA materials and speak to the CMA if further guidance is needed.<sup>21</sup>

3.36 **Creating or exacerbating incumbent advantage** – authorities should be mindful of measures that create or enhance advantages for a specific operator or ‘group’ of operators (for example ‘large’) and consider ways to

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<sup>21</sup> For further information on this see paragraph 18 of the [CMAs response to Welsh Government’s Bus Services White Paper \(2022\)](#); [Government in markets: Why competition matters – a guide for policy makers \(2009\)](#); [Public bodies and competition law \[OFT\] \(2011\)](#); and [Local authorities and competition – open letter to local authority chief executives \(2017\)](#)



achieve the objectives in a more operator-neutral way. The protection of incumbents from competitive pressures, whether intentional or not, is likely to be detrimental to the interests of passenger and likely without a balancing benefit. For example, the CMA has, in a small number of EPs, noted potential barriers to competing on certain routes that may favour the incumbent operator (such as certain slot booking arrangements or the prioritisation of specific services) – in these cases we have encouraged authorities to consider how competition can be facilitated if or when such measures present a barrier to entry or expansion for other operators.