

Dear Sirs

I am writing to you as Managing Director of one of the few remaining municipally owned bus companies in England. We are one of the ALBUM group of companies and my response is therefore largely the same as the collective response you have received from them.

We operate mainly urban services in the Borough of Ipswich, whilst First Eastern Counties operate a mixture of local urban and inter-urban local bus services. Two of the local inter-urban routes are operated by local independents. There is some interchange between the various urban and inter-urban routes operated by different companies. Whilst most passenger journeys can be accommodated on the operations of one operator (return trips into town for work or leisure, or access to the station or colleges outside the town centre) there is some need for an all operator ticket, and certainly public opinion demands one. The CC in its report on the local bus service market was keen to advocate the importance of multi-operator ticketing in order to make the market properly contestable.

Whilst in theory the current block exemption rules allow for the creation of such tickets they remain far too complex and subject to potential legal challenge. This makes it very difficult for SMEs to justify investing time and resources in setting up complex agreements in an area of law in which they have no expertise, in order to meet a limited demand from the public. The complexity of the current regulations therefore blows the short and medium term business case out of the water.

It is to be hoped therefore that the CMA will continue the exemption and simplify the rules, however given its propensity not to let reality get in the way of theoretical economics, I am not optimistic.

1. Do you agree with renewing the Block Exemption? Please explain and provide reasons for your answer.

Renewing the BE will mainly be necessary if coordinated fares continue to be interpreted as 'anticompetitive'. If 'abuse of dominant market position' is taken as the top criterion, there will be less need to micro-manage fare policies.

As an alternative to the block exemption, we recommend the creation of a template and designating schemes that fit the template as "not anti-competitive" and providing no evidence of a cartel. A BE is then not needed. It would take only a subtle alteration to the CMA view to replace the block exemption concept with the template model.

2. Do you consider the continuation of the Block Exemption to be necessary to deliver integrated ticketing schemes that are beneficial to consumers?

If the Block Exemption is not retained in its current form, it will need to be replaced by an alternative and more flexible structure as we recommend above, in order to deliver integrated ticketing schemes, which are increasingly likely to be smart schemes. Our views are therefore expressed in this context.

3. Would consumer choice, in particular the variability and suitability of ticketing options, be significantly reduced without the Block Exemption?

Does the BE facilitate measures such as statutory partnerships? Does it need to be modified to do this more effectively?

Rather than modify it, we recommend the current Block Exemption be abandoned and replaced, starting from a different premise, as suggested above. According to LTAs who want to move to contracted markets, the BE tends to militate against facilitating such measures, although the free-market industry questions this and the LTAs' motive for making the suggestion.

Given the Queen's Speech might we expect more likelihood of QCs and / or other area franchising? If so does this have implications for the block exemption?

Yes to both questions, and the implication is that this would make the BE irrelevant. LTAs generally want franchising as a means of taking control of commercial market operators' profits and boosting their own income so as to procure planned networks. Therefore over time the only areas not franchised would be those where the market is failing (i.e. the complete reverse of the basis for QCs in the 2000 and 2008 Acts), and where it is failing there would generally not be competition anyway, so the BE would be irrelevant.

4. If the Block Exemption was not renewed how would that influence your operations? Please provide examples and an indication of the likely costs to your business and the potential implications for the transport sector more widely.

There is a general public presumption that integrated ticketing is a 'good thing', with objections generally relating to differential between the prices of different schemes, rather than to the principle. We would like to introduce a multi-operator ticket in Ipswich as explained in my preamble.

5. Have there been any adverse consequences from the application of the Block Exemption? Please provide examples and details.

The Swindon MTC agreement is bureaucratic and prescriptive and Thamesdown considers that the same outcomes could be achieved with a more flexible arrangement that focussed on avoiding anything that was anti-competitive.

A wider issue is that smaller operators fear that involvement in an integrated ticketing scheme could bring about inequalities in the acceptance of other operators' tickets; for example whereas a small firm might be prepared to accept a large company's tickets, this might not be reciprocated by the larger concern.

6. Has the current Block Exemption prevented any developments in the last five years that could have benefited consumers? Please provide details of the proposed development and how the Block Exemption has prevented this.

We have some concerns over the 'revenue must lie where it falls' principle. Revenue needs to be automatically allocated, e.g. by card reader on vehicle or through manual validation e.g. by the driver. This is particularly important if a ticket or travelcard, including a smart card, is bought off vehicle. Accurate revenue sharing is most essential if purchase is from an agent (e.g. LTA facility at bus station or convenience store) or if only one of several local operators sells tickets (e.g. at

its own bus station). However, the “revenue must lie where it falls” principle is a useful alternative for small volume schemes, which may eventually generate increased ridership which would encourage investment in a more complex process.

7. Do you encounter any difficulties in applying the Block Exemption rules? Please explain and provide specific examples.

We are concerned that whilst the current Guidance document is clear, it is inadequate in that it tends to be restrictive and as a result hampers development of ticketing schemes. The BE deals with circumstances and technology that prevailed when it was written, but it is insufficiently flexible for new technological developments. There is therefore a tendency for operators to say “what we need doesn’t quite fit the template, so better not to do it”. PLC operators have centrally funded specialists but SMEs do not, so if an SME participates in a multi-operator scheme with one of them, the tendency is to rely on their lead, which may (or may not) be fair and balanced, open and honest, but inevitably draws suspicion.

The 2006 OFT Guidance document OFT 439 appears still to be current. We believe there to have been no replacement Guidance following the 2010 review. The document is mainly clear, although (perhaps unavoidably) written in legal language, as it attempts to cover every eventuality. There are however aspects that are unclear; the following are a few examples we have identified:

It should be made clear at the start that the BE covered is only a DOMESTIC exemption; this is not made clear until para. 2.18. The references in para. 2.3 and subsequently (e.g. 2.5) to EU Article 81/82 agreements between member states should then be downgraded.

Some of the language is unduly complex: e.g. see 2.12 with its multiple negatives.

Excessive discussion of historical situations in 2.23

The most important elements of the guidance are in Chapter 3: Overview. This should become the main section of a revised document, with the additional details transferred to appendices. Even Chapter 3 is very long. ALBUM members would value a simpler document, but there is no substitute to making the basis simpler and easier to follow, not just the way it is described. A short ‘child’s guide’ summary is recommended, outlining the main points in simple, non-technical language. This approach is being adopted by the Traffic Commissioners, e.g. to the publication of revised guidance on driver conduct.

8. We would welcome views on whether a longer duration for the Block Exemption would be desirable. Please outline the reasons for your answer highlighting any cost implications and associated risks of your preferred options (see Chapter 4 above).

If a template-based approach is adopted in place of the current time-limited Block Exemption, we would perceive this as being of long duration, which could remove the need for periodic renewal.

9. Do you agree with the assessment outlined in Chapter 5 of this consultation? Please provide further explanation and information to support your answer. In addition we have highlighted some areas where we would welcome representations:

(a) We would welcome examples where MIT schemes have been abandoned or not commenced because of the requirements that revenue lies where it falls. We would also welcome proposals of other possible revenue share options that would satisfy section 9(1) conditions and under what conditions these would apply, for example where operators only overlap to a limited extent because their services mostly operate at different times of the day. (See paragraphs 5.17 to 5.20)

Does the BE and guidance work when dealing with multi-modal systems (e.g. local rail and/or trams as well as buses?)

The main national multi-modal bus-rail ticket is Plus Bus, the principal disadvantage of which is that it is only obtainable from railway outlets and cannot be bought on buses. This is inevitable for practical reasons relating to the complexity of rail ticketing. We are not aware of any BE-related issues with Plus Bus.

(b) Whether in relation to capped tickets there are any practical obstacles to redistributing revenue collected to the relevant operator on a revenue foregone basis for smart ticket sales which fall below the capped price. If so, what revenue allocation would be appropriate? (See paragraphs 5.36 to 5.38)

We are not aware of any obstacles.

(c) Whether barriers are likely to arise for smart ticketing and the extent to which they could prevent participation in the schemes. (See paragraphs 5.42 to 5.44)

Some SME bus operators have concerns regarding the mutual acceptance of their tickets by larger companies where interworking is in operation.

10. We consider that it is possible for new ticketing technology and products to be accommodated within the current Block Exemption (subject to clarification through revisions to the Guidance Document). Have there been any developments, in particular in ticketing technology and products, in the last five years or are any expected over the next five years that affect the Block Exemption and would require, in your view, a change in its terms? Please explain and provide specific examples.

The term 'ticketing' needs to be amended to ensure that in any new Guidance or other documentation it covers all 'fare payment methods', including those where no physical 'ticket' is issued. This is necessary to take account of developments such as near field technology, fare payment via mobile phones and any other payment methods that may evolve in the future.

11. Please provide any other information and/or views that you consider relevant for the CMA's review of the Block Exemption. Are there in your view other recommendations that the CMA should consider? For example, are there variations to the scope of the Block Exemption that have not been considered in this consultation document? Please provide any relevant evidence that you have to support your views.

The BE arises from the fact that the Competition Act outlaws arrangements that tend to fix product design and pricing between competitors. The BE was necessary because there were considered to be overriding consumer benefits by exemption public transport ticketing from this

overarching premise. The fundamental point that cash single or return ticket prices must not be fixed is understood and supported, and at its simplest adoption of a simple arrangement whereby one operator can accept another's pre-purchase tickets (which includes a return), no matter at what price they have been sold, opens up the availability much more widely as Transport Focus research indicates is wanted by consumers, whilst providing a pressure for lower pricing which is also in the consumers' interest.

Technology is moving ahead faster than the industry is able to adopt, not least because of the restrictive strictures of ITSO compliance (ALBUM/DfT survey) and will increasingly tend to move passenger transport ticketing off the field of consumer expectations unless the BE is removed or modified.

The case made in principle, therefore, to sweep away the BE as it stands, and replace the 'top-down' very detailed approach with one that sets the framework (or template) in terms of what is not acceptable to go beyond (such as certain price fixing, anti-competitive behaviour etc.) and allow the market to develop its own products accordingly. This will facilitate the industry's ability to meet passenger need as identified by TF and react positively to technological developments. This would enable the bus industry to react to one of the key criticisms of LTAs without them having to remove the bus services from the free market.

Any other developments we are aware of in the transport sector that may impact on review of BE?

The development of UBER and similar products means that competition in the market will increasingly be with taxi type operations and not just with, or even occasionally with, other buses. The entire basis of the OFT / MMC 's definition of the market will necessarily change, and with it much of the restrictive regulation for the bus industry that they have put in place. Otherwise the market will be killed off by reversion to a non-contestable structure controlled by local transport authorities. The BE would then be but one casualty of a regulatory model that has, for years, not been fit for purpose, but so too would businesses and thousands of jobs within them. The CMA now has the opportunity to become realistic in its definition of the market in which buses play a part.

Yours sincerely

Jeremy Cooper
Managing Director
Ipswich Buses Ltd

