



The Association of Local Bus Company Managers

September 2015

Competition and Markets Authority

Public transport ticketing schemes block exemption review

Consultation on renewal of the block exemption

Introduction

ALBUM represents the 'non-aligned' sector of the bus industry. The Association has 150 members, representing over 50 companies, mainly in the independent and municipal sectors, who between them operate almost 5,000 buses and coaches, which is about one in twelve nationally. This makes ALBUM members collectively Britain's third largest operator - in the same league as the big five multi-national groups. Stagecoach runs 9,000 vehicles in the UK, First Group 7,000, ALBUM members 5,000, Go Ahead 4,800, Arriva 4,200, and National Express 1,600.

In general, we are concerned that the CMA looks too interested in micro-management; excessively detailed involvement and thinking of every item of coordination as evil 'collusion'. Without this, we feel the contestable market could work a lot better. We therefore suggest in response to CMA Q1 that concentrating on 'abuse of dominant position' might be a better starting point than setting precise conditions for fare coordination, when assessing undesirability of practices.

Questions for consultation

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

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

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

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

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

Likelihood and timing of deployment of smart card schemes

The DfT worked with ALBUM to undertake survey of member bus operators in England in the Spring of 2015. The survey went to 40 operators and secured a 67% response rate. Results were due to be released by DfT and ALBUM in August, but are delayed awaiting signing off by the Minister, Andrew Jones. After this, the report will be made available to the CMA. In summary the survey shows majority of operators using smart-enabled equipment, but adopting smart ticketing very dependent upon LTA lead with smart free travel concession passes. 5 of the 27 operators that responded are not smart enabled, operating an identified 131 routes between them; 60% of these have 30 or fewer vehicles. The main reasons for not going smart (thus far) were the cost, the future uncertainty of BSOG and the smart uplift, and that their current equipment was not fully written down and remained fit for purpose. That means that 22 of the 27 who responded to the survey are smart enabled, which is clearly the trend.

Likelihood and timing of development of smart card schemes?

This very much ties in with survey; the reason for delay in publishing was that the DfT needs to develop credible answers to policy issues (especially ITSO compliance) that have been aired by operators, as other means of communication (NFC, contactless bank cards, etc.) are overtaking ITSO and there is a danger of being stuck with yesterday's technology. Any replacement BE, presuming it lasts five years like previous ones, must make such different means of transacting business acceptable and legal.

What new ticket formats might be enabled?

Price capped tickets are not new, they exist now, e.g. flat fares and zonal fares. We are likely to see whole range of new ticket formats once smart and other means of transacting are developed, and if the market becomes controlled and dominated by LTAs and operations are contracted.

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

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

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

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

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

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

There is a general public presumption that integrated ticketing is a 'good thing', with objections generally relating to differential between the prices of different schemes, rather than to the principle. A number of ALBUM operators participate in multi-operator ticketing schemes and would therefore be affected by changes to the BE regime. For example:

Thamesdown Buses, Swindon, participates in a MTC agreement with Stagecoach that it considers to have been in local bus users' best interests, as it means they can access the combined network of Thamesdown and Stagecoach services in Swindon with one ticket. The ticket has not inhibited competition in the town – the two operators still compete for business – but it may have encouraged some stability in the market which arguably has encouraged greater use of the network.

Rosendale Transport (trading as Rosso) is currently involved in Greater Manchester Ticketing Ltd (GMTL: t/a System One, which includes Stagecoach, First & Arriva) and will soon be involved in "Pennine Reach" which is a SMART ticketing scheme for parts of East Lancashire. System One is not SMART as yet but will probably be so, in part at least, by late 2015. Rosso is also involved in the West Yorkshire multi operator scheme in a very small way. TFGM brokers System One, whilst Blackburn

with Darwen and Lancashire CC will broker Pennine Reach. System One offers a range of multi-modal/operator day, weekly, monthly and annual tickets. This scheme includes tram and heavy rail. Pennine Reach will be multi bus operator and will initially include, day, weekly and monthly tickets. There would be implications for the comprehensive supply and marketing of local bus services in Rossendale and the surrounding area if the Block Exemption was not renewed or replaced by a comparable facility.

Blackpool Transport do not currently have any involvement or experience of multi-operator ticketing schemes. However, Lancashire County Council with all operators in Lancashire (including Arriva, First and Stagecoach) will be introducing a scheme called NoWstar, which will be a Stored Travel Rights scheme available for all operators in Lancashire. The STR smartcard will buy operators single or day products. Blackpool Transport will take part in the scheme and will monitor how it operates. Similarly here, failure to renew or otherwise replace the Block Exemption would inhibit the development of area-wide inter-operator ticketing, which there is public enthusiasm to achieve; and into the attainment of which Lancashire County Council has invested considerable effort.

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

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

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

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

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

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

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

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

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

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

Excessive discussion of historical situations in 2.23

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

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

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

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

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

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

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

Are there any schemes that could have benefitted consumers that have been abandoned because the BE was thought not to cover them? Or schemes that you have developed successfully even though you considered them outside the BE?

When operation of the Nottingham trams passed from Nottingham City Transport to TrentBarton, ticket coordination/interavailability ceased, it is widely thought at the insistence of the competition authorities. This change has been to the detriment of passengers who had chosen to make multimodal journeys, most of which involve tram+NCT bus rather than tram+TB bus. We consider it to have been a misinterpretation that such an agreement would infringe the Guidance, as the pricing scheme related to “onward travel on complementary routes” (OFT439 Guidance para.3.5).

Revenue-sharing

What arrangements does ALBUM members generally use?

Do you have concerns over ‘revenue must lie where it falls?’

Revenue needs to be automatically allocated, e.g. by card reader on vehicle or through manual validation e.g. by the driver. This is particularly important if a ticket or travelcard, including a smart card, is bought off vehicle. Accurate revenue sharing is most essential if

purchase is from an agent (e.g. LTA facility vat bus station or convenience store) or if only one of several local operators sells tickets (e.g. at its own bus station).

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

We are not aware of any obstacles.

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

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

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

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

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

The BE arises from the fact that the Competition Act outlaws arrangements that tend to fix product design and pricing between competitors. The BE was necessary because there were considered to be overriding consumer benefits by exemption public transport ticketing from this overarching premise. The fundamental point that cash single or return ticket prices must not be fixed is understood and supported, and at its simplest adoption of a simple arrangement whereby one operator can accept another's pre-purchase tickets (which includes a return), no matter at what price they have been sold, opens up the availability much more widely as Transport Focus research indicates is wanted by consumers, whilst providing a pressure for lower pricing which is also in the consumers' interest.

Technology is moving ahead faster than the industry is able to adopt, not least because of the restrictive strictures of ITSO compliance (ALBUM/DfT survey) and will increasingly tend to move

passenger transport ticketing off the field of consumer expectations unless the BE is removed or modified.

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

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

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

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