

The public transport ticketing schemes block exemption

Consultation document

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1. Introduction

- 1.1 The Competition and Markets Authority (CMA) is consulting on draft guidance on the application of the Public Transport Ticketing Schemes Block Exemption Order 2001 (SI 2001 No 319) as amended (block exemption).¹ Under the block exemption, multi-operator public transport tickets, which meet certain criteria and conditions, are exempted from Chapter I of the Competition Act 1998 (Chapter I Prohibition).
- 1.2 The draft guidance is intended to replace the guidance *Public transport ticketing schemes block exemption - Understanding competition* (OFT439) which was published in 2006 and reflects the changes recently made to the block exemption and recognises explicitly that smart ticketing is covered by the block exemption.
- 1.3 The draft guidance is aimed at helping operators, local authorities and scheme administrators make their own assessment of public transport ticketing schemes and decide whether their schemes fall within the scope of the block exemption. It has been drafted to be more user friendly, and contains more examples and charts than previously to illustrate particular aspects of the block exemption.
- 1.4 The CMA is also consulting on a short guide to the block exemption. The aim of this document is to provide a quick overview of the block exemption.
- 1.5 The CMA is inviting comments on the draft guidance and the short guide by 25 May 2016.
- 1.6 The draft guidance and the short guide can both be found on the [consultation page](#).

¹ The Order amending the existing block exemption (SI 2001 No 319) is the SI 2016/126.

2. Background

- 2.1 The Chapter I Prohibition prohibits agreements which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom (UK) and which may affect trade within the UK, unless they are excluded, or meet the conditions for exemption contained in section 9(1) of the Competition Act 1998 (CA98). The CA98 also provides for the adoption of block exemptions, exempting a category of agreements from the Chapter I Prohibition.
- 2.2 Public transport ticketing schemes involve agreements that may have a harmful impact on competition for the purposes of the Chapter I Prohibition, for example, where three or more transport operators agree the price at which a multi-operator travel card should be sold to consumers and the consequent revenue-sharing arrangements. However, such agreements can also result in benefits that outweigh their negative impact on competition. For this reason, a block exemption was adopted in 2001 for agreements where the conditions for exemption in section 9(1) of the CA98 were clearly met.² The aim of the block exemption is to provide comfort that agreements between transport operators and others to offer multi-operator tickets are exempt from the Chapter I Prohibition provided they meet certain conditions.
- 2.3 The block exemption adopted in 2001 was recently reviewed by the CMA³ and following its recommendations the Secretary of State has extended it until 28 February 2026.
- 2.4 Between May and July 2015 the CMA carried out a preliminary review of the block exemption and its operation, and published its consultation document on 5 August 2015.
- 2.5 On 10 December 2015, the CMA published its final report and recommended the Secretary of State to amend and extend the existing block exemption for an additional period of ten years. The CMA also announced that it will update its published guidance in accordance with the Secretary of State's final decision.

² 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 Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) (Amendment) Order 2011 (SI 2011 No 227), the Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (SI 2014 No 549), and now the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) (Amendment) Order 2016 (SI 2016 No 126).

³ See the [CMA case page](#).

- 2.6 In February 2016, the Secretary of State accepted the CMA's recommendations and the amended block exemption came into force on 29 February 2016.
- 2.7 The draft guidance reflects the amendments made to the block exemption and requests from stakeholders to make the guidance more user friendly. The CMA has introduced more examples and further details on how, in practice, to apply the block exemption. In particular, the draft guidance includes the following updates:
- Application of the simplified definition of multi-operator travel cards.
 - Greater clarity on what information can be shared and on suitable arrangements to minimise the risk of inappropriate information sharing (paragraphs 4.12 to 4.21).
 - An example of a self-assessment of an alternative multi-operator individual ticket revenue allocation method falling outside the scope of the block exemption (Part 5 Box 9).
 - Clarification that the ticket definition includes smart tickets (Part 3 A).
- 2.8 In addition we have produced a short guide to provide a quick overview of the block exemption.

3. Scope of the consultation

- 3.1 This consultation seeks the views of interested parties on the draft guidance and short guide on the block exemption. The draft guidance also provides wider context on the legal basis for, and objectives of, public transport ticketing schemes and on how to assess whether a public transport ticketing scheme falls within the scope of the block exemption. It sets out the specific questions on which we are seeking respondents' views.
- 3.2 The geographical scope of this consultation is the UK.
- 3.3 This consultation is aimed at those who have an interest in the public transport industry, including consumers, businesses and their legal and other advisers.

4. Consultation process

- 4.1 We are publishing this consultation on the CMA website and drawing it to the attention of a range of stakeholders to invite comments. We would welcome your comments on the content of the draft guidance. Our aim is to ensure that the advice is clear, comprehensive and helpful for its intended users, including bus operators, local authorities and key representative organisations connected to the transport industry.
- 4.2 Please provide supporting evidence for your views where appropriate. We encourage you to respond to the consultation in writing (by email or alternatively by letter) using the contact details provided in paragraph 4.4 below.
- 4.3 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If responding on behalf of an organisation, please make it clear who you are representing and, where applicable, how the views of the members of the organisation were assembled. We intend to publish individual responses we receive. In responding, please confirm you are happy for us to do so (see further paragraph 4.10 below).

Duration

- 4.4 The consultation will run for six weeks, from 13 April to 25 May 2016. Responses should be submitted by post or email, by no later than 25 May 2016, and should be sent to:

CMA - Ticketing block exemption review
Competition and Markets Authority
Victoria House
Southampton Row
London
WC1B 4AD

Email: ticketingblockexemption@cma.gsi.gov.uk

Compliance with government consultation principles

- 4.5 In consulting, the CMA has taken into account the published principles that government departments and other public bodies should adopt when consulting with stakeholders. Full details can be found on GOV.UK.

4.6 The consultation period is six weeks. We consider that this is appropriate because we have already had extensive interaction with the industry during the statutory review of the block exemption. In particular, the CMA had many meetings with a number of key representative organisations connected to the transport industry, and received 32 responses to its initial consultation. Many points were raised on the guidance at this point and these have been taken into account in the drafting of this draft guidance.

Data use statement for responses

4.7 Personal data received in the course of this consultation will be processed in accordance with the Data Protection Act 1998. Our use of all information received (including personal data) is subject to Part 9 of the Enterprise Act 2002. We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, so far as practicable, (i) any commercial information whose publication we think might significantly harm the legitimate business interests of the business it relates to, or (ii) any information relating to the private affairs of an individual that we think might significantly harm the individual's interests. If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential.

4.8 Please note that information provided in response to this consultation, including personal information, may be the subject of requests from the public for information under the Freedom of Information Act 2000. In considering such requests for information we will take full account of any reasons provided by respondents in support of confidentiality, the Data Protection Act 1998 and our obligations under Part 9 of the Enterprise Act 2002.

4.9 If you are replying by email, these provisions override any standard confidentiality disclaimer that is generated by your organisation's IT system.

After the consultation

4.10 After the consultation, we will decide whether any changes are necessary to the draft guidance. We will then publish the final version of the guidance and the short guide on our webpages at www.gov.uk/cma. We will also publish the responses received during the consultation. These documents will be available on our webpages and respondents will be notified when they are available.

5. Consultation questions

- 5.1 The CMA invites views on the overall structure and content of the draft guidance, including with reference to the questions set out in the draft guidance document⁴ and in the short guide.⁵

⁴ Question 1: paragraph 2.16; question 2: paragraph 3.30; question 3: paragraph 3.36; question 4: paragraph 4.5; question 5: paragraph 4.6; question 6: paragraph 4.11; question 7: paragraph 4.22; question 8: paragraph 4.29; question 9: paragraph 4.36; question 10: paragraph 4.47; and question 11: paragraph 5.10.

⁵ The purpose of this short guide is to give a quick overview of the block exemption.

1. Do you think the short guide is sufficiently clear and easy to understand? If not please suggest what needs to be changed.
2. Do you consider that this short guide is providing you with an appropriate level of detail?