

# **Public transport ticketing schemes block exemption review – TfGM response**

## **Introduction**

This is Transport for Greater Manchester's (TfGM's) response to the CMA's Consultation on the renewal of the Block Exemption for public transport ticketing schemes. The response was produced following discussion amongst relevant TfGM directors and senior managers.

We confirm that we are happy for our response to be published.

## **CMA questions and TfGM's responses**

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

Yes.

A key benefit is the legal certainty for the operators that their arrangements, which are typically between actual or potential competitors, are not illegal. The public transport industry needs more, not less, co-operation between operators to ensure that the public transport network is as convenient as possible for passengers.

The effect of the Block Exemption is that passengers benefit from tickets that are valid on the services of all stage-carriage operators in Greater Manchester; operators benefit from the simplicity of the arrangements the Block Exemption affords and revenue from passengers who would not use public transport if multi-operator tickets were unavailable; and the effect on competition is positive, making it easier for small operators to compete with those large operators who offer tickets valid across some or all of their own networks.

Furthermore, using powers of the Transport Act 2000 (Part II, Sections 135-138), TfGM has made a Ticketing Scheme in Greater Manchester. This specifies the types of multi-operator, multi-journey tickets that all operators must make available to passengers making journeys in Greater Manchester. If operators fail to provide these tickets they will be in breach of their Operating Licence and the Traffic Commissioner can impose sanctions on them. The Block Exemption therefore plays a vital role in enabling operators to comply with their legal obligations under the Ticketing Scheme.

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

Yes.

As you note in paragraph 3.10 of the consultation document, operators are risk averse with regard to competition law compliance. There is therefore a significant risk that without the

Block Exemption, there would be no multi-operator ticketing scheme in Greater Manchester, which would not be in passengers' interests.

Multi-operator ticketing plays an indispensable role in making public transport comprehensive and convenient and it is worth pointing out that consumers – users of public transport – are not the only beneficiaries of a comprehensive and convenient public transport network. There are wider economic, environmental and social benefits: better connections between employers and workers (enabling employers to draw on a wider pool of talent and opening up more job opportunities to jobseekers); reductions in car use (leading to reduced traffic congestion and air pollution); and better connections to education, training, healthcare, retail and leisure facilities, leading to better life chances and quality of life.

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

Yes.

To the extent that the absence of the Block Exemption led to the dissolution of the multi-operator ticketing scheme in Greater Manchester, passengers would no longer be able to buy tickets that:

- enable them to make journeys requiring interchanges between operators and/or modes;
- enable them to take advantage of on-road competition between operators, where it exists, reducing the time they need to wait for the next service; or
- make unplanned journeys that they would be unable to make on a single-operator ticket.

As a general point, direct on-road competition between operators is the exception rather than the rule, both in Greater Manchester and elsewhere. The operating areas of individual companies bear little relation to the travel needs of the population, particularly in complex conurbations such as Greater Manchester. In addition, many early morning, evening and Sunday bus services are operated under contract, often not by the core daytime commercial operator. Consequently, it is purely a matter of chance whether the travel needs of any individual can be met by a single-operator ticket and many have no choice about buying a multi-operator ticket.

This point is not sufficiently acknowledged in the consultation document.

**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.**

To the extent that the absence of the Block Exemption led to the dissolution of the multi-operator ticketing scheme in Greater Manchester:

- there would be significant increases in costs, both for TfGM and for operators, in determining the legality of, and establishing, Qualifying Agreements enabling operators to accept each other's tickets;
- such agreements would inevitably only be capable of partially replacing multi-operator tickets currently offered under the Block Agreement; and
- they would further complicate the ticketing options presented to consumers, causing confusion to passengers and would potentially result in costs to operators arising from delayed boarding times as drivers dealt with passengers' misinterpretation of the ticket offer.

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

There have been no adverse consequences 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.**

We are not aware of the Block Exemption preventing developments that could have benefited consumers.

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

No difficulties have been encountered. However, in paragraph 4.26 of the Guidance, it would be useful to include further examples of what is permissible.

**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.**

We agree that the Block Exemption should be extended from 5 to 10 years for the reasons you give in Chapter 4 of the consultation document (paragraph 4.2): to reduce the burden on business and government of a further review in 5 years' time and to provide more legal certainty.

We note (paragraph 4.3 of the consultation document) the possibility that unanticipated changes in technology, significant changes in the policy or regulatory environment, or the competitive landscape may require changes to the Block Exemption, but that it, if this were to be the case, the CMA would be able to initiate a review of the Block Exemption ahead of

its expiry. It would also be open for the CMA to update the Guidelines without amending the Block Exemption. (See also our response to Question 10.)

**9. Do you agree with the assessment outlined in Chapter 5 of this consultation? Please provide further explanation and information to support your answer.**

We have reservations about the analysis of MTC price setting in paragraphs 5.5 – 5.8 of the consultation document, which we explain below. As a preliminary observation, our comments in the second paragraph of our response to Question 3 lead us to conclude that it is not self-evident that there should be any ‘premium’ for an MTC.

You acknowledge that, for various reasons – including not wishing to jeopardise sales of their own individual tickets – negotiations between operators (and local authorities) could result in MTC ticket prices that are “at a substantial premium over individual operator tickets” (paragraph 5.6).

In paragraph 5.7 you advance two arguments for rejecting a link between the price of MTCs and single-operator travelcards:

1. it would give operators, particularly dominant operators, an incentive to increase the price of their own travelcards; and
2. “if the MTC was pegged against a leading operator’s travelcard, 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”.

The validity of the second argument surely depends on the level of the premium. The argument assumes a high rather than a low premium.

The first argument needs to be considered in some detail.

In theory, the desire to protect their market gives dominant operators an incentive to keep the price of their own travelcards low. In practice, by virtue of being dominant and able to offer a network of services, such operators are in a position to maximise revenue by increasing the price of their own travelcards without fear of significant additional competition. There are obviously limits to this – there will be a point at which passenger resistance to price increases offsets any extra revenue from those price increases (i.e. the magnitude of the price elasticity becomes greater than 1.0). Nonetheless, the point remains valid that, before multi-operator tickets are taken into consideration, dominant operators have both the ability and incentive to increase the price of their own travelcards above the level that could be sustained if they were not dominant.

The revenue that dominant operators get from their own travelcards is likely to be much higher, in many cases by an order of magnitude, than their share of MTC revenue; if this was not the case, they would not be dominant operators. By making some reasonable assumptions about sales volumes, it is possible to demonstrate that any additional incentive to increase the price of their own travelcards arising from a link between the price of those

tickets and the MTC price is at the margin compared with the incentive to increase prices that already exists before MTCs are brought into consideration.

Having said this, however, we agree with you that there should not be a fixed link between the price of MTCs and the price of dominant operators' tickets. This is partly because a marginal incentive to increase single-operator travelcard prices is not the same as non-existent incentive. But more importantly, it is also because a fixed link would be too inflexible and limit the ability of MTCs to compete with dominant operators' travelcards, which in practice means it would limit the ability of small operators to compete with dominant operators.

We do, however, think that there should be a *limit* on the difference between the price of MTCs and the price of dominant operators' tickets. Dominant operators want to retain their dominance and therefore have a very strong incentive to ensure that the price differential between their own travelcard prices and the price of MTCs is maximised. They are also often in a position to ensure that this is the case: the governance structures of multi-operator ticketing companies, even if not dominated by a single operator, can lead to high MTC premiums if a sufficient number of directors have a common interest in maintaining high price differentials. Where this happens, it seriously disadvantages those passengers who are forced to use the services of more than one operator (see our response to Question 3). It also has serious implications for the efficient functioning of the bus market, since it inhibits the ability of small operators to compete with large operators and acts as a deterrent to new market entrants.

You point out that the Competition Commission (CC), in the final report of their investigation of the local bus market (December 2011), recommended a basis for Multi-operator Travelcard Companies to determine prices:

$$\begin{aligned} \text{Multi-operator ticket price} = & \\ & \text{average or median single fare} \\ & \quad \times \text{ estimated ticket usage} \\ & \quad \quad \times \text{ discount for a multi-journey ticket} \end{aligned}$$

This formula relates to the price of all single tickets, not those of a particular operator. The CC's rationale for the formula was that such a framework for pricing would increase transparency of price setting. The CC stated that the formula should not be applied mechanistically (it did not specify a value for the discount), but that it should be used as a way of facilitating decisions about an appropriate level of pricing. However, the formula was simply a recommendation and is not mandatory.

The foregoing comments suggest an alternative to the status quo which would work in the interests of passengers who are forced to use more than one operator and which would enhance the ability of small operators to compete with dominant operators:

- Make adoption of the CC's formula a condition for multi-operator ticketing schemes. This would require multi-operator ticketing companies to keep a record of the application of the CC's formula, the implications of alternative discount options

considered and the decision process by which a particular level of discount was decided.

- Set a limit on the maximum price differential between single operator travelcards and MTCs. Within the context of the present consultation, it would be unwise for us to suggest a specific limit on the differential, but we would expect this to be significantly less than the currently existing one in Greater Manchester.

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With regard to the CC's formula, we note that paragraph 4.23 of the Block Exemption Guidance states that "if the agreed MTC price is linked to the fares of the participating operators (especially if it is linked to the fares of only one or a group of the participating operators)", this may mean a multi-operator ticketing agreement is in breach of Section 9(1) of Chapter 1 of the Competition Act. Since the CC's formula is based on the single fares of participating operators, albeit the fares of all operators rather than one operator or a group of operators, the Guidance needs to resolve this conflict.

**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)**

We have no comments.

**(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 do not currently foresee 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)**

We do not currently foresee any barriers arising.

**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.**

This is a complex and evolving area and it would be prudent for the CMA to keep the whole issue of smart ticketing (as defined in 1.3 of the consultation document) under periodic review. A particular area of concern would be any developments that might become a significant barrier for small operators entering the market or participating in multi-operator ticketing.

**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.**

1. We recognise that it is difficult for the CMA to monitor the compliance of multi-operator schemes with the conditions of the Block Exemption and with the Competition Act. In this context, we believe operators should be obliged to declare the proportion of their fare revenue received from a multi-operator ticketing scheme to the relevant local transport authority (LTA). The LTA would be well placed to alert the CMA to any concerns regarding potential prevention, restriction or distortion of competition arising from the operation of the scheme.

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2. Paragraph 3.8 of the Block Exemption Guidance states that:

The block exemption does not cover agreements relating to, for example, *joint marketing of tickets* or routes. Such agreements will need careful consideration by the parties as to whether the agreements have an appreciable effect on competition, and any subsequent action to be taken. (Emphasis added.)

The Competition Commission noted in their investigation into the local bus market “that 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” (*Local bus services market investigation*, December 2011, Figure 15.1). We therefore presume that the “joint marketing of tickets” referred to in the Block Exemption Guidance does not include joint marketing of multi-operator tickets. The revised Guidance needs to make this clear.