

CMA CONSULTATION ON RENEWAL OF TICKETING SCHEMES BLOCK EXEMPTION

FIRSTGROUP PLC RESPONSE

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

Yes, First agrees with renewing the Block Exemption. Subject to the comments below, we believe that the Block Exemption (and the associated guidance) to be fit for purpose, easy to use and a helpful document in confirming the legality of operator actions, enabling them to provide sensible integrated ticketing solutions to customers.

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

Yes, see response to Q1 above.

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

Yes, as the CMA sets out at paragraph 3.10 of its consultation document, in the absence of the Block Exemption, many operators, including First, would be more reluctant to enter into coordinated ticketing arrangements with competing operators. Despite the clear benefits multi-operator schemes offer customers, the potential exposure to enforcement action would be too great.

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.

Please see response to Q3 above.

In the absence of the Block Exemption, each proposed scheme would need to be assessed on its own merits for compliance with the Competition Act. The management time and external legal costs associated with such a self-assessment, plus the ongoing legal uncertainty, would be prohibitive in many cases, particularly the smaller schemes.

Consequently, First believes that, if the Block Exemption were not renewed, it would lead to a reduction in overall passenger numbers using public transport due to the inevitable reduction in the number of multi-operator schemes available to customers.

In addition, it would run counter to the general desire of Government in recent rail franchise rounds which have encouraged bidders to offer increasing integration between modes and across operators. This has also been a recurrent theme in the ongoing debate over devolution which affects all modes of public transport.

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

First is not aware of any adverse consequences from the application of the Block Exemption.

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.

First understands that some operators have taken the view that the inability to set a common price on multi operator individual tickets (MITs) would lead to customer confusion and have therefore not pursued such tickets, resulting in passenger disbenefit. Notwithstanding the CMA's provisional findings at paragraph 5.16 of the consultation, First would like to see operators permitted to agree the price of MITs to improve the customer proposition. If

necessary, this could be conditional on a route having a Joint or Coordinated Service Agreement underpinned by a Qualifying Agreement. There are relatively few MITs compared with MTCs but these offer significant passenger benefits on individual corridors with multiple operators.

Separately, where a bus operator wishes to work with a rail operator from the same owning group to offer a multi modal through ticket, MIT or MTC, or an add-on, there is currently a risk that, due to the allocation of rail revenue to other TOCs (i.e. as a result of the rail revenue allocation scheme set out in the Ticketing & Settlement Agreement), this would technically constitute a multi-operator ticket. Consequently, an operator or owning group may consider it necessary or desirable from a risk perspective to structure it in such a way as to comply with the block exemption, despite the principal purpose and effect of the ticket being as a single operator product. This creates additional administrative burdens and may act as a disincentive on operators or owning groups from offering such products, even though they are clearly in the interests of customers and consistent with the desire for seamless integrated travel in urban areas that is a theme in current rail franchise competitions and the devolution debate. For example, the need to adhere to the requirements of the Block Exemption can prevent the smallest scale schemes (such as through tickets between the last train and connecting buses) being pursued. Further guidance would be helpful on whether there is an acceptable 'de minimis' proportion of rail revenue accruing to other TOCs on the given flows, thereby avoiding the need to produce a written agreement or to fulfil the other specific requirements of the Block Exemption in respect of this ticket.

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

Please see response to Q6 above.

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).

We agree with the CMA that a longer duration of 10 years is desirable as it reduces the administrative burden. It is also beneficial in the greater legal certainty, particularly in the context of rail franchising where franchises typically last between 7 and 10 years.

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)

Save for the comments in response to Q6 above, First is generally supportive of the CMA's assessment outlined in Chapter 5 of the consultation.

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.

First welcomes the proposed clarification on the definition of 'tickets' to make it clear that it includes all types of 'smart' ticketing. First is not aware of any other developments at this stage, although, as the CMA notes, the rate of change in this area is rapid – to this end, the CMA's acknowledgement that earlier review of the Block Exemption may become necessary is welcome.

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.

We would like to see the Block Exemption amended and/or the Guidance clarified to confirm that operators are permitted to develop zonal fares at consistent levels across a city or region. If necessary this could only be permitted in an area subject to a Multilateral Quality Partnership Agreement underpinned by a Qualifying Agreement. Consistent with the aims set out by the Government in its announcement of a Buses Bill and its commitment to significant transport devolution (as summarised in Annex C of the CMA's consultation paper), this would enable operators to work with local authority partners, other stakeholders and each other to develop and promote a better integrated transport system, but without the removal of in-market competition which is a necessary effect of quality contracts or franchising. This should in turn lead to greater efficiencies and passenger benefits, including a consistent and easy-to-understand basis on which fares are charged. This would be applicable potentially in several major conurbations under the new devolved powers agenda.