

Department for Transport response to the CMA review of the Public Transport Ticketing Scheme Block Exemption

Key Recommendations

1. The Block Exemption should at least be extended in time as a basic minimum,
2. Going forward there should be explicit reference to smart schemes within the Block Exemption, and
3. Schemes approved by a local statutory authority or DfT should be included within the categories of exemption

Questions for Consultation:

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

Yes. The Block Exemption is a useful tool for providing legal certainty to the types of agreements that, in their own right, would benefit consumers more than they affect competition. It can be expensive to conduct individual competition tests, particularly when self-assessment does not bring legal certainty.

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

Yes.

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

Yes. The availability of options for multi-operator ticketing would be impaired 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.

Aside from the limited scope of the Block Exemption, there has been some confusion concerning the difference between multi-operator individual tickets ("MITs") and multi-operator travel card ("MTC") products which may be addressed in revised guidance.

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.

The Block Exemption was not used to facilitate the Oyster Pay As You Go scheme in London (as mentioned in paragraph 2.8 of the consultation) but it would not in any case have been adequate as Article 7 prohibits agreements relating to zonal pricing.

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.

A longer duration is to be welcomed, provided that the Block Exemption will apply explicitly to smart ticketing schemes.

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 forgone 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)

There would need to be a system which recognised that the cap was reached and addressed the changeover to a new method of allocation all within a scheme. There is a case for exploring further the technical possibilities here.

(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.

There have been major advances in technology which are a matter of public record.

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.

Further additional comments and information on the Review

- a) Smart ticketing developments can involve not just ticket formats (as indicated in the CMA's Executive summary (*paragraph 1.3*)) but ticketing types. The use of smart ticketing will allow not just the transfer of paper tickets to smart media but new products and even new approaches to the way that consumers travel (e.g. by account based travel services).
- b) It is not clear how the CMA is proposing to facilitate schemes referred to in *paragraph 2.8*, bearing in mind that the Greater London Act 1999 (under which the Oyster scheme was introduced in London) is not replicated elsewhere in England and Wales. Other Regions should have the same opportunities as London. Enhanced guidance is not adequate to address all gaps in the scope of the Block Exemption.
- c) As noted in *paragraph 3.5*, there are material benefits derived from the use of multi-operator and multi-modal schemes. Any such scheme approved by a statutory authority (local authorities, DfT---) would bring such benefits. The CMA's preliminary conclusions set out in *paragraphs 3.9, 3.10 and 3.11* (that the lack of exemption cover for these schemes could prevent risk averse parties from offering the benefits of further integration to consumers) apply equally to new schemes for integrated smart ticketing.
- d) In the case of schemes which have to be approved by a statutory authority, there is less opportunity for the operators to enter into agreements to the disadvantage of others as the way that the approval power is exercised would necessarily include competition considerations.
- e) The CMA has proposed a renewal date of 2026 while acknowledging that new technology might require changes to the Block Exemption (*paragraph 4.3*) meanwhile. This acknowledgement is not enough. The CMA is anticipating a period of 20 years up to 2026 during which the scope will remain unchanged. Significant changes in technology have already happened in the last 10 years since this Block Exemption was made and new schemes involving smart ticketing are emerging. It

is disappointing that the CMA is not proposing to extend the scope of the Block Exemption even now.

- f) The preliminary conclusions given at *paragraphs 5.7 and 5.8* raise further questions. It is not a good prospect for consumers to pay a premium for a consolidating product but the CMA is concerned that linking its price to operators' prices would incentivise an increase in the underlying prices and encourage co-ordination of fares. The incentive to maximise revenue must already be a material factor in any pricing. The addition of a consolidating product does not improve or worsen that position. Where all public authorities strive to increase passenger numbers why is the possibility of greater revenue occasioned by greater take up not considered here? For example there is an assumption that operators would only increase prices to maximise revenue but is that a given where there is still an opportunity to compete on service quality (timetable/frequency/speed/comfort) and efficiency? In reaching these preliminary conclusions has the CMA carried out any analysis of the consumer benefits (of no or limited premia for consolidated products) against any real effects on competition? We think there is a case for allowing operators to agree a price for a consolidating product (whether MTCs or MITs) if this is under a scheme approved by the relevant Authority.
- g) If allocation of revenue is derived from numbers of passengers carried (which is much easier to assess from the use of smart technology), there appears to be a greater incentive for operators to improve service quality. There is at present a link between passenger numbers carried and revenue forgone.
- h) The CMA is particularly concerned with the prospect of operators of interchangeable (i.e. competing) routes agreeing prices and routes for an MIT.
In paragraph 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."
It is likely that multi-operator ticketing schemes will require that prices are agreed between competing operators in relation to new interoperable products. The relevant test is not whether customers are used to existing practices but whether the new schemes would pass the competition test. (It is worth the reminder that Oyster in London would not have been assisted by the Block Exemption.)
If multi-operator/modal schemes were exempt if they were approved by a statutory authority rather than being only and simply

voluntary would that not address many concerns? The laboured distinction between MTCs and MITs would cease to be relevant.

- i) In *paragraphs 5.18 and 5.19* the CMA is concerned about revenue allocation for MITs and that if other than lying where it falls there would be more opportunity to track posted prices and co-ordinate pricing decisions. Prices posted for consumers will be visible to other operators. It is not clear why post hoc travel information used for reconciliation and allocation purposes is such a concern?
- j) *Paragraph 5.27* describes a paper replacement category. This will apply, however, only to the extent that a paper ticket exists. The development of smart ticketing is making possible products that may never exist on paper or which are different in a multi-operator setting.
- k) *Paragraph 30* suggests that there are no new issues associated with this category. However, even for paper tickets to be interavailable there needs to be agreements on validity, revenue allocation, standards, routes etc and this can be on paper or on smart media. For a multi-operator offering (whether for MIT or MTC products) none of that is covered under the current Block Exemption.
- l) Pricing of MTC below the cap is discussed at *paragraph 5.32* but should also include MITs.
- m) *Paragraph 5.34* indicates that operators can only agree the cap for an MTC and no prices below that. Is this seeking to reduce the freedom of operators to agree prices for an MTC (which is permitted under Article 13(2) (b) of the Block Exemption) or is it a case of deciding what the MTC is and when it comes into existence?
- n) As for information sharing referred to in *paragraph 5.40*, perhaps the CMA's views on what is considered "sensitive" here could be included in guidance.