

# The public transport ticketing schemes block exemption

CMA draft guidance

© Crown copyright 2016

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

## Contents

	<i>Page</i>
1. Introduction .....	2
2. Overview of the legal framework.....	5
3. The scope of the block exemption .....	9
4. Legal conditions and obligation for schemes covered by the block exemption ...	21
5. Agreements falling outside the block exemption .....	39
Appendix A: Other relevant prohibitions and exclusions .....	45
Appendix B: Terms used in the Chapter I Prohibition.....	48
Appendix C: The Block Exemption .....	50
Appendix D: The Articles of the block exemption .....	59
Appendix E: Flow chart on the application of the block exemption.....	61

## 1. Introduction

1.1 In this guide we use a number of abbreviations:

<b>Article 101 TFEU</b>	Article 101 of the TFEU.
<b>Article 102 TFEU</b>	Article 102 of the TFEU.
<b>CA98</b>	Competition Act 1998.
<b>Chapter I Prohibition</b>	Chapter I of the Competition Act 1998.
<b>Chapter II Prohibition</b>	Chapter II of the Competition Act 1998.
<b>MITs</b>	Multi-operator individual tickets.
<b>MTCs</b>	Multi-operator travel cards.
<b>The block exemption</b>	The Competition Act 1998 Public Transport Ticketing Schemes Block Exemption Order 2001 (SI 2001 No 319) as most recently amended by the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) (Amendment) Order 2016 (SI 2016/216).
<b>TFEU</b>	Treaty on the Functioning of the European Union.
<b>Ticketing schemes</b>	Public transport ticketing schemes.
<b>TTs</b>	Through tickets.

1.2 Normally, agreements between companies that serve to align their pricing or services are prohibited by Chapter I of the Competition Act 1998 (CA98) ('Chapter I Prohibition') and by Article 101 of the Treaty on the Functioning of the European Union ('TFEU').<sup>1</sup> This is because rivalry between suppliers encourages efficiency, lower prices and better services. A prohibited agreement is not enforceable.

1.3 However, there are limited situations where such agreements can be beneficial to consumers. One such situation is where multi-operator public transport tickets produce significant benefits for passengers and others. In recognition of this, the block exemption applies where particular public

---

<sup>1</sup> Further details on EU competition law can be found in Appendix A.

transport ticketing schemes ('ticketing schemes') meet certain conditions. Its effect is to exempt these schemes from the Chapter I Prohibition.

- 1.4 Where a scheme does not meet the block exemption conditions, it may still be exempted from the Chapter I Prohibition, but the parties would need to self-assess the agreement setting up the scheme to see if it fulfils the criteria for an exemption under section 9(1) of the CA98 ('section 9(1)').
- 1.5 Where schemes are exempted from the Chapter I Prohibition, transport operators are still expected to act competitively – for example in the pricing of their tickets, the services they operate and the quality of provision – to continue to deliver benefits for customers.

## **Purpose of the guidelines**

- 1.6 The purpose of these guidelines is to help operators, local authorities and scheme administrators assess ticketing schemes to decide whether their schemes fall within the scope of the block exemption. The guidelines are relevant to both existing and new ticketing schemes. The guidelines do not apply to agreements in sectors other than public transport.
- 1.7 These guidelines must be applied individually to each ticketing scheme, having regard to the specific factual and legal circumstances in each case. It is the responsibility of the parties to a ticketing scheme to analyse the compatibility of their agreement with the block exemption and, where necessary, with section 9(1).
- 1.8 The Competition and Markets Authority (CMA) may investigate the compatibility of any agreement with competition law, on its own initiative or following a complaint. In such circumstances, the parties to a ticketing scheme would need to be able to demonstrate that the scheme complies with the block exemption or with section 9(1).<sup>2</sup>
- 1.9 These guidelines do not consider other tools of transport policy that also apply and can operate alongside the block exemption (see paragraph 4.63 and [Appendix A](#)). Appendix A to the guidelines sets out other competition scrutiny that may apply alongside the block exemption and also refers to exclusions that may apply.

---

<sup>2</sup> Further information about the CMA's powers under CA98 can be found in [Guidance on the CMA's investigation procedures in CA98 cases \(CMA8\)](#).

## Structure of the guidelines

1.10 The remainder of these guidelines is structured as follows:

- (a) [Part 2: Overview of the legal framework](#). This part provides an overview of the CA98 Chapter I Prohibition and the exemption regime.
- (b) [Part 3: The scope of the block exemption](#). This part gives an overview of the categories of ticketing scheme covered by the block exemption and the criteria that should be met for each scheme.
- (c) [Part 4: Legal conditions and obligation for schemes covered by the block exemption](#). This part describes the conditions that apply to ticketing schemes covered by the block exemption, and other obligations and requirements.
- (d) [Part 5: Agreements falling outside the block exemption](#). Some agreements may be permitted under section 9(1) even when they do not meet the conditions of the block exemption. This part covers the assessment of such schemes.

## 2. Overview of the legal framework

- 2.1 This part gives a brief overview of the Chapter I Prohibition and the exemption regime on which basis the block exemption has been adopted. [Appendix B](#) provides further details on the Chapter I Prohibition, in particular setting out the meaning of some of the terms and concepts used throughout these guidelines. It also provides a list of selected documents issued by the CMA, the Office of Fair Trading (OFT) and the European Commission, which may help with the application of Chapter I Prohibition.

### The Chapter I Prohibition

- 2.2 The Chapter I Prohibition prohibits certain agreements that prevent, restrict or distort competition. More specifically, Chapter I prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which (i) have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom (or a part thereof) and (ii) may affect trade within the United Kingdom.
- 2.3 The Chapter I Prohibition, however, only applies where agreements have as their object or effect an *appreciable* restriction of competition within the United Kingdom or a part of it.<sup>3</sup> Ticketing agreements containing clauses that have only a neutral or benign impact on competition do not fall within the Chapter I Prohibition. For example, where an agreement is between a local bus company and a train operating company that are not actual or potential competitors in any market, or where operators merely standardise the format of their tickets, it is unlikely that an agreement between them will fall within the Chapter I Prohibition because there will be no appreciable restriction of competition.
- 2.4 The Chapter I Prohibition is one of two prohibitions in the CA98. The other – the Chapter II Prohibition – is concerned with abuse of a dominant position. These prohibitions sit alongside two analogous prohibitions in EU law, the difference being that the EU prohibitions only apply where agreements, or the conduct of a dominant undertaking, may affect inter-state trade within the European Union.
- 2.5 Ticketing schemes may prevent, restrict or distort competition to an appreciable extent and hence infringe the Chapter I Prohibition (see paragraph 3.7). These guidelines consider ticketing scheme agreements

---

<sup>3</sup> See paragraphs 3.6 & 3.7 and Appendix B. paragraph 8 provides further details on this point.

primarily in relation to the Chapter I Prohibition, against which the block exemption is available.

- 2.6 The block exemption does not apply outside the UK nor does it exempt agreements from the application of Article 101 TFEU. However, the same principles apply to determine whether an agreement has countervailing benefits under EU law as under the CA98 and accordingly, the CMA considers that where a ticketing scheme agreement meets the requirements of the block exemption or section 9(1) CA98, it is likely to be treated as exempt from the prohibition in Article 101 TFEU.
- 2.7 This guidance is not concerned with abuse of a dominant position. No block exemptions are available from the Chapter II Prohibition or Article 102 TFEU.<sup>4</sup>

### **The exemption regime**

- 2.8 The Chapter I Prohibition provides that some agreements which restrict competition are exempt from the prohibition where they satisfy certain conditions, set out in section 9(1).
- 2.9 Section 9(1) sets out the conditions that must be met for an agreement to have the benefit of the exemption from the Chapter I Prohibition.<sup>5</sup> Broadly, the agreement must contribute clear efficiency benefits. Second, it must provide a fair share of the resulting benefits to consumers. Third, the restrictions on competition that it provides for must be no more than the minimum that is necessary to enable consumers to gain these benefits. Fourth, it must not give companies the opportunity to eliminate competition from a substantial part of the relevant market.
- 2.10 An agreement that satisfies the conditions set out in section 9(1) is valid and enforceable from the moment that the conditions in section 9(1) are satisfied and for as long as that remains the case. The parties involved in such an agreement do not need to seek any authorisation from the CMA; they solely

---

<sup>4</sup> The interactions between the Chapter I Prohibition/Article 101 TFEU, and between the Chapter II Prohibition/Article 102 TFEU and the block exemption, are considered in Appendix A to these guidelines.

<sup>5</sup> The conditions that must be met in full 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 those objectives; or  
(ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.



need to satisfy themselves ('self-assess') that the agreement meets the conditions set out in section 9(1).

### ***Block exemption***

- 2.11 However, to minimise the burden on the parties to agreements, under the CA98 the Secretary of State may make a 'block' exemption that **exempts from the Chapter I Prohibition any agreements that fall within particular categories of agreement which the CMA considers are likely to satisfy the conditions in section 9(1)**. This allows companies to have confidence that their agreement is legal under Chapter I Prohibition, without needing to self-assess against the section 9(1) criteria.
- 2.12 An agreement that falls within a category specified in the block exemption (and that does not breach any of the conditions specified in the block exemption) will not be prohibited under the Chapter I Prohibition and is enforceable by the parties to the agreement. As mentioned in paragraphs 1.7 and 1.8 above, the parties to the agreement need to satisfy themselves that the agreement meets the conditions set out in the block exemption and be in a position to prove that the agreement is block exempted.
- 2.13 Where an agreement has as its object or effect an appreciable restriction of competition but does not fall within the terms of the block exemption, consideration will need to be given to one of the following:
- Does it satisfy the conditions in section 9(1) so as to be individually exempted?
  - Should it be amended so as to bring it within the terms of the block exemption?
  - Does it fall within an exemption or exclusion under other legislation (see [Appendix B](#))?
- 2.14 Further details on how to assess an agreement falling outside the block exemption are provided in Part 5 below.
- 2.15 A copy of the block exemption, as amended, has been included in [Appendix C](#). The purpose of the individual articles of the block exemption are discussed in [Appendix D](#).

### **Question 1**

- 2.16 This section has been shortened and simplified to make the guidance more user-friendly:

DRAFT FOR CONSULTATION

- (a) Do you consider that this section (read in conjunction with the rest of the guidance, in particular [Appendix B](#)) is providing you with appropriate level of detail?
  
- (b) What changes, if any, do you suggest?

### 3. The scope of the block exemption

3.1 This part gives an overview of the categories of ticketing scheme covered by the block exemption and the criteria that should be met for each scheme.

3.2 This part is structured as follows:

- Overview of ticketing schemes (**A**).
- The five categories of ticketing schemes covered by the block exemption (**B**).
- How to distinguish multi-operator travel cards (MTCs) from multi-operator individual tickets (MITs) and through tickets (TTs) (**C**).
- How to assess whether a ticketing scheme is a TT scheme (**D**).
- Duration of the block exemption (**E**).

#### A. Overview of ticketing schemes

##### *Ticketing schemes covered by these guidelines*

3.3 Broadly speaking, ticketing schemes are written agreements between public transport operators allowing for passengers to purchase tickets that can be used on the services of more than one of the participating operators.<sup>6</sup> Over time, new ticket formats such as electronic tickets have been introduced. This has led to the introduction of new ticketing products, such as pay-as-you-go with cap.

3.4 By 'ticket', the block exemption means 'evidence of a contractual right to travel' (Article 3), focusing therefore on the entitlement to travel rather than on the format of the ticket or the type of product concerned. The CMA considers that this definition is wide enough to encompass the smart tickets that are currently offered in the market, including electronic tickets and even situations where the ticket product is not determined until after the event for travel undertaken over a specified period.

3.5 Smart tickets for this purpose include all ticket types that enable electronic ticketing without any specific need for a physical ticket to travel. The tickets can be sold and stored or activated on electronic devices such as smart cards, mobile phones contactless bank cards, or wearable devices. The exact

---

<sup>6</sup> A precise definition of public transport ticketing scheme can be found in Article 4(2) of the block exemption.

form of the entitlement to travel, be it a physical ticket or some other (eg electronic) indication of entitlement to travel is irrelevant to the application of the block exemption conditions. We note that smart tickets can be used to more readily facilitate different ticket types not available as paper tickets, such as pay-as-you-go with cap.<sup>7</sup> Such tickets, and any new ticket types which may be introduced, will still fall within the block exemption as long as they satisfy the conditions for each of the five permitted ticket categories set out in the block exemption (see paragraphs 3.12, 3.14, 3.16, 3.19 and 3.20).

- 3.6 Certain ticketing schemes are likely to prevent, restrict or distort competition to an appreciable extent and hence infringe the Chapter I Prohibition unless they satisfy the conditions in section 9(1). This includes schemes that impose restrictions which reduce incentives to compete on price or quality. Certain schemes may nevertheless generate benefits offsetting the restrictions.

***What restrictions to competition are likely to infringe Chapter I Prohibition?***

- 3.7 Examples of restrictions that are likely to infringe the Chapter I Prohibition include:<sup>8</sup>

- (a) fixing fares for tickets sold under the ticketing schemes;
- (b) carving up routes between participants;
- (c) agreements that raise barriers to entry to keep out new competitors, for example through exclusivity provisions, thus allowing incumbents to raise prices;

---

<sup>7</sup> Examples of current use of smart tickets:

- Different smart ticket types on offer, or anticipated to go on offer, to consumers currently include paper replacement tickets, pay-as-you-go with cap, and pay-later with best price guarantee.
- Paper replacement tickets are simply an electronic replacement of a paper ticket. This includes prepay tickets such as a season ticket stored on an electronic device, or a one-day travel card paid in advance of travel on an e-purse or contactless card. Carnet tickets, off-peak tickets and time-limited travel cards stored on smart devices all fall within this category. These are therefore assessed in the same way as the corresponding paper tickets.
- Pay-as-you-go with cap allows the consumer to make multiple journeys, paying standard single or return fares up to a predetermined price limit, after which any further travel is free. To the extent that these tickets permit travel on multiple operators' services, the block exemption would apply as for example, they would be regarded as MTCs once the cap is reached (provided the conditions of the block exemption were met).
- Pay-later with best price guarantee allows the consumer to undertake travel without any prepayment. A customer is charged after the event for travel undertaken over a specified period (eg a day, a week or a month) and is charged for the cheapest ticket(s) available for the actual journeys undertaken. The final charge to the customer could include a combination of several different tickets, including single or multi-operator tickets. However, each ticket would be assessed individually for the purposes of the block exemption.

<sup>8</sup> These examples are not exhaustive.

- (d) eliminating single-operator tickets, such as single and return tickets that are not part of the scheme and for which fares are set at the discretion of individual operators; and
- (e) facilitating price-fixing through the exchange of commercially sensitive information between operators.

***What type of benefits can ticketing schemes generate which are likely to meet the conditions of section 9(1)?***

3.8 Certain schemes may yield benefits for consumers and others, such as facilitating the efficient use of resources or reducing consumer transaction costs. For example, schemes might encourage public transport use, hence reducing road congestion and pollution, while benefiting passengers both economically and socially with an improved level of public transport services.

**B. The five categories of ticketing schemes covered by the block exemption**

3.9 The block exemption sets out five categories of ticketing schemes which are exempt because they are considered likely to satisfy the section 9(1) conditions, provided they meet certain conditions.

3.10 Distinguishing between these different categories is important because each category has different effects on competition and requires different arrangements to make it work. Consequently, the block exemption requires that each of these different categories of schemes satisfies different conditions in order to benefit from the block exemption (see Part 4 below).

3.11 The criteria that each of the five schemes should meet are explained below.

***Through tickets***

3.12 Further to Article 3 of the block exemption, a TT is a ticket:

- valid on more than one operator's services;
- for completion of a particular journey (whether single or return) on two or more services; and
- where the journey is made on 'complementary services', that is services where the operators do not compete with each other over a 'substantial part of the route' covered by the ticket in question (see paragraphs 3.24 to 3.38 below).

3.13 The conditions that apply to TT schemes are discussed in more detail in Part 4 B. below.

### ***Multi-operator individual tickets***

3.14 Further to Article 3 of the block exemption, an MIT is a ticket:

- valid on more than one operator's services; and
- for the completion of a particular journey (single or return) on whichever service the passenger chooses, involving a journey that could be made on services provided by any of two or more operators where those operators' services are in competition with each other.

3.15 A standard return ticket, including a carnet<sup>9</sup> or a time-limited ticket<sup>10</sup> valid only for a particular journey on a particular route would be an MIT, provided that it met the conditions that apply to MIT schemes (see Part 4 C. below).

### ***Multi-operator travel cards***

3.16 To be defined as an MTC within the meaning of the block exemption (Article 3), a ticket must:

- entitle the holder to make at least three journeys;
- entitle the holder to travel on three or more routes, which are 'not substantially the same'; and
- in practice, not be substantially used by passengers as an MIT or TT.

3.17 MTCs entitle ticket holders to make multiple journeys on different operators' services across a number of different routes, where these routes are not substantially the same, and the tickets are not substantially used by passengers as MITs or TTs.

3.18 For example, if a city is served by several operators with largely different networks, an MTC could allow passengers to travel across the whole city with just one ticket. Types of MTCs include daily and monthly travel cards, carnets, and other time-limited tickets. A carnet or a time-limited ticket valid on any operator's services within a specified geographical area served by two or

---

<sup>9</sup> A carnet is a book of single tickets, usually ten, which entitles the passenger to undertake single journeys either on a particular route or for a range of routes.

<sup>10</sup> Time-limited tickets permit travel for a specified time period (usually one or two hours).

more operators would also be an MTC, provided that it satisfies the conditions that apply to MTC schemes (see Part 4 D.).

### ***Short-distance add-ons***

- 3.19 Short-distance add-ons allow passengers to purchase an MTC as an extension to a ticket (or tickets) entitling the holder to make a particular journey on an individual local route on complementary services (see Part 4 E. below).

### ***Long-distance add-ons***

- 3.20 Long-distance add-ons allow passengers to purchase a single-operator local service ticket, MTC or TT as an extension to a ticket on an individual long-distance route on one or more connecting services (see Part 4 E. below).

## **C. How to distinguish multi-operator travel cards from multi-operator individual tickets and through tickets**

- 3.21 The block exemption allows operators offering an MTC to agree a common price. Since this is not the case for MITs and TTs, it is particularly important to establish whether a ticketing scheme really meets the criteria required for an MTC scheme (see paragraph 3.16).
- 3.22 If these criteria are not met, the block exemption does not apply. In this case, operators may wish to consider whether certain routes could be added to or excluded from the scheme in order to meet the criteria, or whether the scheme could be replaced with one or more MIT/TT schemes. Operators may also consider whether the scheme is exempt following self-assessment under section 9(1).
- 3.23 The rest of this section considers the application of the second and third of the criteria for MTCs in more detail.

### ***How to assess 'not substantially the same' (second criterion)***

- 3.24 To be defined as an MTC within the meaning of the block exemption, a ticket must relate to travel on three or more routes, where these routes are 'not substantially the same'. The purpose of this requirement is to ensure that MTC schemes provide access to a genuine network of complementary routes, rather than for example a single route (where an MIT is likely to be more appropriate). The combination of routes that are included in the MTC scheme should therefore offer passengers substantially different journeys and should not just be very similar routes with only minor variations.

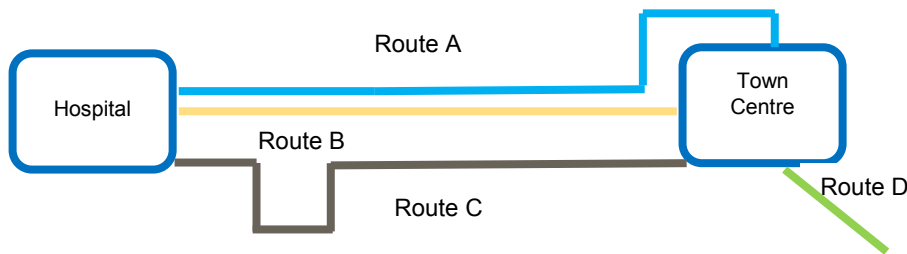
- 3.25 It should be noted that to ensure that a scheme qualifies as an MTC, operators only need to confirm that it covers at least three different (ie not substantially the same) routes. For example, a scheme that includes four routes, two of which are substantially the same as each other but different from the other two routes, would still cover three different routes. If an MTC scheme covers a large network – of many more than three routes – then the CMA considers that it is highly likely that it will meet this criterion and that this can accordingly be established without a detailed assessment. If a scheme covers a small number of routes, operators may have to assess their scheme on a route-by-route basis to confirm whether the second criterion is met.
- 3.26 Many of the routes which operators wish to include in ticketing schemes will involve at least a minimal overlap. For example, it might be that all bus services in a town must pass through one particular street in order to reach the bus station or serve a number of key destinations in a city (eg stops at different parts of the main shopping district, the train station and hospital). Routes may still be ‘not substantially the same’, even if there are such overlaps, so long as they additionally serve a variety of destinations.
- 3.27 It is not possible for the CMA to give a definitive formula which will enable operators to determine whether any particular routes are ‘substantially the same’. Common sense and local knowledge will play an important role when operators are making this assessment. However, the CMA considers that routes risk being considered ‘substantially the same’ when common stops (including adjacent stops) form a substantial part of a relevant route, and/or when routes are considered substitutes by a large proportion of passengers. For example, where:
- common stops account for all or most of the stops on the route itself;
  - common stops account for all or most of the stops in a particular fare zone and most of the passengers originate from or travel to this fare zone; or
  - routes are in practice close substitutes in that they both connect to the same destination from the same starting point and a large proportion of passengers would use either of these routes to connect between the same points.
- 3.28 The CMA considers that an MTC would be likely to fall within the block exemption where three or more routes have only a few stops in common, and these stops do not form a substantial part of any of the routes in question (ie it is not the case that a substantial proportion of passengers are using these common stops).



**Box 1: Examples to illustrate the not substantially the same criterion**

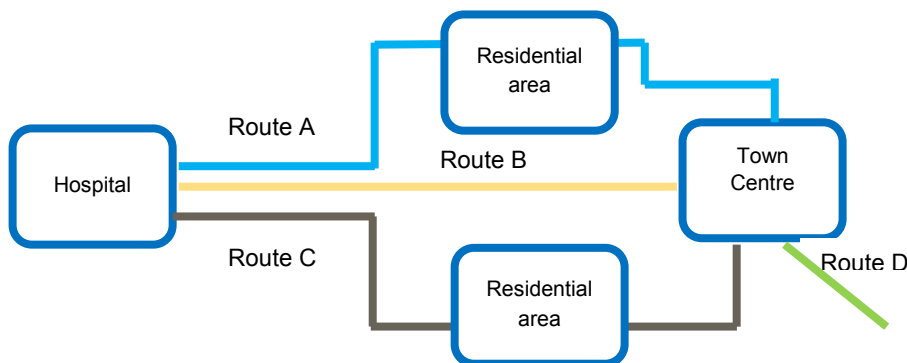
***Example of routes being substantially the same***

A scheme being considered covers four routes (A, B, C and D), each run by a different operator. Three of these routes run between the hospital and the town centre (A, B and C), taking only a very slightly different journey between the two points. A large proportion of passengers on these three routes travel between the hospital and the town centre. It is therefore likely that these routes would be considered substitutes from the point of view of a large proportion of passengers. In this case it is likely that the three routes would be considered substantially the same, meaning that the scheme does not have three or more different routes and may therefore not be an MTC within the meaning of the block exemption provided that it is substantially used as an MIT.



***Example of routes not being substantially the same***

A scheme being considered covers four routes (A, B, C and D), each run by a different operator. Three of these routes (A, B and C) run between the hospital and the town centre, but take very different routes and/or serve a different catchment beyond the hospital and hence serve different areas. It is therefore likely that these three routes would not be considered substitutes from the point of view of the majority of consumers. In this case it is likely that the three routes would not be considered substantially the same, meaning that the scheme would be a legitimate MTC falling within the block exemption (provided it met the other relevant criteria).



- 3.29 In order to avoid overlaps in a public transport ticketing scheme, operators should not make an agreement or an understanding whereby they allocate routes between them. Such ‘market-sharing’ agreements would be likely to infringe the Chapter I Prohibition and are not covered by the block exemption.

## Question 2

- 3.30 This section has been expanded to set out what is meant by ‘substantially the same’. We use examples and route maps to illustrate the points:
- (a) Do you think that it is clear what is meant by ‘substantially the same’?
  - (b) Do you find the examples and route maps helpful?
  - (c) Is the information required to make an assessment easily available?
  - (d) Do you have any suggestions to make this section clearer?
  - (e) Do you have any further comments on this section?

### ***How to assess ‘in practice, not substantially used by passengers’ as an MIT or TT (third criterion)?***

- 3.31 It is likely that many individual passengers will use an MTC on the same route from day to day, and this is permitted under the block exemption. However, if, overall, most passengers are mainly using the MTC on one overlap route, or to travel on a particular journey using two or more operators within the scheme, then the scheme may in practice be operating as an MIT or a TT scheme, and so would not be considered an MTC scheme within the meaning of the block exemption and would not be able to benefit from the ability to set a fixed price for the ticket.
- 3.32 It is not possible for the CMA to give a definitive formula of what would constitute ‘substantial use’ for the purposes of the block exemption. However, to assist operators, local authorities and scheme administrators in assessing whether their scheme is fulfilling the MTC definition we suggest some possible tests which operators and scheme administrators could consider when examining whether the scheme is likely to meet the conditions of an MTC:
- **Is the scheme in practice used as a single overlapping route?** If the passenger usage of any one route (or part of route)<sup>11</sup> which is served by competing operators within the MTC accounts for more than 80% of the

---

<sup>11</sup> Route here is understood as ‘not substantially the same’, see paragraphs 3.24–3.29.

MTC use then this scheme is unlikely to satisfy the definition for an MTC. In such cases, the MTC should be replaced with an MIT for that route.

- **Is the scheme in practice used as a single journey on two or more connecting services?** If the passenger usage of any one journey which is served by two operators' connecting services within the MTC accounts for more than 80% of the MTC use then this scheme is unlikely to satisfy the definition for an MTC. In such cases, a TT scheme on those routes would probably be appropriate (see paragraphs 3.37 and 3.38).

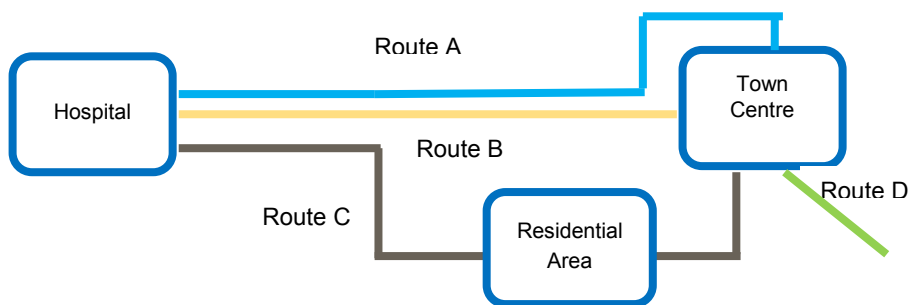
3.33 However, by contrast, the scheme is likely to be operating as an MTC where the passenger usage of the MTC on routes which are not served by competing operators (plus journeys which necessitate the passenger interchanging to use more than one service) represents the majority of MTC journeys undertaken.

3.34 Note that these tests, and the examples in the box below, do not cover all potentially relevant circumstances.

**Box 2: Examples of non-MTC and MTC schemes**

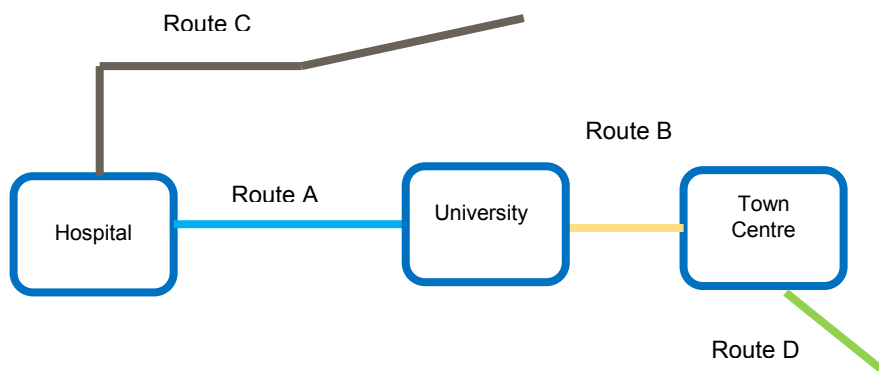
***Example of a scheme with substitute routes that is substantially used as an MIT***

A scheme covers four routes (A, B, C and D), each run by a different operator. Three of these routes (A, B and C) run between the hospital and the town centre. A and B take only a very slightly different journey between the two points; route C however serves a different residential area where many of its passenger originate, and so it is considered a different route to A and B. More than 80% of MTC passengers travel between the hospital and the town centre on routes A and B and use of the other routes, C and D, on MTC tickets is minimal. In this situation the scheme is not an MTC within the meaning of the block exemption. In such cases, the scheme should be replaced by an MIT provided that it meets the relevant criteria in the block exemption.



**Example of a scheme with complementary routes that is substantially used as a TT**

A scheme covers four routes (A, B, C and D), each run by a different operator. One of these routes runs between the hospital and the university, and another runs between the university and the town centre. A large proportion of passengers on these two routes travel between the hospital and the town centre (ie travel over both routes) and use of the other two routes is minimal. In this situation the scheme is not an MTC within the meaning of the block exemption. In such cases, the scheme should be replaced with a TT. The operators could then agree to operate TT schemes on each of these routes, ensuring they meet the relevant criteria in the block exemption.



**Example of a scheme that is not substantially used as an MIT or TT**

Where passenger use of tickets within an MTC scheme is spread over a number of different routes across the network, the scheme is then operating as an MTC.

- 3.35 In situations where it is clear that no one route is attracting a significant number of passengers in relation to other routes, we would not expect operators to explicitly carry out an assessment including, for example, the tests above. However, where there is doubt, we suggest that the tests above, for example, should initially be undertaken after the first six months of operation and every two years thereafter (on the basis of six months of data). In the first instance, the largest operators within the scheme or MTC administrators should consider such evidence in relation to the data they have available. If it indicates a potential problem, the scheme administrators should gather data from all operators to apply the evaluation of MTC usage for the total of all operators (these tests do not apply to single operators).

### Question 3

- 3.36 This section reflects changes to the definition of MTC in the block exemption. We explain what is meant by ‘in practice, not substantially used as an MIT or TT’. We use examples and route maps to illustrate points:
- (a) Do you think that it is clear what is meant by ‘in practice, not substantially used as an MIT or TT’?
  - (b) Do you find the examples and route maps helpful?
  - (c) Is the information required to make an assessment easily available? If not, please explain what the obstacles are and what alternatives might be used instead.
  - (d) Do you have any suggestions to make this section clearer?
  - (e) Do you have any further comments on this section?

#### **D. How to assess whether a ticketing scheme is a through ticket scheme**

- 3.37 To be defined as a TT within the meaning of the block exemption (Article 3), a ticket must relate to a journey made on ‘complementary services’. This means that the operators do not compete with each other over a substantial part of the route covered by the ticket and therefore the passenger would not have a choice of which operator they travel with for a substantial part of the journey. This requirement distinguishes TTs from MITs, which relate to competing routes, and are subject to slightly different conditions under the block exemption.
- 3.38 The CMA considers that the criterion of complementarity should be approached in a similar way to the criterion that MTC routes be ‘not substantially the same’, discussed in paragraph 3.27.

#### **E. Duration of the block exemption**

- 3.39 The block exemption applies from 1 March 2000 until 28 February 2026.
- 3.40 It is envisaged that the operation of the block exemption will be reviewed before its expiry. From July 2015, the Secretary of State is under a duty to review certain regulatory statutory instruments to ensure that they are not

imposing too many burdens on business.<sup>12</sup> As a result, the block exemption will be subject to a review before 28 February 2021. Accordingly, Article 22 of the block exemption provides that the conclusions of the review will be published in a report. The report will also (i) set out the objectives intended to be achieved by the regulatory system established in block exemption; (ii) assess which objectives are achieved; and (iii) assess whether those objectives remain appropriate and if so the extent to which they could be achieved with a system that imposes less regulation.

- 3.41 The CMA also has the power by virtue of section 8(3) of the CA98 to recommend variation or revocation of a block exemption order, if in its opinion, such a course would be appropriate. Where industry participants or public authorities call for an earlier review by the CMA, they will need to explain why the block exemption needs reviewing and the detriment that will arise in the absence of a review.

---

<sup>12</sup> Section 28 of the Small Business, Enterprise and Employment Act 2015.

## 4. Legal conditions and obligation for schemes covered by the block exemption

4.1 This part considers:

- the conditions applicable to all ticketing schemes (**A**);
- the conditions applicable to individual type of schemes (**B to E**);
- the obligation to provide information to the CMA (**F**);
- the cancellation of the block exemption for a particular scheme (**G**); and
- other requirements (**H**).

4.2 The block exemption is set out in [Appendix C](#), and a brief summary of the purpose of each of its articles is discussed in [Appendix D](#).

### A. Conditions that apply to all public transport ticketing schemes

4.3 The block exemption sets out a number of general conditions that must be met by all public transport ticketing schemes (Articles 6 to 9, see below).

#### **Article 6**

**Article 6 requires that a ticketing scheme must be open to any operator, or potential operator, wishing to join it. A ticketing scheme which prevents an operator from joining it may benefit from the block exemption only if there is an objective, transparent and non-discriminatory reason for the exclusion.**

4.4 This condition is to ensure that public transport ticketing schemes do not exclude operators from the ticketing scheme, or form barriers that restrict the ability of new operators to enter the market.

**Box 3: Examples of reasons for excluding operators or potential operators which the CMA considers are likely not to be objective, transparent or non-discriminatory include:**

- (1) Requiring an operator to incur costs on joining a ticketing scheme which are not indispensable to the effective operation of that scheme. Such costs may include unreasonable investment, for example:

- on-board hardware for recording the data required to administer the ticketing scheme, where alternative cheaper or existing systems could deliver sufficient functionality; or
  - advertising to the public the existence of the ticketing scheme where the costs or requirements are excessive.
- (2) Failing to distribute between the parties to a ticketing scheme the revenue received through the scheme as soon as reasonably practicable.<sup>13</sup> This is to ensure that the cash flows of smaller operators are not unduly restricted by the ticketing scheme.
- (3) Requiring any operator to incur costs on leaving a ticketing scheme (exit costs) which are not indispensable to the effective operation of the scheme. Such costs may include:
- requiring an unreasonable notice period to be given; or
  - imposing an unreasonable financial or other penalty on a party for leaving the public transport ticketing scheme.
- (4) Apportioning between the parties to a ticketing scheme the fixed or variable costs of administering the scheme on terms which do not reflect the actual usage of services in the scheme.
- (5) Requiring any party to a ticketing scheme not to participate in any other such scheme.

This list is not exhaustive.

#### Question 4

4.5 This section has not been changed substantially:

- (a) Do you consider that the examples are relevant?
- (b) Would any of the examples cause you concern?
- (c) Would you like to add further examples?

---

<sup>13</sup> Article 10 of the block exemption. It is recognised that it is helpful for operators to receive revenue from annual season ticket sales, for example, in one instalment in the accounting period in which the ticket is bought. 'Regularly', in this instance, does not mean that distribution of the revenue from the sale of the ticket should be spread over the 12 months' validity of the ticket, unless the operational requirements of the ticketing scheme otherwise require it.



## **Article 7**

**Article 7 prevents any restriction of any operator's ability to decide which routes to serve or to fix the price, availability, fare structure or geographic validity of its own single, return or individual operator season tickets.**

- 4.6 A ticketing scheme must not limit the variety or number of routes each operator operates, nor limit the ability of the operators to make commercial decisions about their own single or return fares or the price of single-operator season tickets. A ticketing scheme must not interfere with, for example, the price, fare structure, geographic validity or availability of single-operator tickets.
- 4.7 This is to preserve existing competition between operators on single and return and other tickets and to preserve the freedom of operators to provide services that meet passengers' needs.
- 4.8 The ticketing scheme should be viewed as an **additional** product in the offering to consumers and should not in any way restrict the current range of products offered by the operators.

**Box 4: Example of how an agreement may have the effect of preventing operators' ability to compete, in breach of Article 7 of the block exemption**

- (1) The agreement has the effect of specifying the fare for single-operator tickets.
- (2) The agreement in effect prevents the operator from introducing new ticket types (such as single or return tickets).
- (3) The agreement has the effect of imposing on the participating operator which area it can operate.
- (4) The agreement has the effect of imposing on the participating operator the route(s) it must and/or must not operate.
- (5) The agreement prevents the sale of single-operator travel cards.

This list is not exhaustive.

## **Question 5**

- 4.9 In this section we have introduced some examples:
- (a) Do you consider that the examples are relevant?

(b) Would any of the examples cause you concern?

(c) Would you like to add further examples?

### **Article 8**

**Article 8 prevents any restriction of the ability of operators to take independent commercial decisions on the number of vehicles operated, timetables or headways (except where an agreement on schedules is indispensable to the operation of a scheme which involves the provision of onward connecting services).**

4.10 The ticketing scheme must not prevent operators from taking independent commercial decisions about the number of vehicles to be operated on any particular route, the headways to be used or the times of services,<sup>14</sup> for example. The only exception is that a ticketing scheme may include agreement on schedules if this is indispensable for providing connecting services through, for example, a long-distance add-on or a TT.

**Box 5: Example of how the agreement may prevent operators' ability to compete, in breach of Article 8 of the block exemption**

- (1) The agreement has the effect of deterring the operator from introducing new or more frequent services.
- (2) The agreement has the effect of imposing the timetable of certain services onto the operator (unless indispensable).

This list is not exhaustive.

### **Question 6**

4.11 In this section we have introduced some examples.

(a) Do you consider that the examples are relevant?

(b) Would any of the examples cause you concern?

(c) Would you like to add further examples?

---

<sup>14</sup> However, some restrictions, for example on headways, may be regulated by quality partnerships, or similar schemes permitted by legislation, which are not discussed here. Such legal restrictions can operate in conjunction with a ticketing scheme under the block exemption but the restrictions cannot be part of the ticketing scheme itself if it is to be covered by the block exemption.

## **Article 9**

**Article 9 prevents the exchange of commercially sensitive information, but allows the exchange of information that is ‘directly related and indispensable’ to the effective operation of the public transport ticketing scheme.**

- 4.12 Article 9(1) prevents a ticketing scheme from facilitating the exchange of sensitive confidential information between operators. This is because exchanges of such information can dampen the competitive process and may facilitate collusion by artificially increasing transparency in the market (eg about future intentions that could enable coordinated price rises or capacity reductions).
- 4.13 Clearly, however, some exchange of information between the parties to a ticketing scheme is essential to the operation of many schemes. Article 9(2), therefore, allows the exchange of information which is ‘directly related and indispensable’ to the effective operation of the ticketing scheme itself, and provided it is carried out on an ‘objective, transparent and non-discriminatory’ basis. Parties to ticketing schemes will have to consider, on a case-by-case basis, whether the exchange of a particular type of information meets these criteria.
- 4.14 In this respect, parties to ticketing schemes should make sure that only data **necessary to achieving the benefits expected from the ticketing schemes** is exchanged. For example, the parties should exchange aggregated data (ie where the recognition of individualised company-level information is sufficiently difficult) rather than individualised data whenever this would suffice. They should also ensure that no additional unnecessary information is exchanged.
- 4.15 For example, given that to fall within the block exemption, revenue from MITs must lie where it falls, it is likely that these schemes will require little or no information exchange.<sup>15</sup> Similarly the need for information exchange for TTs should be limited to informing participants of the posted prices and providing information relating to such reimbursement.<sup>16</sup>
- 4.16 The CMA expects that the need to exchange information will arise principally in the case of MTC schemes and will relate to the price of the MTC, the distribution of revenue received through the scheme and the apportionment of administration costs. Any MTC-related information sent to the participating

---

<sup>15</sup> See paragraphs 4.31–4.35 regarding ‘revenue lies where it falls’.

<sup>16</sup> See paragraph 4.26.

operators should be limited to what is indispensable to the operation to the ticketing scheme.

4.17 The list below identifies examples of information that the CMA considers may, where required, be shared for the implementation and/or operation of an MTC scheme. Before exchanging information, the parties should carefully consider whether the exchange is necessary and genuinely indispensable for the implementation and/or operation of their particular MTC scheme. Any information exchange should always be indispensable:

- Average fare data and current publically available fare structures.
- Total number of passengers using the MTC.
- Total revenue data on number of MTCs sold, but not as a proportion of total revenue.
- Other aggregated data needed for revenue share purposes including, where required for revenue sharing, passenger mileage, registered mileage.
- Overall changes in costs to justify adjustments in the price of the MTC.

**Box 6: Example of information which should not be exchanged within MTC schemes (as it is unlikely that such an exchange is likely to be necessary)**

- (1) Commercially sensitive information on price which is not in the public domain (eg related to future price intentions).
- (2) Information about the costs of operations or investments (although note that exchanges of information on increases in overall costs may be permissible – see paragraph 4.41).
- (3) Revenue information relating to individual routes or part of routes.
- (4) Strategic information relating to proposed changes to services, route frequency, future investments and marketing.
- (5) Information on passenger numbers on specific routes or at specific times of day, or individual passenger data (unless required for monitoring purposes or complaints processes, in which case suitable safeguards must be in place).

This list is not exhaustive.

- 4.18 If operators exchange such information highlighted above this could dampen competition between operators, which could result in higher prices for consumers. For example, if future price intentions are shared with rivals this may result in coordinated price increases, whereas in the absence of this, more efficient operators may be able to offer better prices. Similarly, information about future investments may deter more efficient rivals from making investments to avoid competing on the same routes.
- 4.19 Parties to large-scale MTC schemes should exchange information only by means of a strictly confidential bilateral exchange with an impartial person who is neither an operator nor a potential operator. This might be through a local transport authority or an independent administrator, who is required to ensure that no confidential information is shared between operators unless indispensable to the operation of the scheme. The CMA considers that a less stringent approach may be suitable for small-scale schemes where the revenue (or potential revenue) does not allow for the appointment of an impartial third person.
- 4.20 Note that, in situations where the scheme is operated by one of the participating operators, the back office function should be operationally separated from the rest of the operator's business, for example by way of Chinese walls. In particular, it is essential that the employees accessing the MTC's related information do not hold conflicting functions between the business of its company and the back office functions (for example, by being involved in the commercial and/or strategic decisions relating to its company).
- 4.21 Care should also be taken to ensure that the Data Protection Act 1998 is adhered to. The type of data that could be shared between operators and third parties should be limited to aggregated anonymised data such as overall sales revenue and passenger numbers using the travel card. Operators may request information on individual passengers in specific circumstances – for example, for complaint handling purposes.

### Question 7

- 4.22 In this section we have added more explanation and introduced some examples of information which can and cannot be exchanged.
- (a) Does this draft help you to understand what information you can and cannot exchange?
- (b) Do you consider that the examples are relevant? Are there any omissions or points which would cause difficulty in operating the schemes

effectively? Please give details of the nature of information exchanged and why it is necessary for the effective operation of the scheme.

(c) Would you like to add further examples?

(d) Do you have any further comments on this section?

## **B. Conditions that apply to through ticket schemes**

4.23 TT schemes are defined in paragraph 3.12.

### ***Posted prices***

4.24 **Article 13(1)** prohibits price-fixing for most ticketing schemes, including TTs. This is because it is not considered indispensable for operators to coordinate on the prices of TTs.

4.25 In order to retain the benefits of the block exemption, operators must therefore not agree the price of a TT. Note that this prohibition also means that operators may not engage in any behaviour that would have the indirect effect of fixing the price, even if it does not do so explicitly. Operators should refrain from any discussions of TT pricing with other operators.

4.26 Furthermore, the risks of anti-competitive collusion between parties to TT schemes are reduced if communication between parties to the agreement is kept to a bare minimum.

4.27 Article 13(2)(a) allows each party in a TT scheme to set the 'posted prices' that it will charge another operator for accepting a ticket that operator has issued. The posted price is the reimbursement that an operator **independently** decides it requires for any passenger that it carries who uses a ticket purchased from another operator. The following example shows how this posted prices system works.

**Box 7: Posted prices and pricing of TT schemes**

- (1) Suppose the TT is for a journey from A to C via B, where Operator 1 provides the service from A to B and Operator 2 provides the service from B to C.
- (2) Each operator will independently set a posted price, which is the revenue it requires for carrying a passenger using a TT on its leg of the journey.
- (3) Each operator will also independently set a price at which it sells the TT for the complete journey.
- (4) The prices for the TT will be determined independently by the two operators, taking into account the costs and demand each faces for the leg of the journey it provides and the posted price each must pay to the other operator.
- (5) If a passenger travels from A to C and purchases their ticket from Operator 1, they will pay the price that has been set by Operator 1. Operator 1 will initially receive all the revenue but will pay Operator 2 the posted price that Operator 2 has set for the journey from B to C.
- (6) Similarly, if the passenger purchases their ticket from Operator 2, Operator 2 will receive the price that it has set for the complete journey from A to C but will pay Operator 1 the posted price that Operator 1 has set for the journey from A to B.

4.28 It is important to note that the condition is satisfied only if the relevant operators charge each other **non-discriminatory** posted prices. This means that an operator must set the same posted price to all other operators for carrying passengers between point A and point B, where other operators offer longer TTs which include point A and B.

**Question 8**

4.29 This section is largely unchanged:

- (a) Do you consider that the example is still relevant? If not please explain why and provide an alternative example.
- (b) Would you like to add further comment on this section?

**C. Conditions that apply to multi-operator individual ticket schemes**

4.30 MIT schemes are defined in paragraph 3.14.

***Revenue lies where it falls***

- 4.31 As for TTs, Article 13(1) prohibits price-fixing for MITs. It is generally not indispensable for operators to agree the prices of MITs. In order to fall within the block exemption, operators must not, therefore, agree the price of an MIT. As recommended above for TTs, the risks of anti-competitive collusion between parties to MIT schemes are reduced if communication between parties is kept to the minimum necessary.
- 4.32 Furthermore, Article 15 requires that there is no transfer of revenues between operators within an MIT scheme: the arrangement must be that the operator who receives the payment from the passenger keeps it. This is known as a ‘lie where it falls’ approach to revenues, and means that a ‘posted prices’ arrangement – as described above for TTs – cannot be used for MITs.
- 4.33 This approach is based on the assumption that, over time, the revenues will balance out, in the sense that the proportion of revenue received by each operator will broadly correspond to the proportion of passengers it serves. This is a very simple, low-cost method of organising public transport ticketing schemes and is already in common usage for MIT schemes.
- 4.34 However, this method of revenue allocation may not be viable in all scenarios. For example, if one operator mainly runs daytime services and the other operator mainly runs evening services, it is possible that most passengers will buy a ticket from the daytime operator, and travel back with the evening operator using the same ticket. Hence most of the revenue will be collected by the daytime operator, despite the evening operator carrying a large number of passengers. In this case, the operators will want to agree a method to redistribute revenue that does not involve ‘revenue lies where it falls’, and there are several different revenue share options which could be used.
- 4.35 It must be noted that MIT schemes that use a revenue distribution method other than ‘lies where it falls’ do not meet the condition of Article 15 and hence do not fall within the block exemption. However, the CMA considers that these schemes are likely to satisfy the exemption conditions in section 9(1) (see Part 5 below) and therefore not infringe the Chapter I Prohibition, provided that the revenue distribution method is limited to what is necessary for the MIT scheme to work and does not result in the operators agreeing the price of the MIT (or otherwise influence the setting of their own fares). It is up to the operators involved to undertake an assessment of whether the conditions for an individual exemption under section 9(1) are satisfied. Paragraphs 5.7 to 5.9 and Box 9 provide an example of factors that an operator might include in a self-assessment of an MIT with a revenue distribution method other than



'lies where it falls' and how they might approach assessing whether the exemption conditions are met.

### Question 9

4.36 We have changed this section slightly to make it clearer:

(a) Do you have any comments on this section?

## **D. Conditions that apply to multi-operator travel card schemes**

4.37 The conditions described in this section apply only to tickets and schemes meeting the definition of an MTC within the meaning of the block exemption.<sup>17</sup>

### ***Agreeing the price of an MTC***

4.38 Article 13 of the block exemption allows parties to an MTC scheme to agree the price at which they sell an MTC.

4.39 Therefore, the participating operators of an MTC can agree to set the MTC price at a certain level and still benefit from the block exemption, as setting an agreed price is considered likely to be indispensable to achieve the benefits of an MTC scheme.

4.40 However, in order to satisfy the section 9(1) conditions, the agreed MTC price should be set in the least restrictive way,<sup>18</sup> and in particular not be mechanistically linked to the fares of any of the participating operators. MTC tickets should be considered as separate products in their own right and appropriate pricing determined on that basis. For example, if an operator is able to link the MTC price to its own price this would make it easier for that operator to raise the price of its own travel card or other fares, because the competitive constraint provided by the MTC on the own-operator travel card will be removed. By linking the two prices, the operator knows that it will not lose customers to the MTC if it increases prices of its own products as the MTC price will increase too.

4.41 Once an MTC price is agreed it is, however, acceptable for operators/scheme administrators to sense-check this price against the single-operator products in the market and take a view on whether the price that has been suggested is

---

<sup>17</sup> This definition is provided at Article 3 of the block exemption, and is discussed in paragraphs 3.16–3.18.

<sup>18</sup> Even where a scheme might otherwise satisfy the requirements of the block exemption, it is open to the CMA to cancel the block exemption where it considers that the scheme is not one which fulfils the section 9(1) criteria. See paragraphs 4.60–4.62.

competitive and reflective of the local conditions. If the proposed MTC price is uncompetitive, this can then be used as a reason to revisit the pricing decision, so long as no mechanistic premium system is then established

- 4.42 Furthermore, the need to satisfy the section 9(1) conditions does not in itself prevent the operators from agreeing to adjust the MTC price because of cost changes, which may have resulted in some or all of them varying their own ticket prices.

### ***MTC revenue distribution***

- 4.43 Under Article 11 of the block exemption, the participating operators may distribute revenues from an MTC scheme using any method, provided it does not:

- result in an incentive for operators to set their own fares higher than they would have been set in the absence of the MTC; or
- significantly reduce the incentive for each of the operators to compete for passengers.

- 4.44 The operators participating in the MTC scheme can agree on **any** revenue distribution method that serves them best, as long as it meets these two conditions. There are many revenue distribution methods that may meet these conditions, for example methods based on:

- **passenger journeys** – this approach would divide total revenue according to how many journeys are undertaken on each operator's service, with no account taken of the length of the journey or the mode of transport;
- **passenger miles or kilometres** – this approach would divide revenue according to how many miles are travelled by passengers using tickets issued under the MTC scheme, typically assessed using passenger surveys (for example, if passengers used the ticket to travel 100 miles on an operator's service, out of a total mileage of 1,000 miles travelled using the ticket on all operators' services, that operator would get a 10% share of the scheme's revenue);
- **weighted passenger miles** – this approach would take account of both passenger journeys and a notional fare that reflects cost differences between different types of journey (for example, the notional fare could

allocate proportionally higher shares on a per journey or per mile basis to short journeys or to journeys on higher-cost modes of transport);<sup>19</sup>

- **registered mileage** – this approach would divide revenue based on the mileage operated by each bus company on routes on which the ticket was valid; or
- **revenue lies where it falls** – under this approach the operator that collects the money retains it; there is no distribution of the revenue depending on how customers use the tickets.

This is not an exhaustive list, a wider variety of systems will be permissible.

#### **Box 8: Example of revenue distribution by passenger numbers**

Revenue allocation by passenger numbers involves either using surveying methods or data from smart tickets to calculate the number of passengers that travelled on each of the operators' services. The revenue is then allocated in proportion to the passenger numbers.

More sophisticated systems or surveys can estimate the average length of the passenger journey on each route and apply a weight to routes with longer or multi-zone journeys. It is also possible to take account of different operating costs of different modes (train or underground for example) and apply appropriate weights to more expensive modes.

4.45 However, not all revenue distribution methods will meet the Article 11 criteria. A revenue distribution method that involves a direct link to the actual fares charged by operators is unlikely to meet the condition that the method must not result in an incentive for operators to increase their own fares. For example, if operators are reimbursed for their participation in an MTC scheme on the basis of **revenue forgone** (the amount the passenger would have paid if charged the operators' own fares for each journey), there is a real danger that they will have an incentive to increase their own fares. This is because, under this system, the higher an operator's fares, the bigger the share of the travel card reimbursement pot the operator receives. For this reason revenue forgone should not be a basis for distributing MTC revenue.

4.46 In certain very limited circumstances and provided that there is no other allocation system available, schemes where revenue is distributed on the

---

<sup>19</sup> The notional fare could take account of the fare differences between the participating operators, as long as there was no direct link to the actual fares charged by the operators.

basis of revenue forgone may benefit from the block exemption. This could be the case, for example, where for all of the participating operators the MTC revenue is very small compared with the operator's other revenue (representing, say, only a few percent), and it is unlikely that the share of the MTC revenue will grow appreciably, such that there is no incentive to raise own fares.

### Question 10

4.47 In this section we have provided more clarification on agreeing the price of MTCs and we have added a revenue share example:

(a) Do you consider that the guidance on agreeing prices is helpful?

(b) Would any of the examples cause you concern?

(c) Would you like to add further examples?

### **E. Conditions that apply to short-distance and long-distance add-on ticket schemes**

4.48 A short-distance add-on is a ticket where an MTC (for example, a bus zonal ticket) is provided as an add-on to a local public transport service (for example, a bus journey), providing onward travel connections for passengers on 'complementary services'. Short-distance add-ons stem from agreements that enable an operator which is supplying a local public transport service between, for example, two towns, to offer passengers an MTC as an 'add-on' to a single or return ticket for travel between those two towns. This 'add-on' would be for travel within the destination town, for example.

4.49 As defined under the block exemption, short-distance add-ons only cover MTCs. Other tickets purchased as an add-on to a local public transport service may fall within the definition of a TT for the purposes of the block exemption.

4.50 A long-distance add-on is a ticket under which a long-distance operator offers a single-operator ticket, an MTC or a TT as an add-on, for example, to a single or return ticket for travel on a long-distance service between two destinations (eg coach). For services where passengers are set down frequently (eg local bus), the ticket will be a short-distance add-on or a TT.

### ***Pricing of add-ons***

- 4.51 Article 13(1) prohibits price-fixing for, among other things, short- and long-distance add-on tickets. In order to retain the benefits of the block exemption, operators must not, therefore, also agree the total price of a ticket including the add-on element.
- 4.52 Article 13(2)(a), however, allows parties in an add-on scheme to set the 'posted prices' that they can charge one another for accepting a ticket another participating operator has issued. The posted price is the reimbursement that an operator independently decides it requires for any passenger it carries who uses a ticket purchased from another operator.
- 4.53 Article 13(2)(b) also allows operators to fix the price of an MTC which is purchased as a short- or long-distance add-on. However, for the reasons explained in paragraph 4.40, the benefit of the block exemption may be withdrawn if the mechanism for agreeing the MTC price is not compatible with the section 9(1) conditions.

### **F. Obligation to provide information to the CMA**

- 4.54 Article 17 requires any person (including an undertaking) to provide the CMA with such information as it may request concerning a public transport ticketing scheme to which that person is a party. This allows the CMA to monitor schemes and to require operators and others to provide information, for example if a complaint is made about the scheme. Requests for information will be made in writing and must be complied with within ten working days from the date on which the request is received. If the request is not complied with, the CMA may cancel the block exemption for any public transport ticketing scheme to which the request relates.<sup>20</sup>

### **G. Cancellation of the block exemption for a particular scheme**

- 4.55 Not complying with the conditions defined in the block exemption will have the effect of cancelling all or part of the block exemption in relation to a particular agreement.

### ***Breach of any of the general conditions (Articles 6 to 9)***

- 4.56 Further to Article 10 of the block exemption, failure to comply with any of the general conditions will result in the block exemption being cancelled in relation

---

<sup>20</sup> Article 18.

to the public transport ticketing scheme to which the breach relates. This means that the ticketing scheme agreement will no longer benefit from the exemption from the CA98 and operators must ensure that the agreement does not infringe the CA98 either by removing any relevant infringing provision or by applying the criteria under section 9(1) to its scheme.<sup>21</sup>

***Breach of any of the specific conditions attached to certain schemes (Articles 11 to 16)***

- 4.57 Breach of the condition requiring revenue from an MTC to be distributed through a method with the correct incentive structure (Article 11, as set out in paragraphs 4.40 to 4.46) will cancel the block exemption in relation to the scheme to the extent that MTCs are offered for sale under the scheme (Article 12). This means that any MTCs sold under the particular scheme will not benefit from the block exemption, and that part of the scheme may therefore be in breach of the Chapter I Prohibition unless it satisfies the conditions in section 9(1). Where other ticket types are offered under the scheme and these arrangements satisfy the relevant conditions of the block exemption, the block exemption will continue to apply to the provisions for these other tickets.
- 4.58 Similarly, a breach of the price-fixing conditions in Article 13 (eg agreeing prices for tickets other than MTCs) will cancel the block exemption in relation to the relevant scheme only (Article 14). This means that any tickets sold under the scheme will not benefit from the block exemption, and that part of the scheme may, therefore, be in breach of the Chapter I Prohibition unless it satisfies the conditions in section 9(1). If, however, other ticket types are offered under the scheme and these arrangements satisfy the relevant conditions, the block exemption will continue to apply to the provisions for these other tickets.
- 4.59 In addition, failure to comply with the conditions provided in Article 15 (ie MIT revenue lies where it falls) will cancel the block exemption in relation to the MIT (Article 16). This means that any MITs sold under the particular scheme will not benefit from the block exemption, and that part of the scheme may, therefore, be in breach of the Chapter I Prohibition unless it satisfies the conditions in section 9(1) so that it is not prohibited. If, however, other ticket types are offered under the scheme and these arrangements satisfy the relevant conditions, the block exemption will continue to apply to the provisions for these other tickets.

---

<sup>21</sup> Article 10 of the block exemption.

### ***Cancellation of the block exemption by notice***

4.60 The CMA may cancel the block exemption in relation to a specific ticketing scheme, provided that it first gives notice of its proposal to the relevant operators. The CMA shall consider any representations made to it.

4.61 Such proposal may happen in two situations:

(a) If the CMA considers that a particular public transport ticketing scheme is not one to which section 9(1) of the CA98 applies (Article 19). This might happen, for example, where the introduction of a ticketing scheme resulted in an unreasonable increase in fares by any or all of the operators who were party to the agreement. In this example, the agreement would not confer a fair share of the benefits on consumers, and so would not satisfy the conditions of section 9(1). The CMA may therefore monitor the operation of ticketing schemes with particular regard to the effect on prices for single and return fares offered by individual operators. If those fares rise at a rate that passengers consider to be excessive, they should inform the CMA so that the reasons for the price increases can be investigated.

(b) In case of a failure to comply with the obligation imposed by Article 17 without reasonable excuse (Article 18).

4.62 The CMA is required to first give notice in writing to the participating operators of its proposal to cancel the block exemption with respect to that scheme. The recipient would be able to send representations to the CMA. Having considered those representations, the CMA would decide whether it wished to pursue cancelling the block exemption in respect of that scheme.

## **H. Other requirements**

4.63 In addition to the conditions and obligations set out above, in order for an agreement to fall within the block exemption, there are a few further requirements that must be met:

- the agreement must be in writing;<sup>22</sup>
- each ticket type must be sold to a consumer, although this person may then transfer the ticket to someone else (for example, parents buying tickets to be given to children, educational establishments buying tickets to be given

---

<sup>22</sup> Article 4 of the block exemption.

or sold to students, and firms buying tickets to give or sell to employees);<sup>23</sup> and

- the agreement must relate principally to the supply of local public transport services. In relation to bus services, these are local services that are registered under the Transport Act 1985.<sup>24</sup> Any other form of public transport service will be 'local'<sup>25</sup> if it meets the following criteria:
  - broadly, one or more passengers travels less than 15 miles on the service;<sup>26</sup>
  - it is a scheduled, rather than a 'chartered', service; and
  - it is not a local guided tour service.<sup>27</sup>

4.64 Other than to the extent that long-distance add-ons are issued under an agreement, long-distance services where, broadly, every passenger travels 15 miles or more<sup>28</sup> – for example, air services, international ferry services, or long-distance rail or coach services – are not covered by the block exemption.

---

<sup>23</sup> This also includes group tickets where passengers travel together with only one document as evidence of their right to travel.

<sup>24</sup> Other than those on which the passengers travel together on a journey, with or without breaks, from one or more places to one or more places and back (section 159(1) of the Transport Act 1968 (as amended)), and other than local guided tour services (defined as 'tourist service' in Article 3 of the block exemption).

<sup>25</sup> Defined more fully in paragraph (b) of the definition of 'local public transport service' in Article 3 of the block exemption. This definition reflects the approach in the Transport Act 1968 (as amended) in relation to local bus services.

<sup>26</sup> If no passenger travels less than 15 miles the service is a 'long distance service' as defined in Article 3 of the block exemption.

<sup>27</sup> Defined as 'tourist service' in Article 3 of the block exemption.

<sup>28</sup> Defined more fully in Article 3 of the block exemption.



## 5. Agreements falling outside the block exemption

- 5.1 Agreements which do not fall within the block exemption are subject to the normal application of the CA98 and EU competition law. Such agreements are not, however, necessarily prohibited by the Chapter I Prohibition. The present part focuses exclusively on the application of the Chapter I Prohibition. The possible application of EU competition law is examined in [Appendix A](#).

### Key principle to consider when analysing a restrictive agreement

- 5.2 Where a restrictive agreement falls outside the conditions of the block exemption and has an appreciable impact on competition (see paragraph 2.3), it may nonetheless be exempt from the Chapter I Prohibition, if it satisfies the conditions in section 9(1). As explained in Part 2 above, such an agreement is valid and enforceable from the moment the conditions in section 9(1) are satisfied and for as long as that remains the case.
- 5.3 [Appendix E](#) sets out a flow chart on the application of the block exemption which indicates the order of appropriate conditions to determine whether a ticketing agreement is permitted under the block exemption or under section 9(1).

### Agreements which might fall outside the block exemption

- 5.4 Some public transport ticketing schemes may include arrangements covering more than one ticket type. If the agreement contains a provision that breaches one of the conditions relating to one of the ticket types the arrangement for that particular ticket type is not covered by the block exemption even though the rest of the agreement is exempted (see paragraph 4.55). If, for example, an agreement covered an MTC and an MIT and the MIT arrangement breached Article 15, that MIT arrangement would not benefit from the block exemption. However, providing that the MTC still met all the conditions in the block exemption, the MTC part of the arrangement would continue to benefit from the block exemption.
- 5.5 The block exemption does not cover agreements relating to, for example, joint marketing of tickets or routes. Such agreements will need careful consideration by the parties as to whether the agreements appreciably restrict competition. This does not mean that joint marketing of tickets is prevented but this is an area which falls outside the scope of the block exemption and the parties to the agreement should therefore self-assess whether the joint market agreement satisfies the conditions of section 9(1).

5.6 The block exemption also does not cover some schemes where revenue is distributed on the basis of revenue forgone. In such circumstances, the scheme might still satisfy the conditions in section 9(1) so that the scheme is not prohibited by the Chapter I Prohibition (see paragraph 2.8 above). This could be the case, for example, where the scheme distributes revenues on the basis of revenue forgone and may not satisfy Article 11 but it is not feasible for a different method to be used (this could be the case if operators are already required to calculate amounts owing under local authority concessionary fares schemes under the Transport Acts by reference to revenue forgone, and the revenues from the scheme are too small to make apportionment by two methods feasible). Note that it would only be in exceptional circumstances that it would be possible to argue that this method of revenue sharing was indispensable and therefore that the scheme would satisfy the section 9(1) conditions.

### **Guidance on how to self-assess an MIT with a revenue distribution method other than ‘lies where it falls’**

5.7 As noted in paragraph 4.34, revenue-sharing arrangements falling outside the block exemption may nevertheless be lawful where they meet the criteria for individual exemption.

5.8 The following is an example of factors that an operator might include and the approach it might take in a self-assessment of whether a proposed MIT with a revenue distribution method other than ‘revenue lies where it falls’ will meet the individual exemption criteria and be lawful. As set out in paragraph 2.9, an agreement must meet four conditions in order to be exempted from the Chapter I Prohibition under section 9(1).

5.9 The example below is not intended to provide a ‘check box’ approach to assessing such a distribution method and operators must consider carefully whether the facts of their particular scheme meet the exemption criteria.

#### **Box 9: Example of an MIT revenue self-assessment**

As explained in paragraph 4.34, there may be instances where the ‘revenue lies where it falls’ method would not be viable. This could be the case in a situation where there is a limited overlap in the hours of operation of the participants to the MIT, one operator, A, mainly running daytime services while the other operator, B, would mainly be covering the evening services. Most passengers will buy their ticket during the day from the daytime operator. In such a situation, the operators may want to agree a method to redistribute revenue that does not involve the method ‘revenue lies where it falls’. The CMA considers that such schemes are likely to

satisfy the conditions of section 9(1), provided that the revenue allocation method is limited to what is necessary for the MIT scheme to work and does not result in the operators agreeing the price of the MIT.

Below we consider how a scheme where the MIT revenues are distributed on the basis of passenger numbers is likely to satisfy the conditions of section 9(1).

***The first question to consider is whether the agreement contributes to improving production or distribution or promotes technical or economic progress.***

In the proposed scenario, absent an agreement passengers must buy separate tickets to travel out and back on this journey if they return during the evening. This is likely to result in higher prices for consumers and the cost and complication caused could mean fewer people travelling than would otherwise be the case. Evidence<sup>29</sup> where available suggests that more passengers would use the service if they could buy one ticket or if the fare was lower.

By distributing revenues on the basis of passenger numbers, both operators A and B would have an incentive to carry passengers on the service, leading to the following possible benefits (to be assessed on a case-by-case basis):

- Does the MIT agreement deliver a better quality transport service for passengers, for example, by providing more flexibility and travel options for their return journey?
- Does the MIT agreement encourage greater use of public transport, for example, allowing for passengers to rely on the service to travel either more frequently or to switch from other modes of travel, leading to an increase in passenger numbers?
- Does the MIT agreement allow for passengers in remote areas to be better connected to a town and enabling the operators to serve areas with few alternative transport opportunities due to location or social circumstances? This might be the case where car ownership is low in the area served by the route and there are few alternative public transport options. Research may have highlighted the benefits to the community of better transport services or the local authority may have established a need for improved connections.

---

<sup>29</sup> When we refer to evidence, research or surveys in this section, it is anticipated that this would in practice include reference to any pre-existing documents which presents evidence covering broadly comparable circumstances, or other pre-existing evidence of transport needs, objectives and priorities, such as local transport strategy documents.

***The second question to consider is whether the consumers receive a fair share of the benefits generated by the restrictive agreement, ie they receive a fair share of the improved production or distribution or promotion of technical or economic progress.***

Can the objective benefits to consumers be identified, which result from restrictions which have been identified as indispensable? For example:

- Does the MIT agreement allow passengers to travel and use the return ticket on both services, for example improving choice, frequency and/or the time of day when the service is available?
- Have the benefits been assessed with regard to the size of the restriction of competition? For example, are the benefits relatively high (and do they accrue to consumers in large part) and are the restrictions on competition relatively low? The benefit of the agreement in this case is that it gives a simple option for return travel without having to buy another ticket or ensuring that return journeys are completed during the time which a particular operator runs its services. Evidence where available may show that consumers value these factors. The benefits are high compared with the restriction of competition, which in this case is relatively low because of the limited pre-existing overlap.

***The third question to consider is whether the agreement imposes restrictions that are not indispensable to achieving the benefits.***

Are both the restrictive agreement and the individual restrictions necessary to achieve the efficiency benefits identified in (1) above? For example:

- Absent the proposed revenue share option, would the scheme be possible? Using revenue-where-it-falls would be unsustainable for B as evidence shows that most passengers travel out on A leaving therefore little or no revenue for B despite it providing an efficient return service. Is the revenue share option for the scheme considered indispensable, and does it avoid imposing restrictions which go beyond what is necessary to achieve the benefit?
- Does the agreement include any provisions which allow the sharing of confidential information between the parties?

***Lastly, section 9(1) is likely to be met if the agreement does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.***

Does this possibility exist, having regard both to the size of the restriction of competition involved and also to the amount of competition which currently exists in the market? For example:

- Does the agreement prevent competition between the operators in the sale of tickets including individual tickets or MITs?
- Is the agreement open to entry by new operators on non-discriminatory terms?
- Is any reduction in the incentive for the existing companies to compete small, for example because the operators were not generally serving the same passengers at the same time (given that most passengers use A for the outward journey)? Can the operators compete for passengers on both legs of the journey at least in so far as timetable overlap allows?
- Does the revenue-sharing method avoid: operators agreeing a fixed price for the MIT; creating an incentive for operators to set their own fares higher than they would have been set in the absence of the MIT; or reducing the incentive for each of the operators to compete for passengers?

The specific facts of a proposed ticketing scheme would need to be assessed against the above illustrative factors, and any other relevant factors, identified by operators.

Further examples of how to apply the individual exemption criteria under section 9 of the CA98 and Article 101(3) TFEU can be found, for example, in the OFT's *Opinion on Newspaper and Magazine Distribution* (OFT1025, October 2008),<sup>30</sup> paragraphs 4.29–4.144, and in the European Commission's *Guidelines on the Application of Article 101(3) TFEU*.<sup>31</sup> See also the OFT's *Short Form Opinion Rural Broadband Wayleave Rates* (August 2012).<sup>32</sup>

## Question 11

5.10 In this section we have introduced an example of a section 9(1) self-assessment to give an indication to operators that wish to develop MIT-type schemes which fall outside the block exemption of the kinds of factors which could be relevant.

---

<sup>30</sup> [Newspaper and magazine distribution: Opinion of the Office of Fair Trading.](#)

<sup>31</sup> [European Commission website: Publications on antitrust and cartels.](#)

<sup>32</sup> [Rural broadband wayleave rates: Short-form Opinion of the Office of Fair Trading.](#)

DRAFT FOR CONSULTATION

- (a) Do you consider that the example here is helpful? Or do you think that there are still areas which need more guidance?
- (b) Do you have any further comments on this section?

## Appendix A: Other relevant prohibitions and exclusions

1. The block exemption only exempts agreements from the scope of the Chapter I Prohibition. However, there are a number of other provisions of UK law relating to competition which in limited circumstances may be relevant where an operator participates in a particular ticketing scheme, which operators should be aware of.

### UK competition law: the Chapter II Prohibition on abuse of a dominant position

2. In addition to the Chapter I Prohibition (see Part 2 above),<sup>33</sup> the CA98 prohibits conduct by one or more undertakings which amounts to an abuse of a dominant position in a market and which may affect trade within the United Kingdom or any part of it (the Chapter II Prohibition).
3. There is no provision for exemption from the Chapter II Prohibition and public transport operators therefore remain subject to the Chapter II Prohibition when making and considering ticketing arrangements.<sup>34</sup>
4. If an undertaking that participates in a public transport ticketing scheme holds a dominant position in a market, it must take care that its conduct does not infringe the Chapter II Prohibition. A dominant operator which sets excessive or predatory fares, for example, may still infringe the Chapter II Prohibition whether or not the fares were set in the context of an exempt agreement. Abuse of a dominant position by an undertaking which enters into a public transport ticketing scheme is assessed in exactly the same way as any other type of conduct under the Chapter II Prohibition. This is discussed in the OFT guidance *Abuse of a dominant position* (OFT402), which has been adopted by the CMA.<sup>35</sup>

---

<sup>33</sup> The Chapter I Prohibition prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom (or a part thereof) and which may affect trade within the United Kingdom.

<sup>34</sup> The TFEU and the CA98 both prohibit, in certain circumstances, conduct by one or more undertakings which amounts to an abuse of a dominant position. Both Article 102 TFEU and the Chapter II Prohibition provide, in similar terms, that conduct may, in particular, constitute an abuse if it consists of:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions

(b) limiting production, markets or technical development to the prejudice of consumers

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

<sup>35</sup> *Abuse of a dominant position: Understanding competition law (OFT402)*, adopted by the CMA board.

## EU competition law: Articles 101 and 102 TFEU

5. As noted in paragraphs 2.6 and 2.7, the CMA has additional powers under EU competition law to apply and enforce Articles 101 and 102 of the TFEU, as well as the Chapter I and II Prohibitions in relation to anti-competitive agreements and conduct. These two provisions are similar to the Chapter I Prohibition and the Chapter II Prohibition under the Act. The main difference between the UK and the EU provisions is the geographic scope: Articles 101 and 102 only apply to agreements and conduct which may affect trade between member states whereas the Chapter I Prohibition and the Chapter II Prohibition only apply to agreements and conduct that may affect trade within the United Kingdom.
6. The case law of the European courts has interpreted the phrase ‘may affect trade between Member States’ broadly. However, public transport ticketing schemes generally relate to services within a limited geographical area, such as a town or city. Given that the block exemption applies principally to the supply of local public transport services it is unlikely that the types of public transport ticketing schemes covered by the block exemption would be capable of being caught by Article 101(1), as the agreement would need to have an effect on trade between member states. Further information on the relationship between EU and national competition laws can be found in the OFT guidance *Modernisation* (OFT442), adopted by the CMA.
7. The European Commission has issued a Notice entitled Guidelines on the Application of Article 101(3) of the Treaty. This Notice is intended to assist companies and their advisers in determining whether an agreement satisfies the conditions in Article 101(3). As the wording in section 9(1) is similar to the wording of Article 101(3) the CMA will have regard to this Notice in considering the application of section 9(1) of the CA98.

## The Enterprise Act 2002<sup>36</sup>

### *The cartel offence*

8. Section 188 of the Enterprise Act 2002 makes it an offence for individuals to participate in hardcore cartels. Typically, these involve secret arrangements under which competitor businesses agree to coordinate their activity, usually in order to preserve or drive up prices. There are a number of statutory exclusions and defences.<sup>37</sup> Guidance on the scope of the criminal cartel

---

<sup>36</sup> As amended by the Enterprise and Regulatory Reform Act 2013.

<sup>37</sup> See sections 188, 188A and 188B of the Enterprise Act 2002, as amended by the Enterprise and Regulatory Reform Act 2013, and paragraphs 4.11–4.25 of *Cartel Offence Prosecution Guidance* (CMA9).



offence is outside the scope of these guidelines. Further information on the criminal cartel offence can be found in CMA9 Cartel Offence Prosecution Guidance.

## **The Transport Act 2000 and the Transport (Scotland) Act 2001 as amended by the Local Transport Act 2008**

9. Further information on how to apply the competition tests set out in the Transport Act 2000 as amended can be found in the OFT publication *Guidance on the application of competition law to certain aspects of the bus market following the Local Transport Act 2008* (OFT452), adopted by the CMA.
10. At the time of publication, the government has announced it will introduce a Buses Bill during 2016 aiming to give councils more freedom to improve local services to make bus travel more passenger-friendly.<sup>38</sup>
11. The CMA has also written a letter explaining its process for considering the appropriate balance between competition in local bus markets and partnership working.<sup>39</sup>

## **Exclusions**

12. Schedules 1 to 3 of the CA98 specifically exclude certain categories of agreement from the Chapter I Prohibition. For example, an agreement is specifically excluded from the Chapter I Prohibition to the extent to which it is made to comply with a legal requirement (paragraph 5 of Schedule 3 to the CA98).<sup>40</sup>
13. A domestic exclusion does not exclude agreements or conduct affecting trade from applicable EU law. This means that any agreements or conduct which may affect trade between member states that are excluded under the CA98 remain subject to Article 101 or 102 TFEU.
14. Further details are provided in the OFT guidance on *Agreements and concerted practices* (OFT401) which has been adopted by the CMA.

---

<sup>38</sup> Department for Transport news story (11 February 2016): [New Buses Bill to deliver a better deal for the public](#).

<sup>39</sup> [Letter from the CMA to local transport authorities on bus partnership arrangements](#) (1 March 2016).

<sup>40</sup> Transport for London operates a range of multi-operator tickets, many of which are broadly equivalent to ticket types under the block exemption. However, Transport for London does not in practice need to rely on the block exemption since it is under a legal obligation to enter into the relevant ticketing agreements by virtue of a mayoral direction under the Greater London Authority Act 1999.

## Appendix B: Terms used in the Chapter I Prohibition

1. Some of the terms used in the Chapter I Prohibition and the concepts relevant to their application are explained below. Further information about these terms can be found in the OFT guidance *Agreements and Concerted Practices* (OFT401), adopted by the CMA.

### ‘Undertaking’

2. The term undertaking is not defined in the TFEU or the CA98 but its meaning has been set out in EU law. It covers any natural or legal person engaged in economic activity, regardless of its legal status and the way in which it is financed. It includes companies, firms, businesses, partnerships, individuals operating as sole traders, agricultural cooperatives, associations of undertakings (for example, trade associations), non-profit-making organisations and (in some circumstances) public entities such as local authorities that offer goods or services on a given market. The key consideration in assessing whether an entity is an ‘undertaking’ for the application of the Chapter I Prohibition is whether it is engaged in economic activity. An entity may engage in economic activity in relation to some of its functions but not others.
3. The Chapter I Prohibition does not apply to agreements where there is only one undertaking: that is, between entities which form a single economic unit. In particular, an agreement between a parent and its subsidiary company, or between two companies which are under the control of a third, will not be agreements between undertakings if the subsidiary has no real freedom to determine its course of action on the market and, although having a separate legal personality, enjoys no economic independence. Whether or not the entities form a single economic unit will depend on the facts of each case.
4. The Chapter I Prohibition applies to local authorities in so far as they act as undertakings. In assessing whether a local authority is acting as an undertaking in a particular set of circumstances, the key question is whether or not it is engaged in an economic activity. A bus company co-owned by a local authority is an undertaking. If the local authority merely owns shares in the bus company, the authority is not necessarily an undertaking. However, if the local authority is involved in the day-to-day running of the bus business it may be regarded as an undertaking.

## **‘Agreement’**

5. Agreement has a wide meaning and covers agreements whether legally enforceable or not, written or oral; it includes so called gentlemen’s agreements. There does not have to be a physical meeting of the parties for an agreement to be reached: an exchange of letters or telephone calls may suffice.
6. The block exemption, however, specifies that only written agreements may benefit from it. This is to encourage transparency between parties and potential parties on the terms of their particular public transport ticketing scheme.

## **The prevention, restriction or distortion of competition**

7. The Chapter I Prohibition applies where the object or effect of the agreement is to prevent, restrict or distort competition within the United Kingdom (or a part of the United Kingdom where the agreement operates or is intended to operate only in that part).

## **The appreciable impact on competition test**

8. An agreement will fall within the Chapter I Prohibition only if it has as its object or effect an appreciable prevention, restriction or distortion of competition within the United Kingdom. The European Commission’s Notice on Agreements of Minor Importance<sup>41</sup> sets out, using market share thresholds, what is not an appreciable restriction of competition under Article 101 of the Treaty. In determining whether an agreement has an appreciable impact on competition for the purposes of the Chapter I Prohibition, the CMA will have regard to the European Commission’s approach as set out in this Notice, information about which can be found in the OFT guidance *Agreements and concerted practices* (OFT401),<sup>42</sup> which was adopted by the CMA board.

---

<sup>41</sup> OJ C 291, 30.8.2014, pp1–4. The Notice has been amended since the OFT guidance *Agreements and concerted practices* (OFT401) was published.

<sup>42</sup> [Agreements and concerted practices \(OFT401\)](#), adopted by the CMA board.

## Appendix C: The Block Exemption

### Citation, Commencement, Duration and Interpretation

1. This Order may be cited as the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 and shall come into force on 1st March 2001.
2. This Order shall have effect from the beginning of 1st March 2000 and shall cease to have effect at the end of the period of twenty-five years commencing on 1st March 2001.

3. In this Order—

‘the Act’ means the Competition Act 1998;

‘block exemption’ means the exemption from the Chapter I prohibition arising by virtue of this Order for the category of agreements specified in this Order;

‘bus service’ has the meaning given in section 159(1) of the Transport Act 1968 but excludes a bus service which is a tourist service;

‘chartered service’ means a public transport service:

- (a) for which the whole capacity of the vehicle, vessel or craft supplying that service has been purchased by one or more charterers for his or their own use or for resale;
- (b) which is a journey or trip organised privately by any person acting independently of the person operating the vehicle, vessel or craft supplying that service; or
- (c) on which the passengers travel together on a journey, with or without breaks, from one or more places to one or more places and back;

‘complementary services’ means local public transport services which are not in competition with each other over a substantial part of the route covered by the ticket in question;

‘connecting service’ means a service (other than a bus service, a chartered service or a tourist service) for the carriage of passengers by road, tramway, railway, inland waterway or air which is a long distance service and which runs between—

- (a) a station or stopping place at or in the vicinity of which the relevant local public transport service stops; and
- (b) any other place;

'inland waterway' includes both natural and artificial waterways, and waterways within parts of the sea that are in the United Kingdom;

'journey' means any journey made by an individual passenger and includes a return journey;

'local public transport service' means:

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

'long distance add-on' means:

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

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

'long distance operator' means an undertaking (other than an operator) supplying a scheduled long distance service using one or more vehicles, vessels or craft for the carriage of passengers by road, railway, tramway, inland waterway or air at separate fares other than a chartered service or a tourist service;

'long distance service' means a public transport service in relation to which (except in an emergency) one or both of the following conditions are met with respect to every passenger using the service:

- (a) the place where he is set down is fifteen miles or more, measured in a straight line, from the place where he was taken up;
- (b) some point on the route between those places is fifteen miles or more, measured in a straight line, from either of those places,

and where a public transport service consists of one or more parts with respect to which one or both of these conditions are met, and one or more parts with respect to which neither of them is met, each of those parts shall be treated as a separate public transport service;

‘members of the public’ means any person other than an operator, potential operator, long distance operator or potential long distance operator;

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

‘multi-operator travel card’ means a ticket (or tickets) entitling the holder to make three or more journeys on specified local public transport services operating on three or more routes provided that:

- (a) these routes are not substantially the same; and
- (c) in practice, the ticket is not substantially used by passengers as a multi-operator individual ticket or a through ticket;

‘operator’ means an undertaking supplying local public transport services;

‘posted price’ means, where a ticket is purchased from one undertaking (the seller), a wholesale price set independently by another undertaking (‘the creditor’) for the carriage of passengers bearing that ticket on the public transport services of the creditor;

‘public transport ticketing scheme’ has the meaning given in Article 4(2);

‘the register’ means the register maintained by the CMA under rule 20 of the CMA’s Rules set out in the Schedule to the Competition Act 1998 (Competition and Markets Authority’s Rules) Order 2014;

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

‘stopping place’ means a point at which passengers are taken up or set down in the course of a public transport service;

‘through ticket’ means a ticket (or tickets) entitling the holder to make a particular journey on two or more local public transport services provided that such a journey is made on complementary services;

‘ticket’ means evidence of a contractual right to travel;

‘tourist service’ means a public transport service where the price charged for that service includes payment for a live or recorded commentary about the locality being a service primarily for the benefit of tourists;

‘vehicle’ includes vehicles constructed or adapted to run on flanged wheels but excludes hackney carriages, taxis, cabs, hire cars and any vehicle propelled by an animal; and

‘working day’ means a day which is not a Saturday, Sunday or any other day on which the office of the CMA is closed for business.

## **Block Exemption**

4. (1) The category of agreements identified in paragraph (2) as public transport ticketing schemes is hereby specified for the purposes of section 6 of the Act.
- (2) For the purpose of this Order a public transport ticketing scheme is one or more of the following:
  - (a) a written agreement between operators to the extent that it provides for members of the public to purchase a multi-operator travelcard;
  - (b) a written agreement between operators to the extent that it provides for members of the public to purchase a through ticket;

- (c) a written agreement between operators to the extent that it provides for members of the public to purchase a multi-operator individual ticket;
  - (d) a written agreement between operators to the extent that it provides for members of the public to purchase a short distance add-on;
  - (e) a written agreement between one or more operators and one or more long distance operators to the extent that it provides for members of the public to purchase a long distance add-on;
5. This block exemption has effect subject to the conditions and the obligation specified in Articles 6 to 17.

### **Conditions and consequences of breach of conditions**

6. Unless there is an objective, transparent and non-discriminatory reason, a public transport ticketing scheme shall not, directly or indirectly, in isolation or in combination with other factors under the control of the parties:
- (a) have the object or effect of preventing any operator or potential operator from participating in that public transport ticketing scheme; or
  - (b) to the extent that the scheme provides for members of the public to purchase a long distance add-on, have the object or effect of preventing any operator, potential operator, long distance operator or potential long distance operator from participating in that public transport ticketing scheme.
7. A public transport ticketing scheme shall not, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have the object or effect of limiting:
- (a) the variety or number of routes on which any operator or long distance operator provides or may provide public transport services; or
  - (b) the freedom of operators or long distance operators to set the price or availability of, the fare structure relating to, or the zones or geographical validity applicable for, any ticket entitling the holder to make a journey solely on the public transport services of any one operator or any one long distance operator.



8. A public transport ticketing scheme shall not, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have the object or effect of limiting the frequency or timing of any public transport services operated by any operator or long distance operator, unless such restriction is indispensable to the effective operation of that scheme, pursuant to an agreement which provides for onward travel connections for passengers.
9. (1) Subject to paragraph (2), a public transport ticketing scheme shall not, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have the object or effect of facilitating an exchange of information between the parties to that public transport ticketing scheme.  
  
(2) Paragraph (1) shall not prevent an exchange of information between the parties to a public transport ticketing scheme which is directly related and indispensable to the effective operation of that scheme, provided that the relevant provision under which the information is exchanged is objective, transparent and non-discriminatory and that it does not breach any of the other conditions imposed by this Order.
10. Breach of any of the conditions imposed by any of Articles 6, 7, 8 or 9 shall have the effect of cancelling the block exemption in respect of that public transport ticketing scheme.
11. The parties to a public transport ticketing scheme, which provides for members of the public to purchase a multi-operator travelcard, shall not distribute between themselves the revenue received by virtue of the operation of that scheme in a way that provides the parties with an incentive to set their own fares higher than they would have been set in the absence of the multi-operator travelcard, or significantly reduces the incentive for each of the parties to compete for passengers.
12. Breach of the condition imposed by Article 11 shall have the effect of cancelling the block exemption in respect of the relevant public transport ticketing scheme to the extent that such scheme provides for members of the public to purchase a multi-operator travelcard.
13. (1) Subject to paragraph (2), a public transport ticketing scheme which provides for members of the public to purchase a through ticket, multi-operator individual ticket, short distance add-on or long distance add-on, shall not directly or indirectly, in isolation or in combination with other factors under the control of the parties have the object or effect of fixing a price at which the respective through ticket, multi-operator individual ticket, short distance add-on or long distance add-on is offered for sale.

(2) Paragraph (1) shall not prevent:

- (a) the parties to a public transport ticketing scheme from agreeing to charge each other non-discriminatory posted prices for sales of the respective through ticket, short distance add-on or long distance add-on; or
- (b) operators from fixing the price of a multi-operator travelcard which may be purchased as a short distance add-on or long distance add-on

provided that such action does not breach any of the other conditions imposed by this Order.

- 14. Breach of the condition imposed by Article 13 shall have the effect of cancelling the block exemption in respect of the relevant public transport ticketing scheme to the extent that such scheme provides for members of the public to purchase the relevant through ticket, multi-operator individual ticket, short distance add-on or long distance add-on.
- 15. The parties to a public transport ticketing scheme which provides for members of the public to purchase a multi-operator individual ticket, shall not:
  - (b) distribute between themselves the revenue received by virtue of the operation of that scheme other than pursuant to terms contained in that scheme whereby the operator which sells any particular multi-operator individual ticket retains exclusively all the revenue received from that sale.
- 16. Breach of the condition imposed by Article 15 shall have the effect of cancelling the block exemption in respect of the relevant public transport ticketing scheme to the extent that such scheme provides for members of the public to purchase a multi-operator individual ticket.

### **Obligation to provide information to the CMA**

- 17. A person shall, within ten working days from the date on which it receives notice in writing under this Article, supply to the CMA such information in connection with those public transport ticketing schemes to which it is a party as the CMA may require.

### **Cancellation by notice**

- 18. If there is a failure to comply with the obligation imposed by Article 17 without reasonable excuse, the CMA may, subject to Article 20, by notice in writing

cancel this block exemption in respect of any public transport ticketing scheme to which the relevant request for information under Article 17 relates.

19. If the CMA considers that a particular public transport ticketing scheme is not one to which section 9 of the Act applies, it may, subject to Article 20, by notice in writing cancel this block exemption in respect of that scheme.
20. If the CMA proposes to cancel the block exemption in accordance with Article 18 or Article 19, the CMA shall first give notice in writing of its proposal and shall consider any representations made to it.
21. For the purpose of Articles 18, 19 and 20, notice in writing is given by:
  - (a) the CMA giving notice in writing of its decision or proposal to those persons whom the CMA can reasonably identify as being parties to the relevant public transport ticketing scheme; or
  - (b) where it is not reasonably practicable for the CMA to comply with paragraph (a), the CMA publishing a summary of its decision or proposal in the register and causing a reference to that summary to be published in --
    - (i) the London, Edinburgh and Belfast Gazettes;
    - (ii) at least one national daily newspaper; and
    - (iii) if there is in circulation an appropriate trade journal which is published at intervals not exceeding one month, in such trade journal,

stating the facts on which the CMA bases its decision or proposal and its reasons for making it.

22. (1) The Secretary of State shall before 28th February 2021—

- (a) carry out a review of this Order;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The report shall in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by this Order;
- (b) assess the extent to which those objectives are achieved; and

- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

## Appendix D: The Articles of the block exemption

1. Article 1 gives the full title of the Order, Article 2 states the length of time for which the Order shall be in place, and Article 3 defines terms used in the Order. The remaining Articles are as follows.
2. Article 4: specifies the categories of agreements for the sale of tickets covered by the block exemption and provides that there must be a written agreement.
3. Article 5: provides that the block exemption has effect subject to the conditions and the obligations specified in Articles 6 to 17.
4. Article 6: prevents any operator or potential operator from being excluded from the public transport ticketing scheme without 'objective, transparent and non-discriminatory' reasons.
5. Article 7: prevents any restriction of any operator's ability to decide which routes to serve or to fix the price, availability, fare structure or geographic validity of its own single, return or individual operator season tickets.
6. Article 8: prevents any restriction of the ability of operators to take independent commercial decisions on the number of vehicles operated, timetables or headways (except where an agreement on schedules is indispensable to the operation of a scheme which involves the provision of onward connecting services).
7. Article 9: prevents the exchange of commercially sensitive information, but allows the exchange of information that is 'directly related and indispensable' to the effective operation of the public transport ticketing scheme.
8. Article 10: provides that any breach of Articles 6, 7, 8 or 9 results in the cancellation of the block exemption in respect of the public transport ticketing scheme to which the breach relates.
9. Article 11: allows revenue under a public transport ticketing scheme for an MTC to be distributed using any method, provided that the distribution method does not provide operators with an incentive to set their own fares higher than they would have been in the absence of the MTC, or significantly reduce the incentive for each operator to compete for passengers.
10. Article 12: provides for cancellation of the block exemption in respect of the MTC in question if Article 11 is not met.

11. Article 13: prohibits price-fixing for MITs, TTs and add-ons, but allows an agreed price for MTCs purchased as an add-on and a 'posted price' arrangement for TTs and other add-ons.
12. Article 14: provides for cancellation of the block exemption in respect of the ticket type in question if Article 13 is not met as regards that ticket type.
13. Article 15: requires revenue from MITs to lie where it falls.
14. Article 16: provides for cancellation of the block exemption in respect of the MIT in question if Article 15 is not met.
15. Article 17: specifies that a request for information must be complied with within 10 working days of receipt.
16. Article 18: provides for cancellation of the block exemption for failure to comply with Article 17.
17. Article 19: provides for the CMA to cancel the block exemption in relation to a particular public transport ticketing scheme if the scheme does not meet the conditions in section 9(1) of the Act.
18. Articles 20–21: specify the mechanism for cancelling the block exemption in the circumstances set out in Articles 18 or 19.
19. Article 22: sets out an obligation for the Secretary of State to carry out a review of the Order before it expires to assess whether its objectives could be achieved with a system that imposes less regulation on businesses.

## Appendix E: Flow chart on the application of the block exemption

