

Public transport ticketing schemes block exemption review

Consultation on renewal of the
block exemption

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1. Executive summary

- 1.1 This consultation document seeks views on whether the Competition and Markets Authority (CMA) should make a recommendation to the Secretary of State for Business, Innovation and Skills (the Secretary of State) to renew or vary the public transport ticketing schemes block exemption (the Block Exemption). It has been published by the CMA pursuant to sections 8(1) and 8(3) of the Competition Act 1998 (the Act).
- 1.2 Between May and July 2015 the CMA carried out a preliminary review of the Block Exemption and its operation. This review has included meetings with a number of key representative organisations connected to the transport industry,¹ as well as revisiting the reviews carried out by the Office of Fair Trading (OFT) between 2003 and 2005, and in 2010.
- 1.3 In this review, the CMA first considers whether the criteria for a sector-specific block exemption continue to be met. The CMA then considers whether there should be any amendments to the Block Exemption given issues raised with us by Stakeholders in our preliminary review. In particular we address issues relating to developments in ticket formats, which now include the possibility of tickets being either stored or activated on electronic devices (such as mobile phones, wearable devices and so on), on smart cards or via contactless bank cards. We refer to all ticket products where the entitlement to travel (or ticket) is stored electronically as ‘smart tickets’.
- 1.4 Based on this preliminary review of the Block Exemption, we are minded to recommend to the Secretary of State that the existing Block Exemption is renewed until 28 February 2026 (subject to consultation views on the duration of the Block Exemption).
- 1.5 We are also proposing to issue revised guidance, to make a number of changes to the public transport ticketing schemes block exemption guidance (OFT439, November 2006 as adopted by the CMA board) (the Guidance Document), to clarify some areas which are thought to be unclear and to update some aspects of the guidance to take account of new formats and products that have emerged with the introduction of smart tickets.

¹ These include Transport Focus, the Passenger Transport Executive Group, the Association of Train Operating Companies, the Confederation of Passenger Transport UK, ALBUM, commercial transport operators and Journey Partnership. We have also met with various government departments and agencies, including the Department for Transport (DfT), the Department for Business, Innovation & Skills, Transport Scotland, the Department for Regional Development Northern Ireland, the Office of the Rail and Road and the Welsh Government.

2. Introduction

Background to the Block Exemption

- 2.1 Section 2 of the Act prohibits agreements which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom (UK) and which may affect trade within the UK, unless they are excluded or meet the conditions for exemption contained in section 9(1) of the Act. The Act also provides for the adoption of block exemptions, exempting a category of agreements from the prohibition in section 2.
- 2.2 In 2001, the Block Exemption was adopted for public transport ticketing schemes that meet certain conditions.² The current version of the Block Exemption is due to expire on 29 February 2016.
- 2.3 Public transport ticketing schemes involve agreements that may have a harmful impact on competition for the purposes of section 2 of the Act, for example, where three or more transport operators agree the price at which a multi-operator travel card should be sold to consumers and the consequent revenue-sharing arrangements. However, such agreements can also result in benefits that outweigh their negative impact on competition. For this reason, a block exemption was adopted in 2001 for agreements where the conditions for exemption in section 9(1) of the Act were clearly met. The aim of the Block Exemption is to provide comfort that agreements between transport operators and others to offer multi-operator tickets are exempt from the prohibitions in section 2 of the Act provided they meet certain conditions.³

² The Block Exemption is set out in the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 (SI 2001 No 319), as amended by the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) (Amendment) Order 2005 (SI 2005 No 3347), the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) (Amendment) Order 2011 (SI 2011 No 227).

³ The categories of ticketing schemes covered by the Block Exemption are as follows:

- Multi-operator travel cards (MTCs); these are tickets valid for three or more journeys, including unlimited travel for a particular period of time, on any of three or more specified services operating on three or more routes so long as the routes and services are not 'substantially the same'.
- Through tickets; these are tickets valid on more than one operator's services for completion of a particular single or return journey on two or more complementary services, ie where the operators do not compete with each other over a 'substantial part of the route' in question.
- Multi-operator individual tickets (MITs); these are tickets valid on more than one operator's services for the completion of a particular single or return journey, on whichever service the passenger chooses, that could have been made using any of two or more competing operators' services).
- Short or long distance add-ons (these are tickets where an operator provides an MTC, in the case of short distance, or an MTC or through ticket, in the case of long distance, as an 'add-on' to a short or long distance single or return ticket).

Scope of this consultation

- 2.4 This consultation document has been published by the CMA to seek views on the CMA's proposed recommendation to the Secretary of State to renew the Block Exemption until 28 February 2026 (subject to consultation views on the duration for the Block Exemption). This consultation is limited to the CMA's ability to make recommendations to the Secretary of State on the use of his powers to make or vary block exemptions under the Act.
- 2.5 The geographical scope of this consultation is the whole of the UK. We have considered whether the Block Exemption has a different impact on any on the devolved nations which should be considered separately in the review. We have spoken to representatives within each nation and have not been alerted to any substantive differences in the operation of the Block Exemption between countries that would require separate or different consideration within this consultation.
- 2.6 If any respondents have specific issues to raise relating to the Block Exemption and its operation within Scotland, Wales or Northern Ireland, these should be highlighted in the response to this consultation.
- 2.7 This consultation is aimed at businesses, trade associations, government bodies, local authorities, individuals or any other parties that may have an interest in passenger transport issues.

Context

- 2.8 This review of the Block Exemption takes into account previous work undertaken by the OFT and the Competition Commission (CC). We have also been conscious during our preliminary review of the widely held desire to increase the number of integrated ticketing schemes across the country, for example to introduce ones similar to the Oyster style scheme in London (see Annex C). The ticketing systems in London, however, do not rely on the Block Exemption because they are excluded from competition law under an arrangement required by statute.⁴
- 2.9 The scope of the review of the Block Exemption however does not consider the implications of policy and regulatory changes on the transport sector in

⁴ 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. As such, the Chapter I prohibition does not apply to the relevant ticketing agreements because of the legal requirements exclusion in paragraph 5(1) of Schedule 3 to the Act.

general but instead examines whether there is still a need for public transport ticketing schemes to be exempt from the Act within this proposed framework.

Consultation process

- 2.10 We are publishing this consultation on the CMA webpages and drawing it to the attention of a range of stakeholders to invite comments. We would welcome your comments on the proposed recommendations to the Secretary of State.
- 2.11 Please provide supporting evidence for your views where appropriate. We encourage you to respond to the consultation in writing (by email or alternatively by letter) using the contact details provided in paragraph 2.13 below.
- 2.12 When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. If responding on behalf of an organisation, please make it clear who you are representing and, where applicable, how the views of the members of the organisation were assembled. We intend to publish individual responses we receive. In responding, please confirm you are happy for us to do so or alternatively provide a non-confidential version for publication (see paragraphs 2.14 to 2.16 below).

Duration

- 2.13 The consultation will run for six weeks, from 5 August to 16 September.⁵ Responses (including if necessary a non-confidential version for publication) should be submitted by post or email, by no later than 16 September 2015, and should be sent to:

Ticketing Block Exemption Team
Competition, Consumer and Markets Group
Competition and Markets Authority
7th Floor
Victoria House

⁵ In consulting, the CMA has taken into account the published principles that government departments and other public bodies should adopt when consulting with stakeholders. We consider that a six-week consultation period is appropriate in light of the extent of preliminary consultation we have undertaken in relation to the CMA's power to make recommendations to the Secretary of State on proposals to vary the Block Exemption. This process yielded a number of valuable stakeholder responses on issues related to this consultation, which have informed the CMA's proposed recommendations to the Secretary of State in relation to the Block Exemption. In particular, we note that the preliminary review was with a group of organisations who represent a cross-section of those likely to use the Block Exemption, including government bodies, consumer and trade organisations, and transport operators.

37 Southampton Row
London WC1B 4AD
Email: ticketingblockexemption@cma.gsi.gov.uk

Data use statement for responses

- 2.14 Personal data received in the course of this consultation will be processed in accordance with the Data Protection Act 1998. Our use of all information received (including personal data) is subject to Part 9 of the Enterprise Act 2002. We intend to publish consultation responses, and we may also wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, so far as practicable, (i) any commercial information whose publication we think might significantly harm the legitimate business interests of the business it relates to, or (ii) any information relating to the private affairs of an individual that we think might significantly harm the individual's interests. If you consider that your response contains such information, please identify the relevant information, mark it as 'confidential' and explain why you consider that it is confidential. Where submissions contain confidential information, please provide a clearly marked 'confidential' version and a 'non-confidential' version. Please note that blanket confidentiality will not be accepted.
- 2.15 Information provided in response to this consultation, including personal information, may be the subject of requests from the public for information under the Freedom of Information Act 2000. In considering such requests for information we will take full account of any reasons provided by respondents in support of confidentiality, the Data Protection Act 1998 and our obligations under Part 9 of the Enterprise Act 2002.
- 2.16 If you are replying by email, these provisions override any standard confidentiality disclaimer that is generated by your organisation's IT system.

After the consultation

- 2.17 After the consultation, we will decide whether to recommend that the Secretary of State should renew the Block Exemption (with or without variation) or allow the Block Exemption to expire. The CMA's decision and individual responses to the consultation will be available on our webpages and respondents will be notified when they are available. Should the Secretary of State decide to extend and/or make changes to the Block Exemption, we would expect to revise the Guidance Document and consult on a revised draft. Any review of the Guidance Document would be with the aim

of making appropriate amendments (if necessary) to clarify the application of the rules of the Block Exemption and also to encompass any developments that have taken place in ticketing schemes over the last five years.

3. Criteria for assessing whether a block exemption is appropriate

3.1 For the purposes of this review, the CMA considers that the following four criteria⁶ should be met for a sector-specific block exemption to be appropriate:

- (a) There is a clearly identifiable category of beneficial agreements that appear to **meet the conditions for an exemption under section 9(1) of the Act** (see Annex B paragraph 5), namely that: the agreement must contribute to improving production or distribution or promote technical or economic progress, consumers must receive a fair share of the benefits generated by the restrictive agreement, the agreement must not impose restrictions that are not indispensable to achieving the benefits, and the agreement must not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.
- (b) The category of agreements are 'special' in that, in comparison with other agreements, they require an **enhanced need for cooperation** for them to be concluded and implemented.
- (c) There is a significant and **real risk that the category of agreements will not be entered into in the absence of a sector-specific block exemption**.
- (d) **Alternative, reasonable and practicable arrangements cannot be concluded** that would create even greater benefits to consumers or that would otherwise be more appropriate.

3.2 The following section considers the application of those criteria to public transport ticketing schemes.

Ticketing schemes as an identifiable category of beneficial agreements meeting section 9(1) of the Act conditions

3.3 We consider that there continue to be clearly identifiable categories of public transport ticketing schemes that meet the section 9(1) of the Act conditions.

⁶ The test applied here is similar to the test applied in the OFT's previous review in 2010. It is broadly consistent with the approach taken in EU block exemption reviews in the insurance (see the [Financial services: Insurance section of the European Commission's website](#)) and motor vehicle sectors (see the [Motor vehicles: Legislation section of the European Commission's website](#)).

Efficiency gains – the agreement must contribute to improving production or distribution or promote technical or economic progress

3.4 In the 2005 and 2010 reviews, the OFT concluded that public transport ticketing schemes contribute to improving production or distribution, or promoting technical or economic progress. We have seen no evidence that the position has changed. As identified in the previous reviews the ticketing schemes covered by the Block Exemption potentially deliver the following benefits for passengers, operators and other consumers:

- (a) Better quality bus services and improved transport networks.
- (b) Flexibility of choice on specific routes.
- (c) Increased geographical coverage of services for passengers by linking routes of operators.
- (d) Increased patronage on public transport.

Fair share for consumers

3.5 As above, in the 2005 and the 2010 reviews, the OFT concluded that the ticketing schemes covered by the Block Exemption allow consumers a fair share of the resulting benefit. Consumer benefits are mainly in the form of improvements in the quality and flexibility of public transport ticketing services, for example allowing a consumer to use one ticket for a journey involving travel on more than one operator's services. Transport Focus, operators and transport authorities that we have spoken to have carried out research on passenger preferences, which strongly supports the CMA's view that there are clear consumer benefits to the categories of agreements covered by the Block Exemption and that consumers have a strong preference for integrated travel both within geographical areas and multi-modal, for example, on bus and train. The CC's market investigation into local bus services found that consumers benefit significantly from the use of multi-operator ticketing.⁷

Restrictions are not indispensable

3.6 The Block Exemption contains general conditions that apply to all ticketing schemes and also different conditions that apply to each of the different schemes. Those varying conditions were put in place following the OFT's review in 2005 to ensure that the balance of the Block Exemption satisfied the need to ensure that the ticketing schemes covered by the Block Exemption do

⁷ Local bus services market investigation (CC) – [Final report](#), paragraph 15.17.

not impose restrictions that are not indispensable to the benefits flowing from the agreement, and the OFT's review in 2010 concluded that there was no evidence to suggest that the position had changed. The CMA's preliminary review has considered whether the various conditions that apply to the ticketing schemes remain indispensable and our provisional view is that those conditions remain indispensable.

No elimination of competition

3.7 As mentioned above, there are conditions in place in the Block Exemption that are designed to ensure that ticketing schemes within the scope of the Block Exemption do not eliminate competition in respect of a substantial part of the services in question, namely that the schemes must be open to all operators, and that operators retain commercial freedom to set their own fares, services and timetabling. The Block Exemption also contains restrictions on information sharing by limiting the ability to share information to only the information that is indispensable to that scheme. We have no evidence to suggest that the Block Exemption is likely to eliminate competition on a substantial part of the market for transport services. We note in the CC's market investigation into local bus services, it found effective multi-operator ticket schemes are likely to reduce barriers to entry and expansion and thus stimulate competition among bus operators to the benefit of passengers.⁸

Enhanced need for cooperation

3.8 Public transport ticketing schemes require an enhanced level of cooperation in comparison with other sectors of the economy. Consumers highly value the integration of the network which enables them to travel more easily throughout the ticketing area. In local transport markets with more than one operator integrated ticketing schemes would simply not be feasible without agreements between transport operators. Customers would need to buy separate tickets from different transport operators where their journey involved travelling on routes offered by different transport operators. Our preliminary review highlighted that the majority of consumers across the country have an awareness of integrated ticketing schemes operated in parts of the UK and would like to see them provided more widely.

⁸ Local bus services market investigation (CC) – [Final report](#), Figure 15.1.

Significant and real risk that ticketing schemes will not be entered into without the Block Exemption

- 3.9 In the absence of the Block Exemption, parties to any multi-operator ticketing agreement would have to self-assess compliance with the Act and ensure that it met the conditions of section 9(1) of the Act. Parties have indicated to us that they are reluctant to do this because they see it as lacking certainty. The aim of the Block Exemption is to provide comfort that agreements between transport operators and others to offer multi-operator tickets are exempt from the prohibitions in section 2 of the Act provided they meet certain conditions. The legal framework is set out in Annex B.
- 3.10 The CMA considers that there is a significant and real risk that, without the Block Exemption, some operators would be reluctant to join public transport ticketing schemes. Operators in the transport sector appear to be aware of the need to ensure competition law compliance, and also appear to be risk averse in this regard. Individual operators are unlikely to be willing to join such schemes in the absence of the Block Exemption, due to concerns that the agreement could risk infringing competition law with the associated risk of exposure to enforcement action under the Act, including financial penalties and/or the risk of director disqualification. Transport operators, government and transport authorities have informed the CMA that the Block Exemption is an invaluable and in some cases the only tool that enables this degree of enhanced cooperation. The preliminary review strongly suggests that operators would be reluctant to undertake a self-assessment for compliance of multi-operator ticketing schemes with the Act. The general view expressed was that if a scheme does not fall within the Block Exemption then the risk of it being considered in breach of section 2 of the Act is too great compared to the potential benefits of delivering a multi-operator scheme.

Alternatives not available

- 3.11 The CMA's provisional finding is that there are currently no alternative, reasonable and practicable arrangements to facilitate joint ticketing schemes that could deliver even greater benefit to passengers, or which would otherwise be more appropriate.

4. The Block Exemption: should it be extended?

- 4.1 Our emerging view, based on our preliminary review carried out between May and July 2015, is that the Block Exemption continues to meet the four criteria we have applied for considering whether a block exemption is necessary. We therefore propose to recommend to the Secretary of State that it should be renewed until 28 February 2026.
- 4.2 We are minded to propose that the Block Exemption is renewed for ten years, rather than the five-year period recommended at the last review. The burden on business as well as on government could be reduced by extending the review period. A longer period may also be beneficial in terms of providing more legal certainty. Our review has suggested that new ticketing technologies and products can be accommodated within the existing Block Exemption without modification suggesting that it may generally be unnecessary to update it for such innovations.
- 4.3 However, we recognise that given the rate of change of technology, it is possible that new ticketing formats and products of an unanticipated type, and which are substantially different in their execution or impact on competition and operator incentives might emerge during the duration of the Block Exemption. These could require changes to the Block Exemption to be considered exempt from the Act. It is also possible that there could be significant changes in the policy or regulatory environment, or the competitive landscape around public transport. It would be open for the CMA to launch a review of the Block Exemption ahead of its expiry if there have been significant changes.
- 4.4 We would particularly welcome views on whether a longer duration for the Block Exemption would be desirable. Please outline the reasons for your answer highlighting any cost implications and associated risks of your preferred options.

5. Does the Block Exemption need to be varied?

- 5.1 Our preliminary review has considered whether the current Block Exemption is working well and whether it is able to accommodate future development of ticketing technology and products available, both in terms of ticket format and ticket types.
- 5.2 This chapter first considers the current Block Exemption and discusses some of the points that have been highlighted to us during the preliminary review as areas where the Block Exemption itself or the Guidance Document could be improved. We then consider smart ticketing. We propose an analytical framework for new ticket formats and products and discuss whether greater flexibility to the Block Exemption or the Guidance Document is required.
- 5.3 We would value any comments on any of the issues highlighted here. If consultees consider that the Block Exemption should be varied we would welcome a considered explanation of why it should be varied. Please also explain how any proposed variation meets the criteria for exemption set out in section 9(1) of the Act and why the change is appropriate for the Block Exemption rather than self-assessment by operators or others.

Points raised on the Block Exemption and the Guidance Document

- 5.4 From our preliminary review it is clear that stakeholders value the Block Exemption and would like to retain it – see paragraphs 3.4 to 3.6 above. The preliminary review, however, suggested certain areas where the Block Exemption or the Guidance Document could be modified, clarified or improved. We consider those below.

Multi-operator travel card pricing

- 5.5 Currently, the pricing of an MTC cannot be set by reference to the price of individual operators' own travel cards (see the Guidance Document, paragraph 4.23). Some stakeholders suggested that it would be appropriate to allow this as a quick and clear way of setting the price of an MTC, allowing in addition for a small premium to reflect the extra utility offered by multi-operator usability.
- 5.6 We understand that setting the MTC price involves complex negotiation between operators and local authorities and agreement may often be difficult. Uncertainty of value to consumers of the MTC and usage, or operators not wishing to jeopardise sales of their own individual operator tickets, could result in MTC ticket prices being agreed at a substantial premium over individual operator tickets. Stakeholders have further said that any incentive

effects from allowing pricing with reference to an operator's own travel card are likely to be very small compared to other competitive constraints as MTC revenues tend to be a small proportion of overall operator revenues.

- 5.7 By linking the MTC price to an operator's own travel card the price restraint of the MTC on the operator's own travel card and its fares would be removed. The incentive, therefore, to increase operators' own prices would be greater. This could apply particularly where one operator is the major network provider in an MTC area. The linking of prices might also act as a focal point for coordinating fares across operators. In particular if the MTC was pegged against a leading operator's travel card, ensuring it was always sold at a premium, this would continue to make the MTC less attractive to consumers and reduce the ability of rival operators to compete through participation in the MTC scheme.⁹
- 5.8 Therefore, we do not consider that linking the determination of the price of an MTC is appropriate, as it could reduce incentives to limit operators' own ticket prices or for operators to compete on prices. Nor do we consider the change to be necessary. Instead those tickets should be considered as separate products in their own right and appropriate pricing determined on that basis (ie in a way that is not directly linked to the individual fares of each of or any one of the participating operators). Pricing issues were considered at length in the CC local bus services market investigation, and the final report contained recommendations for the pricing of schemes.¹⁰

MTC using revenue forgone for revenue sharing

- 5.9 We were told the development of multi-operator ticketing schemes might be hindered by the restriction placed by the Block Exemption on the use of revenue forgone (the amount the passenger would have paid if charged the operators' own fares for each journey) as a method of revenue distribution for MTC schemes. One concern raised with us is that absent the use of revenue forgone it is difficult to accommodate operators with very different cost structures. For example, it may be difficult to attract higher cost operators, which typically offer longer fare stage journeys, or different transport modes to become part of the MTC.
- 5.10 Article 11 of the Block Exemption requires that a revenue share scheme does not:

⁹ Guidance Document, paragraph 4.24.

¹⁰ Local bus services market investigation (CC) – [Final report](#), paragraphs 15.48–15.50.

- result in an incentive for operators to set their own fares higher than they would have been set in absence of the MTC; or
 - significantly reduce the incentive for each of the operators to compete for passengers.
- 5.11 Revenue forgone is considered unlikely to fall within the Block Exemption because it provides a direct link to actual fares charged by operators and may provide an incentive for operators to increase their own fares. This is because the higher the fare, relative to other operators, the bigger the share of the revenue. Therefore, it is unlikely to meet the first condition in Article 11 of the Block Exemption.
- 5.12 As with MTC pricing, we were told there are other restraints on the fares than the MTC revenue share, which are likely to outweigh the incentive to increase prices. These restraints include actual and potential competition from other operators. We were also told that MTC revenues are likely to be a small proportion of total income for the operator, and so the incentives to raise fares to increase the revenue share of the MTC pot are likely to be very limited compared to the impact on own ticket sales. However, the Guidance Document already mentions (paragraph 4.28) that revenue forgone might be used as a revenue sharing method where the MTC revenue is very small compared to the other operators' revenues (representing, say, only a few per cent), and it is unlikely that the share of MTC revenue will become appreciable.¹¹ However, where the MTC share is significant or growing the incentive on operators to increase fares remains strong.
- 5.13 The Guidance Document is also clear that any other methods can be used for revenue distribution, provided they do not incentivise operators to set their own prices higher than they would have done without an MTC scheme or reduce their incentives to compete for passengers. Such methods can take account of different costs. For example, among illustrations of some possible methods, it mentions weighted passenger miles as an allocation system that takes account of both passenger journeys and a notional fare that reflects cost differences between different types of journey (under this higher reimbursement values could be allocated to longer journeys (perhaps with proportionally higher shares (in pence per mile) to short journeys) or to

¹¹ Guidance Document paragraph 4.28:

In certain very limited circumstances, schemes where revenue is distributed on the 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 to the operator's other revenue (representing, say, only a few per cent), and it is unlikely that the share of the MTC revenue will grow appreciably, such that there is no incentive to raise own fares. Operators will therefore need to ensure that their scheme does not result in an incentive to increase their own fares and that it does not significantly reduce the incentive for each of the operators to compete for passengers.

journeys on higher cost modes of transport such as ferries, trams or metro systems. It states that 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 individual operators.

- 5.14 Given the availability of other methods of revenue allocation, and the potential ability to use revenue foregone where MTC revenue is proportionately very small, we are not minded to relax the condition on revenue share arrangements.

Multi-operator individual tickets pricing

- 5.15 Article 13(1) of the Block Exemption prohibits price fixing for, among other things, MITs, ie separate operators cannot agree a common price for these tickets, unlike MTCs. However, it has been put to us that prohibition should be relaxed to improve the customer proposition, as we heard the inability to set a common price results in customer confusion and this may be preventing the creation of MIT schemes. We were also told that operators may be reluctant to participate for fear of being undercut by a rival who is incentivised to sell the ticket and provide the first journey but is not incentivised to similarly offer the return element.
- 5.16 The CMA is not minded to relax the prohibition for price fixing of MITs; we have not been presented with any arguments that price fixing is indispensable for operators, we consider that customers are used to the idea that different operators will charge different prices for their tickets and can comprehend this even for multi-operator tickets, nor have we seen strong evidence to suggest the pricing rule is preventing MIT schemes from being established.

MIT revenue allocation (other than revenue lies where it falls)

- 5.17 Article 15 of the Block Exemption requires that revenue lies where it falls for MITs. Where operators sell a number of tickets roughly in proportion to passengers carried, this is likely to be a suitable, and low-cost arrangement. However, in cases where there is an uneven distribution of ticket sales and passenger numbers across different operators' services, revenue lying where it falls is likely to discourage operators from entering into such schemes. This is because where an operator carries more multi-operator ticket passengers than it sells multi-operator tickets, it does not receive reimbursement for all passengers carried, and hence it can be unattractive for that operator to participate in that scheme.¹² In its local bus services market investigation final

¹² Local bus services market investigation (CC) – [Final report](#), paragraph 15.59.

report,¹³ the CC recommended that to give greater clarity of which schemes would be acceptable, the Guidance Document should identify what other revenue share arrangements might be acceptable when revenue lies where it falls is not considered suitable.

- 5.18 In our preliminary review stakeholders did not generally consider revenue distribution a major impediment to the attractiveness of MIT schemes. Some said that as MIT schemes were generally small-scale, they needed a simple and cheap system of revenue distribution. We are also concerned that other revenue sharing systems (such as reimbursement based on posted prices, when actual travel use can be tracked using smart ticket data), represents an unnecessary exchange of information between operators and changes in posted prices could be used to coordinate pricing decisions between operators.
- 5.19 Nonetheless, we note concerns that revenue lies where it falls may provide a disincentive to the establishment of MIT schemes in certain cases, such as where operators only overlap to a limited extent, for example where only one operator serves a route outside core hours or provides an evening service. In such cases, any detrimental impact on competition is unlikely to be significant. In such cases, we consider, therefore, that it may be possible for operators to introduce other revenue share options that do not diminish incentives for competition. This might be facilitated by the introduction of smart ticket and the resulting availability of better travel data.
- 5.20 We would welcome examples where MIT schemes have been abandoned or not commenced because of the requirements that revenue lies where it falls. We would also welcome proposals of other possible revenue share options that would satisfy section 9(1) conditions of the Act and under what conditions these would apply, for example where operators only overlap to a limited extent because their services mostly operate at different times of the day.

Issues relating to smart tickets

- 5.21 Should the Block Exemption be retained after February 2016, it is important that it continues to facilitate the development of new as well as established schemes which deliver clear benefits for consumers without allowing unnecessary restrictions on competition. It appears that a variety of smart ticketing technologies have been and will continue to be introduced. This has resulted in the development and introduction of new ticket formats, which have enabled new types of tickets (new products) to be offered to consumers.

¹³ Local bus services market investigation (CC) – [Final report](#), paragraphs 15.58–15.63.

Therefore, our review has considered how to provide the greatest flexibility for schemes that may be adopted and that will deliver consumer benefits without undermining the benefit of legal certainty that is provided by the current Block Exemption to facilitate operators entering into multi-operator ticketing schemes.

- 5.22 Developments in ticket formats include an array of tickets either stored or activated on electronic devices (such as mobile phones, wearable devices and so on), on smart cards or via contactless bank cards. We refer to all such means as smart tickets where the entitlement to travel (or ticket) is stored electronically.
- 5.23 The new ticketing products include prepay options where the customer commits to travel in advance such as carnets and electronic purses, capped tickets and pay-later options with best price guarantee. In this consultation we do not intend to cover all possible ticketing products but instead propose a framework for considering whether such new products fall within the current Block Exemption and what impact they have on competition. It is of course possible that future products (as yet unforeseen) may be proposed which could raise competition concerns and would need to be individually assessed for compliance.
- 5.24 Where necessary we consider whether the Block Exemption is sufficiently flexible to accommodate new ticket formats and products that deliver clear customer benefits. The issues we have focused on in this consultation are whether the new ticketing formats and products increase information sharing between operators, and whether they create or increase barriers to entry or adverse effects on the incentives of operators for pricing individual ticket offerings.

Definition of tickets to include smart tickets

- 5.25 The Block Exemption defines a 'ticket' in Article 3 as 'evidence of a contractual right to travel'. In general, our preliminary review supports that this definition is wide enough to encompass the new ticketing products outlined in paragraph 1.3. The majority view expressed to us during our preliminary review was that the current Block Exemption is wide enough but that greater clarity in the Guidance Document would be welcomed.
- 5.26 We intend to clarify that we consider the definition is broad enough to cover smart tickets in the Guidance Document.

Smart ticket categories¹⁴

Paper replacement

5.27 This type of smart ticket is simply a replacement of a paper ticket. This category 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 (such as a ticket that allows travel on any operator within a certain time period) also fall into this category.

Pay-as-you-go with cap

5.28 This smart ticket allows the consumer to travel on multiple operators and pay standard fares to each operator up to a predetermined price limit (generally the price of an MTC ticket) after which the consumer is deemed to have purchased an MTC and can undertake further travel for free within the MTC area for a limited time period.

Pay-later with best price guarantee

5.29 This smart ticket allows for the consumer to undertake travel without any pre-commitment. The customer is charged after the event for travel undertaken over a period (day, week or longer) and is given 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.

Potential issues raised by smart tickets

5.30 It is our intention to ensure that the ticket definition is extended to include all forms of smart tickets. This will be clarified in the Guidance Document. For smart tickets falling within the paper replacement category we do not consider that there are any new issues raised with respect to the operation of the Block Exemption or the incentives on operators to compete.

5.31 For tickets falling within the pay-as-you-go with cap category issues relating to price and revenue distribution have been raised. These may also be relevant

¹⁴ There are many variations of ticket products, currently these fall within the categories defined and do not appear to give rise to new competition concerns and can be accommodated within the Block Exemption. It is however possible that ticket types or products will be developed in the future that fall outside the framework and that would require further assessment to determine their impact on competition and whether they are covered by the Block Exemption.

for tickets falling within the pay-later with best price guarantee category but have been raised in particular in relation to the cap.

Pricing of MTC below the cap

- 5.32 During the preliminary review we were asked whether the agreed price of MTC schemes could be amended to be priced 'up to' rather than 'at' an agreed price to accommodate for price-capped schemes where the sum of the prices for ticket sales lie below the capped ticket price.
- 5.33 Paragraph 13 of the Block Exemption allows operators to agree the price of MTC tickets and the Guidance Document states that operators can agree to set the MTC prices at a certain level.¹⁵ The Guidance Document also states that it is clearly not possible to use a 'posted price' mechanism for the revenue reimbursement for an MTC because the operator will not know what journeys have been made.¹⁶
- 5.34 By using smart ticket technology the scheme administrator is likely to know what journeys have been made and could charge the customer accordingly. In a capped scheme, if the customer makes a number of single journeys which collectively do not add up to the capped amount (the point at which the customer is deemed to have purchased an MTC) then the customer has not purchased an MTC. The customer should be charged the prevailing ticket price for the actual journeys made and it is not apparent that there is a need for operators to agree prices below the MTC price.
- 5.35 We are not minded to change the definition of MTC pricing to include prices 'up to' the agreed price as we do not consider that this is necessary and would not satisfy the section 9(1) conditions of the Act. We do, however, intend to make the Guidance Document clearer on this point.

MTC revenue distribution below capped price

- 5.36 Some concerns have been raised with respect to how to distribute the revenue collected from smart tickets that fall below the capped MTC price. It has been suggested that revenue could be put in the MTC scheme pot and distributed according to local revenue share arrangements or it could be allocated to the relevant operator using revenue forgone.
- 5.37 Because we do not consider revenue spend below the capped price to be part of the MTC scheme we see no reason why it should be put into the MTC

¹⁵ Paragraph 4.23.

¹⁶ Paragraph 4.22.

scheme pot. Rather it seems more appropriate to distribute this revenue on the basis of revenue forgone as the customer has effectively purchased individual tickets (single tickets, return tickets or a single operator travel card). In this context revenue forgone is unlikely to result in incentives to increase price as the revenue allocation method is simply a reflection of a journey undertaken on an identified operator rather than part of an MTC scheme. There is therefore no link between the fare and the proportion of revenue allocated from the MTC revenue pot.

- 5.38 We would be interested to hear whether in relation to capped tickets there are any practical obstacles to redistributing revenue collected to the relevant operator on a revenue forgone basis for smart ticket sales that fall below the capped price. If so what revenue allocation would be appropriate?

Information sharing

- 5.39 As smart tickets are introduced more widely it is likely that better and more detailed data will become available to scheme administrators and operators, this may result in several improvements. For example revenue share systems will be more accurate and may not have to rely on expensive user diary surveys. Customers are also likely to benefit. For example, if they frequently use a certain route the operator can send them personalised information about this route, or compensation payments for late or cancelled services on rail could be automatic.
- 5.40 However, with more information available the risks of information sharing between operators become greater and it is therefore important the scheme administrators take strong precautions to ensure that sensitive data is protected. We consider that for schemes of a significant size scheme administrators should be independent and that clear procedures must be in place to ensure that information sharing between operators is limited to information strictly necessary for the efficient operation of the scheme.
- 5.41 We are minded to clarify this in the Guidance Document.

Barriers to entry

- 5.42 It is important also that smart ticket developments do not result in systems or system costs that are so complex or expensive that they effectively exclude some operators or potential operators.
- 5.43 We would be interested in hearing views on what barriers to entry are likely to arise for smart tickets and the extent to which they could prevent participation in the schemes.

5.44 We are minded to update the Guidance Document on barriers to entry taking account of new barriers that may arise.

Incentives on pricing and competition

5.45 During our preliminary review we have not identified any significant additional concerns on pricing incentives or incentives to compete on individual tickets or service arising from smart tickets.

6. Our preliminary view on recommendations

- 6.1 We are minded to recommend to the Secretary of State that the Block Exemption is renewed in its current terms until 28 February 2026 (subject to views on the duration received in response to this consultation).
- 6.2 We are proposing to make a number of changes to the Guidance Document to clarify some areas that are thought to be unclear and to update some aspects of the Guidance Document to take account of new formats and products that have emerged with the introduction of smart tickets.

Questions for consultation:

1. Do you agree with renewing the Block Exemption? Please explain and provide reasons for your answer.
2. Do you consider the continuation of the Block Exemption to be necessary to deliver integrated ticketing schemes that are beneficial to consumers?
3. Would consumer choice, in particular the variability and suitability of ticketing options, be significantly reduced without the Block Exemption?
4. If the Block Exemption was not renewed how would that influence your operations? Please provide examples and an indication of the likely costs to your business and the potential implications for the transport sector more widely.
5. Have there been any adverse consequences from the application of the Block Exemption? Please provide examples and details.
6. Has the current Block Exemption prevented any developments in the last five years that could have benefited consumers? Please provide details of the proposed development and how the Block Exemption has prevented this.
7. Do you encounter any difficulties in applying the Block Exemption rules? Please explain and provide specific examples.
8. We would welcome views on whether a longer duration for the Block Exemption would be desirable. Please outline the reasons for your answer highlighting any cost implications and associated risks of your preferred options (see Chapter 4 above).
9. Do you agree with the assessment outlined in Chapter 5 of this consultation? Please provide further explanation and information to support your answer. In

addition we have highlighted some areas where we would welcome representations:

- (a) We would welcome examples where MIT schemes have been abandoned or not commenced because of the requirements that revenue lies where it falls. We would also welcome proposals of other possible revenue share options that would satisfy section 9(1) conditions and under what conditions these would apply, for example where operators only overlap to a limited extent because their services mostly operate at different times of the day. (See paragraphs 5.17 to 5.20)
 - (b) Whether in relation to capped tickets there are any practical obstacles to redistributing revenue collected to the relevant operator on a revenue foregone basis for smart ticket sales which fall below the capped price. If so, what revenue allocation would be appropriate? (See paragraphs 5.36 to 5.38)
 - (c) Whether barriers are likely to arise for smart ticketing and the extent to which they could prevent participation in the schemes. (See paragraphs 5.42 to 5.44)
10. We consider that it is possible for new ticketing technology and products to be accommodated within the current Block Exemption (subject to clarification through revisions to the Guidance Document). Have there been any developments, in particular in ticketing technology and products, in the last five years or are any expected over the next five years that affect the Block Exemption and would require, in your view, a change in its terms? Please explain and provide specific examples.
11. Please provide any other information and/or views that you consider relevant for the CMA's review of the Block Exemption. Are there in your view other recommendations that the CMA should consider? For example, are there variations to the scope of the Block Exemption that have not been considered in this consultation document? Please provide any relevant evidence that you have to support your views.

Annex A: The Block Exemption

Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 (as amended)

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 2001 and shall cease to have effect at the end of the period of fifteen 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 1968¹ 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 three or more specified local public transport services operating on three or more routes provided that:

(a) these routes are not substantially the same;

(b) these local public transport services are not substantially the same; and

(c) for each of these routes and local public transport services, the passenger usage and revenue received from the ticket and other such tickets purchased as a result of the relevant agreement, demonstrate that the ticket is not, in practice, 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 Competition and Markets Authority (“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, in a single transaction, a multi-operator travelcard;

(b) a written agreement between operators to the extent that it provides for members of the public to purchase, in a single transaction, a through ticket;

(c) a written agreement between operators to the extent that it provides for members of the public to purchase, in a single transaction, a multi-operator individual ticket;

(d) a written agreement between operators to the extent that it provides for members of the public to purchase, in a single transaction, 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, in a single transaction, 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 where by 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

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, it 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 it 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.

Annex B: The legal framework

The Competition Act 1998

1. The Act prohibits:
 - agreements between undertakings,¹⁷ 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 (UK) (or a part thereof) and which may affect trade within the UK (the Chapter I prohibition); and
 - 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 UK (the Chapter II prohibition).
2. The CMA has additional powers to apply and enforce Articles 101 and 102 of the Treaty on the Functioning of the European Union (the TFEU) alongside the European Commission. 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 European Union (EU) provisions is their geographic scope. Articles 101 and 102 of the TFEU only apply to agreements and conduct which may affect trade between member states. The Chapter I and Chapter II prohibitions apply only to agreements and conduct which do not have a cross-border element and which may affect trade within the UK. The case law of the European Court has interpreted the phrase 'may affect trade between member states' broadly. However, to the extent that ticketing scheme arrangements affect trade within the UK, and do not affect trade between EU member states, they will be considered under UK competition law only.

The appreciable effect on competition test

3. The European Court has held that the prohibition on anti-competitive agreements is not applicable where the impact of the agreement on competition is not appreciable. As a matter of practice the CMA is likely to consider that an agreement will not fall within the Chapter I prohibition when it is covered by the European Commission's *Notice on Agreements of Minor*

¹⁷ An undertaking means any natural or legal person carrying on commercial or economic activities relating to goods or services, irrespective of legal status. For example, a sole trader, partnership, company or a group of companies can each be an undertaking. Further guidance on the meaning of undertaking can be found in the OFT publication (2004), [Agreements and concerted practices: understanding competition law](#) (OFT401).

Importance (de minimis).¹⁸ This notice states that an agreement between competing undertakings is unlikely to have an appreciable effect on competition if the combined market share of the competing undertakings does not exceed 10%.¹⁹ The fact that the parties' market shares exceed the thresholds set out in this notice does not automatically mean that the effect of an agreement on competition is appreciable. Further details can be found in the OFT competition law guidance *Agreements and concerted practices*.²⁰

The legal exemption regime

4. A legal exemption regime operates under the Act. This means that an agreement that falls within the Chapter I prohibition but which satisfies all the conditions set out in section 9(1) of the Act is not prohibited, with no prior decision to that effect being required. Such an agreement 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.
5. Section 9(1) of the Act sets out four cumulative conditions that must all be met in order for an agreement which falls within the Chapter I prohibition to be exempt from the prohibition:
 - (i) **Efficiency gains** – the agreement must contribute to improving production or distribution or promote technical or economic progress.
 - (ii) **Fair share for consumers** – consumers must receive a fair share of the benefits generated by the restrictive agreement.
 - (iii) **Indispensability of the restrictions** – the agreement must not impose restrictions that are not indispensable to achieving the benefits.
 - (iv) **No elimination of competition** – the agreement must not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.
6. Section 9(2) of the Act provides that the burden of proving that the conditions are satisfied rests on the undertaking(s) claiming the benefit of section 9(1).

¹⁸ [European Commission, De Minimis Notice](#).

¹⁹ The threshold for non-competing undertakings is 15%. This approach does not apply to agreements containing hard core restrictions including price fixing and market sharing – see paragraph 11 of the *Notice on Agreements of Minor Importance (de minimis)*.

²⁰ OFT401 as adopted by the CMA.

Block exemptions

7. Under the Act the Secretary of State may, acting on the CMA's recommendation, make domestic block exemptions for particular categories of agreement which the CMA considers are likely to satisfy the conditions in section 9(1). An agreement that falls within a category specified in a block exemption will not be prohibited under the Chapter I prohibition and is enforceable by the parties to the agreement.
8. A block exemption may include conditions or obligations. Breach of a condition imposed in a block exemption has the immediate effect of cancelling the exemption in relation to a particular agreement. Failure to comply with an obligation specified in a block exemption allows the CMA to cancel the block exemption in relation to a particular agreement.
9. A domestic block exemption relates only to the Chapter I prohibition. There is no provision for exemption from the Chapter II prohibition. A domestic block exemption does not exempt agreements affecting trade between member states for the purposes of Article 101. An agreement affecting trade between member states that falls within Article 101(1) and is block exempt under section 9(1) will be invalid and unenforceable if it does not benefit also from an EU block exemption or does not otherwise satisfy the conditions in Article 101(3) (this is the equivalent of section 9(1) of the Act for agreements that may affect trade within member states).
10. Section 8(4) of the Act requires the CMA to publish details of any proposed variations to a block exemption it proposes to recommend to the Secretary of State and to consider any representations about its proposals before it makes a recommendation to the Secretary of State under section 8(3) of the Act.

Annex C: Policy developments and the Competition Commission bus market investigation

Competition Commission local bus services market investigation

1. The OFT referred the local bus services market to the CC in January 2010, following its initial study into the sector and public consultation.
2. The CC's final report was published in December 2011 stating that in many areas of the UK bus operators faced little or no competition, leading to passengers facing less frequent services and, in some cases, higher fares than where there was some form of rivalry. The CC identified a number of factors that restricted entry and expansion into local areas by rivals and outlined a package of measures to tackle these factors and open markets up in future. Among these measures, remedies relating to multi-operator ticketing schemes included:
 - Increasing the number of effective multi-operator ticketing schemes, by giving local transport authorities additional powers to introduce and reform schemes on terms that make them effective and attractive to passengers.
 - A recommendation to review the ticketing block exemption to assist this process.
3. The government's response to the CC's report²¹ welcomed the package of measures proposed and confirmed that smart and integrated ticketing had a particularly important role to play in improving the bus passenger experience. The government welcomed the emphasis placed on competitively-priced and effective multi-operator ticketing solutions.
4. As part of its response to the CC report, DfT produced in March 2013 a guidance document,²² aimed to help local transport authorities introduce effective multi-operator ticketing schemes in their area and to maximise the benefits of existing schemes. It also sought to show how, by combining multi-operator ticketing with smart ticketing, the passenger experience could be improved.

²¹ [Government response to the Competition Commission's report 'Local bus services market investigation' \(2012\)](#).

²² DfT (2013), [Building better bus services: multi-operator ticketing](#).

Future developments

Buses Bill

5. The Queens Speech in May 2015²³ announced the introduction of a 'Buses Bill'. This bill would provide the option for combined authority areas with directly elected Mayors to be responsible for the running of their local bus services. The main benefits of the bill were described as:
 - providing the option to franchise bus services to areas willing to strengthen their governance with a directly-elected Mayor;
 - supporting a thriving local bus market with the passenger at its centre; and
 - allowing cities to promote an integrated transport system, supporting the growth and development of their areas.

Transport devolution

6. In its publication *Fixing the foundations: Creating a more prosperous nation*,²⁴ the government set out a **commitment to significant transport devolution in all of the country's city regions that elect a mayor**.²⁵ This includes the roll-out of smart and integrated ticketing systems. The government also set out its proposal to launch a new transport devolution package for the North, including working with Transport for the North to advance the introduction of Oyster-style smart and ticketing systems across bus, tram, metro and rail services throughout the region.

²³ <https://www.gov.uk/government/topical-events/queens-speech-2015>

²⁴ HM Treasury (2015), [Fixing the foundations: creating a more prosperous nation](#) (Cm 9098).