

Chief Executive Officer and Director of Transport
Local Transport Authority

From: Douglas Cooper
Project Director, CMA

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Dear Sir/Madam

Competition, co-operation and partnership working in local bus markets

The CMA's view is that passengers can benefit from effective partnerships between bus operators and local transport authorities (LTAs) as well as from effective competition in local bus markets. This letter aims to provide some clarity on the way in which the CMA considers how best to achieve the appropriate balance between competition and partnership working. It is based on recent CMA advice to an LTA in relation to its planned partnership arrangements and may be useful to any authority considering developing partnership plans.

Partnerships and competition law

In a deregulated bus market, fair and open competition helps ensure that passengers get the best possible bus services. As commercial undertakings, bus operators are subject to normal competition law provisions to prevent practices that harm passengers' interests, such as colluding to raise prices or geographic market sharing.

The CMA recognises that passengers can benefit from effective partnerships between bus operators and LTAs. Such beneficial forms of cooperation can include better integrated networks, multi-operator ticketing schemes and integrated information management.

Legislative mechanisms are in place to ensure that competition law does not prevent consumers benefitting from improvements that can only be secured through closer partnership working. The Local Transport Act 2008 provides some additional protection for LTAs and operators seeking to deliver passenger benefits through certain forms of partnership, by removing the CMA's ability to impose fines for those involved in a scheme arranged in good faith under a Voluntary Partnership

Agreement or Qualifying Agreement even if it might subsequently be found to be anticompetitive.

The Department for Transport (DfT) has previously produced guidance to LTAs on setting up and running multi-operator ticketing schemes.¹

However, recent conversations between LTAs and the DfT have emphasised that the perceived threat of CMA action remains a significant barrier to closer partnership working. The CMA does not want LTAs to be deterred from introducing partnership arrangements that benefit customers but do not weaken rivalry between bus operators by unfounded concerns that they might breach competition law. Drawing on our previous consideration of local bus markets, this letter highlights some key issues for LTAs to consider when developing proposals for partnerships. This letter is intended to complement the existing guidance available to LTAs, though it does not constitute formal legal advice.

Retaining competition within a planned bus network

LTAs may be considering redesigning local bus networks to improve performance against pollution or congestion targets, get citizens to work more efficiently or to integrate buses with other forms of transport.

LTA coordination of network planning does not inherently raise competition concerns as long as the approach taken:

- i. builds on the normal business practice of conducting network reviews and
- ii. uses the partnership mechanisms set out in legislation.

In striking an appropriate balance between competition and cooperation, network planning should provide scope for continuing rivalry between operators, both in how the right or responsibility to run particular services is allocated and through on-the-road competition where routes overlap.

i) Allowing new entry

To ensure that a network planning scheme delivers long-term customer benefits it is important to allow scope for the network to evolve, for new entry to take place and for existing operators to be able to propose new services. Retaining an ongoing threat of potential competition plays an important and necessary role in motivating operators to maintain the quality of their services. It also encourages innovation by potential competitors.

¹ <https://www.gov.uk/government/publications/building-better-bus-services-multi-operator-ticketing>

LTA should therefore ensure that network planning schemes are designed to allow for the approval of new and revised services. To allow for the necessary flexibility, our guidance to LTAs is that:

- i. the network planning process should allow for rival operators to seek LTA approval to run services in competition with an existing operator.
- ii. it is particularly important for the LTA to allow the provision of services to evolve if there are already restrictions in place due, for example, to congestion and pollution concerns.
- iii. the commercial impact on an incumbent operator's services should not form part of the assessment of whether another operator could establish a new service.

ii) Risk of geographic segregation

There is a risk that operators expressing an interest in running different routes as part of network planning might increase geographic market segregation. Any such retreat to 'core territories' would reduce the effectiveness of potential and actual competition. The CMA expects the likelihood of this risk materialising to become apparent relatively soon after inviting expressions of interest. If this appears to be the result of unilateral decisions by individual bus operators, LTAs could invite operators to make alternative expressions of interest so as to maintain the scope for potential competitive constraints to apply across the area. If, however, LTAs suspect there is evidence of explicit market sharing or anti-competitive agreements between bus operators, there may be scope for action under competition law.

iii) Entry requirements

As part of a partnership scheme, LTAs may wish to seek minimum standards for bus operators participating in the scheme, for example in terms of the quality of the fleet that they are operating.

While minimum standards can deliver benefits to passengers in terms of overall service quality and satisfaction, it should not be made unnecessarily difficult for operators to meet requirements to run bus services within the local area. Entry requirements should be proportionate and clearly justified in relation to the objectives of the scheme.

This issue would become more important in the event that legislative change gives Passenger Transport Executives the ability to require compulsory participation in

partnership schemes, as such standards would become a cost for all market participants.

Ticketing schemes and alignment of fare zones

The CMA supports well-designed multi-operator ticketing schemes. Such schemes can deliver increased convenience to those passengers who choose to use multi-operator ticketing products. In addition, participation in ticketing schemes can help smaller or growing operators to overcome barriers to entry and expansion. In this way, implementation of an effective ticketing scheme can enhance competition.

The potential benefits of multi-operator ticketing schemes are recognised under the public transport ticketing schemes 'block exemption'. Provided they meet the terms of the block exemption, certain types of agreements between LTAs and commercial operators – including many covering multi-operator travel cards and individual tickets, through tickets and add-on tickets – are expressly allowed by the Competition Act 1998 (CA98). The CMA has recently reviewed the block exemption and has clarified how it applies to multi-operator travel card schemes, including that whilst multi-operator travel card tickets cannot be priced by deterministic premium rule relative to single operator tickets, they can be set with an awareness of single operator prices to make sure they are competitive. The CMA intends to consult on revised guidance on the application of the block exemption before the end of March 2016.

LTAs may also consider ways to standardise the definition of commonly used ticket types and fare zones within a local area. Although coordination between operators on these two dimensions is explicitly outside the block exemption, there is a legal exception regime under the CA98. This means, in broad terms, that potentially restrictive agreements will still be lawful if a) they produce economic benefits that outweigh the restriction, b) these benefits are shared with consumers, c) they do not unnecessarily impose restrictions, or d) give rise to the possible elimination of competition.

The CMA would encourage LTAs and partner operators who are considering standardising ticket types and zones to self-assess as far as possible whether the agreements are likely to meet the exemption criteria. Some more details will be provided in the CMA's revised guidance on the block exemption. However, the CMA recognises that this is not necessarily straight forward and is willing to discuss significant schemes being considered by individual LTAs.

In considering such developments, the CMA would consider it reasonable for LTAs to take into account the potential consumer benefits in standardising some aspects of the tickets which consumers may find confusing. For example, some forms of

standardisation (e.g. that removes largely arbitrary differences between operators' ticketing policies) may allow passengers to make better informed comparisons between the aspects of ticketing offers that matter to them such as price and frequency. Such standardisation could therefore benefit consumers without harming competition to any meaningful extent. As such, proportionate restrictions on the type of ticketing products available in a local area – for example, a common definition of 'students' or agreed boundaries of the main urban zones within a conurbation – may satisfy the criteria for a specific exemption.

There is, of course, a balance to be struck. The CMA would also encourage LTAs to be alert to risks of excessive standardisation and avoid unduly restricting aspects of individual suppliers' ticketing offering which are highly valued by consumers and serve to drive competition including operators' own period/area tickets. For example, an operator may launch an innovative product aimed at encouraging travel at off peak times over specific clusters of routes. The extent to which this is a problem in practice might be demonstrated by customers' use of existing ticketing products that would no longer be permitted under a proposed standardisation scheme.

Commercially sensitive information

Arrangements for integrated customer management records, smart ticketing and real time data have the potential to harm competition if they were to result in competing operators being able to share commercially sensitive information which, in turn, could allow operators to coordinate their activities. When considering setting up such arrangements, LTAs should establish appropriate firewalls to ensure integrating customer management records, smart ticketing and real time data does not result in sharing of commercially sensitive information between competitors.

Future legislation

It was announced in the Queen's Speech that the Government would introduce a new Buses Bill. The CMA will continue to work closely with officials from the Department for Transport to ensure LTAs are able to balance close partnership working with healthy competition in local markets for the benefit of passengers.

Yours faithfully

Douglas Cooper
Project Director