Response to Ticket Scheme Block Exemption Consultation
September 2015

Background

The Competition and Markets Authority [CMA] has issued a Consultation in respect of a possible renewal of the Ticket Scheme Block Exemption originally established in 2001 and in revised form from 2011. It is presently set to expire in February 2016.

This response is prepared by an independent Chairman and Managing Director [✂]

[Section numbers refer to the published CMA background paper 'Public Transport ticketing schemes block exemption review' dated 5 August 2015.]

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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?
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.
In succinct terms, yes it should, nay, must be so.

The Block Exemption underpins the vast majority of the management process of an MTC. It is not essential to go into great detail on this point as its absence:

- would appear to render any price agreement process illegal.
- Whilst in the absence of such a facility an Independent Chairman or a Local Transport Authority (LTA) could fix a price, the Scheme would be unlikely to command the support of operators who would thus either not participate, short of the LTA using its powers granted under Clauses 135-8 of the Transport Act 2000 which in themselves are woefully simplistic or else such operators could actively seek to frustrate the objectives of a Scheme by a variety of means.
    - Using a headline fare to seek to influence pricing
    - Refusing to sell the MTC products, there being no process to mandate this requirement as the CC Report of 2011 was not followed up with any legislation whatever.
- Were the Block Exemption to survive in some devastated form, the basis of distribution would effectively be subject to gaming by certain operators and non-objective bases would emerge which would be likely to favour dominant operators.

The interests of smaller operators would be largely unprotected leading to further fragmentation. This is directly contrary to the thrust of the CC Report of 2011.

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

Without the Block Exemption, consumers would have significantly less choice due to the fact that:

- Easy transfer between modes without a need to buy a separate ticket for each would be impossible
- Many journeys require the use of the service of multiple operators given
    - the fragmented nature of service provision in a deregulated market and
    - the 'territorial' nature of much of that provision which in many ways has not changed at all since the 'regulated' era between 1930 and 1986.

Each of these is met by the existence of a vibrant and successful MTC Scheme.

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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.

In general the Block Exemption has functioned extremely well and has underpinned Schemes based upon conventional paper media. It has however begun to show its shortcomings in relation to the digital era.

Most importantly Schemes cannot harness the benefits of the vastly improved data availability to improve the accuracy of distribution of funds in the absence of clear stipulations in relation to 'Common Fare Geography'. This is something which is of concern to operators of all sizes but is perhaps of greater concern to smaller participants. This subject is discussed below.

In order to develop products, Scheme Managers have to be able to satisfy participating operators that as accurate a method of distribution as possible is available to ensure equitable means of distribution.

- In the absence of being able to embrace digital technology Scheme Managers have to draw on their skill and judgement in managing distribution.

- Whilst this is impartial and as objective as reasonably practical, it is takes up to six months to build a reliable data base of usage by statistical methodology and therefore
- As a Scheme Manager there is a reluctance to have several new products concurrently as each dilutes the statistical base of the total distribution. Whilst a limited dilution is acceptable, a greater one could be said to lack the transparency essential for MTCs to function satisfactorily.
  Thus:
- The lack of 'targeted' distribution has tended to stifle the creation of an enlarged range of tickets covering different sections of the passenger base as operators are reluctant to take risks on their revenues. This affects operators large and small
  - the large Groups are margin driven and no local Managing Director would want to imperil a revenue stream simply because it might benefit consumers in a niche market
  - Small and medium sized operators will resist for fear of the unknown in terms of loss of revenue.

Therefore an unholy alliance would be formed to resist product range enhancement for differing reasons.

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

No particular difficulties have been experienced following the rules and operators at large are generally anxious to ensure that the requirements of the Block Exemption are followed. However:

- This has to be tempered by saying *very* clearly that an experienced and strong Chairman underpins this statement as such an office bearer can effectively determine the equitable rules of engagement in a Scheme and provide strong guidance to a Board:
  - Those challenging him would not find it easy to suggest ignoring such 'guidance' viz:
  - In the present case [✂] to seek independent legal advice [✂]
  - Thus such informed guidance effectively challenges dissenters to counter with their own advice if they disagree.
- A consistent approach to legal compliance and process generally enables a Chairman to increase his personal effectiveness in an area in which the 'protection' of the Block Exemption could, *in extremis* be withdrawn and the participants subject to the legal remedies and penalties associated with any ongoing breach.
- A weak Chairman less versed in this critical aspect could find himself in some difficulty however as low value 'opinion' is substituted for substantive advice. Whilst strictly speaking legal 'advice' is merely the 'Opinion' of Counsel', it has considerable considerably more intellectual rigour which distinguishes it from 'lay' opinion.

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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).

The premise that its validity should be extended to ten years is well founded: A reduction of the burden upon Scheme operators is warmly welcomed but would also confer stability.

- Whilst management and other costs in preparing a response such this are not huge, they are nonetheless time consuming thus any such tasks should be minimised unless there are sound reasons to demand them. In reality these costs are *de minimis* to a large Scheme in a Metropolitan area but could be disproportionate to a small Scheme.
- However a mechanism to trigger a Review is critical; a consultation about a consultation is not appropriate but the circumstances in which a review could take place needs to be of an ecumenical nature such that no party or sector can effectively veto that move. The transport industry remains a broad church and the interests of all parties need to be formally considered.
- One very effective approach might well be to maintain a panel of Scheme Chairmen who could inform the CMA on current issues and any short comings in the regulatory structure which is to be followed. Whilst this could not be the subject of any regulatory approach, as part of the CMA's market intelligence activity it would confer considerable benefit.

Other variables which support the instigation of a 'trigger'-based intermediate Review Process Presently the new Conservative Government is very actively pursuing 'Devolution' Policy which entails 'powers' and 'duties' it must be said moving from a centralised Government model to a regional structure empowering locally elected 'Metro Mayors' and associated regional Authorities

Moreover, it is quite likely that different structures will emerge. These are now crystallising:

- To Greater Manchester, which is being held out as the model to which other areas should aspire. This pioneering area has had substantial powers bestowed upon it including management of the regional National Health Service provision.

- In the transport arena, Transport for Greater Manchester, the executive body responsible for managing transport provision across bus, the light rail system and a heavy rail operation upon which many regional passenger movements are dependent has declared that it sees a Quality Contract model as most appropriate.

- The Sheffield City Region Transport Committee and Executive (South Yorkshire and surrounding areas) strongly favours a partnership approach,
- others such as the North East Combined Authority, Cornwall County Council and others have declared themselves to favour 'Quality Contracts' (QC), (cf Transport Act 2000, Local Transport Act 2008) whilst there are also other options which could be brought into play.
- In a predominantly rural area Cornwall County Council has, in its bid for devolution, declared that it wants franchising powers to be amongst its chosen selection of powers/duties.

This is a broad cross section of approaches, different camps will emerge over the next six months.

- Whilst a QC led approach could be said to remove the need for an MTC Scheme for the larger part, there will inevitably be services originating from across the QC boundary.
- Thus passengers who wish to avail themselves of such services either wholly within the QC Area or in part could reasonably expect to enjoy the benefits of an MTC.
- In this circumstance it may well prove appropriate to afford such operators a meaningful voice in the management of such scheme in which the Local Transport Authority (LTA) could well enjoy a dominant position by weight of vehicles or mileage as the operator would merely be its contractor.
- Such voice may well demand disproportionate voting rights else the imposition of an alternative mechanism on such a scheme to temper that dominance and ensure that a barrier to entry is not created. This approach would be essential to nurture or even preserve competitive service provision in a free market.

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9. Do you agree with the assessment outlined in Chapter 5 of this consultation?

Multi Operator Travel Card pricing

5.5

The Consultation rightly hails this as being a critical consideration which can excite very contrasting views and the possible manipulation of pricing to suit larger participants.

The Competition Commission report "Local bus services market investigation" of 2011 which pertained to the supply of such services in the provinces rightly focussed upon ticketing and set forth a complex means by which an MTC price might be set. The key issue in this connection is the premium that an MTC 'enjoys' over similar or near similar single operator products. The points raised in section 5.7 of the Consultation document are well made and so it is probably appropriate to break down the influencing factors.

1. The costs of operating an MTC scheme
2. Consideration of whether the extra convenience to users of having the ability to use *all* buses/modes of transport in a locale is one which should command a cash premium and, if so, at what level might it reasonably be set.
3. The Competition Commission perhaps rightly averred that an MTC was a key means by which a smaller operator could play a part in a full local network.
4. Any price relationship to a basket of equivalent local operator products

Thus a framework for dealing with such conflicting issues would be desirable to reduce the conflict in interests between operators large and small and also between operators of all sizes and 'Local Transport Authorities' (LTAs). The role of an independent Chairman can be crucial in such discussions in that he/she can seek to build a consensus on some occasions. However, all too often, that endeavour can be easily frustrated by one large player.

It would therefore be beneficial were the guidance to reflect on these points in a simpler manner than the CC Report than that in the CC Report. As a straw man to stimulate debate on these points:

- item 1 (costs) is a reasonable requirement,
- item 2 can be seen by some as a means to frustrate 3. This is ripe to be disallowed on the grounds that
  - the user is unlikely to make extra boardings and
  - therefore thus no additional benefit is being taken and
  - therefore should not incur a cost penalty simply because of the (fragmented) manner in which services are provided.
- The use of 4 can be seen as slightly more contentious if there are disparities in the prices of the single operator prices prevailing.

- However the thrust of the Consultation fails to give adequate weight to the inevitable effect of two similarly sized 'large' operators who would reasonably use price competition as part of that market. The overriding tenet is likely to be that neither wants to be 'undersold' and thus the fares inevitably converge.
- This does not imply any inappropriate behaviour but merely reflects the mechanics of the market place – for example supermarket operators employ staff to survey each other's prices and thus the term 'price match' was born or more prosaically 'never knowingly undersold.

Such a change would bring necessary clarity to this issue and remove an unnecessary cost penalty that users presently face in some areas.

5.4/5.7

This section discusses the part which a single operator ticket price should play as a basis for fixing an MTC price and essentially dismisses it. However that is too simplistic an approach as the existence of two larger operators in an area can effectively create a 'market price' which both user and LTA see as a start point. It is appropriate that the revised Guidance recognise that fact, despite some of the adverse consequences described.

The CC Report expressed proposals in this regard. However these do seem overly complex and it is suggested that where the single operator product prices do diverge the Chairman should use two factors:

- Those prices
- The respective market shares by registered mileage as evidenced by certified BSOG claims to weight the single operator prices and then
- Simply calculate the average.

The revised Guidance should local factors to be introduced on an exceptional basis.

One warning bell must be heard at this point: There is no merit in using an advantageously priced MTC to simply enable a small operator to mindlessly 'cream off' passengers along an attractive corridor at popular times Monday to Friday. The larger operator generally provides a meaningful service in the evening and on Sundays when such handsome traffic is simply not on offer and at times at which the smaller operator simply does not open. However:

- The outcome can be that the primary operator withdraws its evening/Sunday services and leaves those to the LTA to subsidise, (Transport Act 1985 at Sections 89 or 91), if it sees fit.
- Given the paucity of money under 'austerity' such subsidy is less likely to be available and the public is the party that suffers a reduced or even non-existent service.

There is one further aspect to pricing which needs to be addressed and that is how service providers whose costs of operation are genuinely higher than those of bus operators generally. The obvious examples being the railway and light rail operations.

How these issues should influence price is perhaps different.

1. **Light rail (tram).**
   If the Scheme intends to offer separate products, bus only, bus + tram, then a similar calculation to that above is appropriate with the equivalent product of the tram operator added.

2. **Bus+tram+rail or bus +train** – depending upon facilities available.
   Any product which combines rail is necessarily more complex. Rail prices are far from consistent;
   - frequently prices for local flows are set by an Intercity TOC which views pricing on the basis of its long distance fares but
   - in other instance a TOC providing services on a predominantly local basis is likely to have much lower fares;
     - these often relate to historic influences such as Metropolitan Rail Grant made available to Passenger Transport Executives by central government in the mid-1980s (Transport Act 1985) or even
     - Times prior to that when PTEs (and their political) masters entered arrangements with the British Railways Board to subsidise prices, in this instance using money raised via local rates.

Now it is not the place of either a Block Exemption or this submission to seek to introduce new regulation in this area save in one of these cases. The public is already being deprived of the opportunity to enjoy the benefits of an MTC in the former instance. [✂] The product has consciously been deleted from the catalogue. It is therefore suggested that such season ticket prices should be restated on the basis of a local 'point to point' price rather than reflecting the intercity basis otherwise used by a local TOC.

Noting also that rail prices are closely regulated both by the Railways Act and DfT and thus the TOC has minimal opportunity to manipulate fares arbitrarily those levels generally can form a basis from which to calculate an MTC. It is suggested that, whilst the railway cannot enjoy a guarantee that its fare levels be 'covered', t it does have some options to reduce levels to alter specific fares downwards. Therefore the costs of managing an MTC should be added plus a reasonable uplift in relation to road elements. However that 'compartmentalisation' has no place in revenue distribution and the railway should expect no preferential or guaranteed share as some schemes afford it presently. A requirement to participate must remain however in the public interest.

5.9

Operators have a reasonable expectation that they will be reimbursed in proportion to the journeys taken by users. This falls into two extremes, firstly those operators with a higher proportion of short riders, very likely in an inner urban area and, secondly, those whose riders travel a greater distance say from outlying areas to a commercial hub such as a City or large town. The overriding principles are that the method of distribution must be equitable to operators of all sizes, reflect the operations of each and be both objective and transparent to all. Thus there needs of a stricter regulation of distribution methodologies not less as suggested by some parties and certainly nothing as crude as simply dividing the pot by the number of boardings to get to a capitation payment.

There must also be consideration of the need to ensure that the administrative arrangements in this regard are proportionate to Scheme size. However the practical situation in which administrators find themselves in late-2015 is that multi operator ticketing is set to grow in significance both by the results of policy declarations of the five major bus operating groups as well as the demands of 'Devolution' where both local politicians and LTAs favour such arrangements.

Classically revenue apportionment was intended to reflect:

- The numbers of passengers travelling on the services of each operator
- the travel taken (measured by distance) by such passengers.
- It has also been considered reasonable to reflect the differences in how fares are charged to passengers which normally reflects the construction of a fare table in that the fees for shorter distances are usually higher per kilometre than those for longer journeys also by kilometre. This can be reflected 'reasonably'[1] replicated by the adoption of a 'Boarding Charge' element in the reimbursement arrangements for each passenger travelling.

Various methods have been used to simulate these factors the most accurate of which is to employ a process of 'survey and scale' whereby the operations of each participant are surveyed to enable the following to be established:

- The numbers of passengers using the MTC are counted
- In larger MTC Schemes data this data is gathered by MTC product
- The distance taken by each passenger is measured using origin and destination data
- The overall pattern of surveys reflects both time of day and day of week to account for 'real' passenger use patterns
- In each instance the volume of surveys is proportionate to the number of services operated usually measured by departures although total 'registered' mileage operated is another possible proxy.
- At this point the surveyed data for each operator is grossed up by scaling factors to reflect the total operations of participant.
- It is also statistically preferable to employ an average of these elements over a rolling period of twelve months (either 12 calendar months or 13 financial periods as may be) to remove the variations which can arise in a single period. This in turn removes the possibility of swings in receipts by operator which enables sensible budgetary control.
- This method of working makes an assumption that all operators 'lose' a fixed proportion of departures due to breakdown, accident or other reason. This is a valid industry wide statistic but an independent Administrator can employ a sense check to ensure no operator is reimbursed for a day on which its staff might be on strike or else an operator for who there is documented significant loss of mileage due to a disproportionate staff shortage or similar reason.

Confidence in such a method is given by a regular statistically review of process and outputs by statisticians and this has been demonstrated to be a remarkably and transparent robust process.

Now the Consultation rightly refers to the onset of the digital era manifested by smart cards. Whilst this rightly offers the passenger a modern and potentially convenient method of paying for and manifesting a transport ticket it also offers administrators a much easier way of both gathering data of the fashion set forth above and also of using to determine cash distribution accurately.

New and considerably more accurate data is available and its use should be mandated in order to ensure both an entirely equitable approach which can take account of any short term fluctuations which are an inevitable and potentially inequitable short coming of the older methods.

[1] Used in a legal sense.

(1) Passenger Count by Class of ticket

This is one of the simplest elements of distribution in the digital era.

- As each passenger boards a bus he/she 'checks in' via use of a smartcard.
- The class of ticket[1] is chosen by that passenger (Adult/discount by age/other entitlement/area chosen) etc. and validity period at the point of purchase, much in the same way as a product on paper media.
- Whilst to set up the entitlement to a particular product requires work on the part of both Administrator to create and operator to configure its Electronic Ticket Machines (ETMs) to accept it, it is a 'one off' task.

Thus the administrator has complete and accurate data on products sold and boardings by operator by ticket type for each participant.

(2) Distance Travelled.

The other variable element of distribution is journey length measured in kilometres. In an ideal world this would be achieved by requiring passengers to 'check out', i.e. the creation of a closed system in the manner of London Underground and others. Ironically the only operator known to have implemented this in the provinces is TrentBarton which actually uses it for its own fare products not an MTC Scheme. Whilst traditionally this is acquired by the survey/scale process noted above it is possible to calculate this to a very high degree of accuracy and at proportionate cost. This is done by a process of Reverse Journey Matching (RJM). This might be simply be described as:

- Tracking the use of each smartcard on a particular day
- If it is seen once in the morning or whenever boarding at a specific boarding stage then is seen once only again that day, the second boarding being along the line of the route there is a more than reasonable chance the its bearer has returned to the point of origin.

Thus it is possible to calculate the distance travelled by reference to the 'crow fly' distance between each stop. The two trips can then have that distance assigned to each operator. To calculate that distance already established distances between such points are used but to turn this into a reasonably practical something called Common Fare Geography is required.

Common Fare Geography:

In order that Reverse Journey matching can be managed reasonably, it is necessary to use common boarding points – i.e. fare stages whose relationship by reference to distance can be set in hand on a one off basis. Notice that this should not include route miles as so to do would lead to interminable re-basing of the model and an unacceptable amount of work – for which the benefits are small to say the least if not vastly outweighed by the cost of implementation in the first place.

Early work has demonstrated that the effective sample rate obtained will approximate at 60% rather than the <2% of existing methods: That therefore is a goal which the new Block Exemption/Guidance should mandate. However to achieve this it is necessary for the MTC Managing Organisation to be able to mandate 'Common Fare Geography' i.e.

- that all fare stages and thus boarding reference points are the same across all operators.
- That the *areas* of validity for all MTC products are the same.

To what extent is Common Fare Geography justifiable?

Within an MTC Scheme the use of Common Fare Geography is essential, firstly in managing the Scheme and secondly to create simplicity/comparability for the public. In turn this invites the question 'Can this be done under the terms of the current TSBE?' Specific legal opinion avers that it appears to meet all requirements of existing Competition Law but it would be essential to Scheme Managers that any new TSBE gives specific approval to implementing this to put the matter beyond doubt. It must be robustly stated that this course of action does not, in any way, impinge upon the ability of operators to set their own 'single', 'return' and period pass fees.

Practical Considerations

The CC Report of 2011 sought to balance the market by ensuring equal access to the broad market for smaller/medium sized operators. Many really do not understand how 'equitable apportionment' as a concept can be achieved; indeed many still believe that their interests are subservient to those of the large Groups where distribution is in play. Whilst this is assuredly not so, a more defined approach to this key aspect of the operation of MTCs would achieve a great stride to obviate this short-sighted concern.

- the minds of this group of operators being focussed on the more traditional fares – 'singles' and 'returns', their offers of longer period offers – 7-Day/28-Day are of little merit due to the limited nature of their operations.
- The travelling public therefore benefits as this change would entrench the existence of MTCs to their considerable advantage of the travelling public.

The technology to follow an entirely equitable solution is now readily available; curiously harnessing this approach reduces the burdens upon Scheme Managers and has a considerable benefit that its costs are reduced by the elimination of costly labour

intensive surveys and need to manipulate data thus collected. Apart from possible *de minimis* payments to very small participants in the market who might operate infrequent niche services this approach completely obviates the need for peculiar local ways including agreeing that a party is entitled to a set percentage of revenue notwithstanding passengers may choose not to use its services and thus it has no incentive whatever to be competitive in either service provision or price. That in effect is a gross distortion of the market which has no valid justification whatever.

5.12

This question is predicated upon the view that MTC revenues form "a small proportion of the revenue for the operator". This however must be questioned in the light of the changing face of ticketing described in the comments on Clause 5.9 of the Consultation Document narrative above. However detaching the correlation between operator pricing and reimbursement as described in Clause 5.9 removes this concern and leaves operator pricing to the effects of the market generally.

It is perhaps helpful to consider the place of small MTC Schemes at this point. There clearly needs to be a measure of proportionality between total scheme revenue and the costs implicit in disbursing such revenue.

- Which Scheme falls into which category is a concept which might properly be considered in formal Guidance.
- It is unlikely that any Scheme in either a metropolitan area or any large/medium size town/city or general area but guidance on the point which distinguishes one from the other would be useful to Scheme Managers.
- As a discussion point and, in view of the much reduced costs which prevail in the digital era, maximum scheme revenue of £500,000 per annum is a good start point to define small schemes.

However this is a value which should be kept under review as the relevant software to operate more sophisticated distribution methodologies becomes available cheaply as it certainly will in a very short space of time.

5.14

This point has been covered by the response to Question 5.9 *et seq.* and demonstrates, that rather a consideration of relaxing conditions on revenue sharing, the reverse can readily apply and that it should be tightened.

- Whilst this may cause some Schemes a need to amend their traditional operations, this should been deemed necessary as the circumstances which gave rise to them are substantially removed by the advent of technology.
- There is a concern in doing this that certain shares of revenue enjoyed by either one operator over another or one mode over another may shift, possibly markedly, the absolute requirement of achieving an equitable distribution outweighs such concerns.
- 'One man's gain is another man's loss but it is very difficult to support a concept that ensures one party benefits at the direct expense of another.

A business transition period to enable a 'loser' to adjust his business is reasonable – say a maximum of six months.

9(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)

Multi-operator individual tickets or MITs do not directly concern the operator of an MTC scheme as, by their nature, such schemes must embrace three or more operators generally. However it is pertinent to consider whether two operators could adopt an MIT approach in order to undermine an MTC Scheme generally and frustrate the purpose of the CC Report 2011 which sought to remove the disadvantage implicit by the differing scale of operations of operators generally.

- That Report sought to establish the importance of an MTC Scheme in enabling smaller operators to be part of the broader Network in any locale.
- Thus two operators combining to establish an MIT, lawful in itself, might have the effect of squeezing a smaller operator out of the market to their joint benefit.
- This arises as passengers buying the tickets of a smaller would find themselves restricted to that operator which is very likely to have a far smaller level of operations on a corridor potentially dominated by the timetables of the larger parties.

It would therefore appear necessary to question the circumstances in which this might arise. Whilst a key feature of an MIT is that its participants must have complete freedom to set their own fares, in the 'smart' world considerably more opportunities to exchange information arise which cannot be obviated by any artificial 'Chinese wall'.

Clause 5.18 refers to such arrangements being "generally small scale". However that is a generalisation too far.

- As an example one could consider a corridor in a large area dominated by two operators where that corridor is in fact a significant part of the total operations.
- Thus by establishing an MIT, even taking the position that revenue 'lies where it falls', the two operators concerned thereby render any competitive operation both uneconomic and extremely difficult to mount.

It is therefore suggested that this type of ticketing needs to be reviewed in this light and, where an MTC alternative exists in that locale, should be prohibited as anti-competitive by its nature. Whilst that might be considered to disadvantage the travelling public, the existence of the MTC restores the option to use any bus – on the same basis as other users in the same areas. Such a product fails any reasonable and objective Public Interest Test as it effectively creates a monopoly by those operators, discourages competition which in itself would be of benefit to the public. The existence of an MTC removes any disadvantage to the public and supports competition.

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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.

Whilst it can never be said that technology will not offer new opportunities in the future it is likely that in the next five years nothing that is not known today will be introduced. This assertion covers 'M' tickets which can function in the same manner as smart tickets if operators generally equip there vehicles with the required readers; it also covers new, (to the UK), proximity reading of credit cards etc. in lieu of STR stored on cards.

If the revised Block exemption were to be valid for ten years, it might prove appropriate to consider a review after five years although it is difficult at this range to predict what might trigger that. The key principle of equitable distribution of the sales value will remain valid and the opportunities created by the move to smart card will ensure that Schemes maximise their commitment to this.

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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 Consultation as published does not refer to the following issues which are likely to arise in the approaching years and are considered significant omissions..

(i) Operator Sales of smart products

Whilst sales of MTCs by operators, frequently on board vehicle, is to be welcomed as a possible passenger utility which reflects the CC Report this brings a critical problem which revised Guidance must address if many of its other strictures avoiding data visibility are not to be avoided.

Such sales of MTC products can be made by three main ETM technical facilities within the mandated ITSO protocols. The TSBE needs to stipulate the acceptable methods. The options are:

a. The 'Distributed Model'.
b. The use of product 'keys'
c. The use of 'Proxy ISAMs'.

The Distributed Model involves each vendor creating its own version of the smart MTC and selling that. However that falls down in that vending operator can see the complete, use of the products it sells on any other operators' services upon which it is used. Curiously the MTC Manager cannot and is entirely dependent upon the vending operator supplying the data to him, to enable distribution, in complete form.

The latter two methods, Product Keys and Proxy ISAMs ensure that the vending party can only see use on its *own* services, and the Scheme Manager can receive data at first hand. [✂].

The revised Block Exemption and Guidance needs to address the exchange of confidential information in considerably more detail. It should be clear that the 'Distributed model' must NOT be used, however attractive its ease might appeal to some. The resultant visibility of data fails the current 'necessary for the administration of the Scheme test' (Articles 9(1) and 9(2) of the Block Exemption and Guidance para 4.16) as the alternative models are equally available, developed and proved, and, once set in place will function as may be required.

(ii) Use of a smart MTC on the services of one operator only.

It is also now possible for an MTC Scheme Manager to see use of each smart card in any stipulated period. In the event that a specific card is only used on the services of one participating operator it is not unreasonable to aver that the fee paid for such product, (less costs) should accrue to that operator. There is an advantage to the travelling public in-so-much that it will encourage the take up of MTCs and thus enjoy the flexibility it offers.

The obvious parallel is in 5.28 above and in the Consultation. Here it is deemed reasonable for the value paid for a series of journeys made which fall below the cap in the capping period should be paid over to the operator(s) as revenue forgone. Can the same be done if the passenger reaches the cap solely on the services of one operator?

There is something of a risk that an operator might game the scheme by this option and that requires further consideration.

5.21 Issues relating to smart tickets.

As noted, the advent of the smart era raises an opportunity for the creation of new ticket types as well as significant 'soft' benefits such as automatic payments funded from bank account or credit card thus removing a need to buy at shop or on vehicle.

- The consultation document asserts that "…there appears to be a variety of ticketing…"
- Whilst that is true of the global market place it is not of the UK provinces in that DfT has to practical effect mandated compliance with the ITSO protocols which are © HMSO and are therefore 'open technologies'.

This mandate is underpinned by the English National Concessionary Travel Scheme which perforce can only function with common technology as it covers the whole of England. For clarity, Wales and Scotland both have their own individual schemes as this is devolved a responsibility: These too use the same technology given that many buses and operators serve any two of these areas on individual services. Whilst that protocol is far from the most effective that is available, that consideration is irrelevant here.

(iii) Who is my customer

[Note: In this section it is assumed that the requirements of the Data Protection Act 1998 will be followed: This is not repeated to avoid such repetition]

As the use of MTCs grows and the shift from single operator tickets follows, so too will concerns over how marketing to passengers should be arranged. Classically little was known about most passengers as they simply bought a paper product quite anonymously. However in the smart era there is a real opportunity to gather names/addresses and travel patterns of individuals.

It would therefore not be unreasonable for those operators providing the travel facilities to be able to market to those using them. However such access needs to be tempered and both the Block Exemption and Guidance need to reconsider the issue of access to data held by and MTC. The following is suggested:

That the IPR in this data is unequivocally that of the MTC Scheme Company. The potential licensees, (i.e. operators), should inform the MTC Operator of its intentions and request that a Licence to use the data be granted to it - on equal terms to that available to other participating operators.

Those terms should be defined at least in the Guidance although there is a significant issue which should be closed down.

So:

- An operator may have sight of and use those names and addresses of passengers whose registered smart cards have been 'seen' on its services for the purposes of marketing those services/communicating details of timetable changes and any other relevant material.
- If a corridor is 'shared' then both such operators may have equal access to the data but the MTC Operator is to be under no duty to advise one party of the other's request.
- An operator may not be allowed sight of data for routes or areas where it has no present interests.
- If a 'Partnership' as envisaged by the Local Transport Act 2008 is in place then details of users of the services covered by such partnership may have sight of and use this data for the purposes of marketing to users generally.
- An LTA may request such data for informing passengers of changes to services and other similar purposes.

All those receiving such Licenses to confirm that they will use it for the agreed purposes and in compliance with the Data Protection Act 1998.

Barriers to entry

In order to enable a smart-based Scheme to function correctly and to maximise public benefit it is recommended that the Block Exemption should give:

- the option to Scheme Managers to require the adoption of smart ticketing by all participants or
- If that is considered to be an entry barrier, then the ability to pass on to such operator any costs arising from alternative methods that it is necessary to employ to ascertain its share.

Whilst such a requirement might appear oppressive, it should be seen in the light of the many other requirements imposed upon a would-be operator: These include:

- Suitable garage premises (not being the public highway)
- Specified maintenance facilities
- Registration of services and the ability of a Traffic Commissioner to impose other requirements upon the operator.
- a requirement that buses be 'accessible' and so well-maintained and otherwise sound vehicles might no longer be used.

The Department for Transport has long issued ENCTS cards in smart form and has incentivised the adoption of smart facilities by an 8% enhancement to the BSOG arrangements. More recently it has mounted the 'Smart Cities' initiative. Thus a requirement to adopt smart ticketing is *de minimis* to other requirements to enter the industry and is supportive of Government initiatives in this regard.

Incentives on Pricing and Competition

There few specific concerns on how the price of an MTC might be skewed generally but the CC Report of 2011 did speak of premia over single operator equivalent products.

Under Devolution it is likely that the premia of MTCs over single operator products will be sharply decreased and it is conceivable that single operator products may even disappear. [✂]. Either of these instances tends to mean that one operator could:

(i) either drive prices up or
(ii) Larger operators may prevent there being a price increase to the detriment of (a) smaller operator(s).

For example:

a) In a situation where (say) a fuel 'hedge' of one major operator had ended and its successor was at a higher price to reflect the swings of pricing of Brent crude oil which is the usual base, it could seek to force the MTC price.
b) The converse situation could arise that the putative larger operator had 'hedged' its fuel prices whereas the small operator was forced to buy on the 'spot market' at considerably higher prices. It might therefor *need* a price increase to remain in business whilst the larger one does not.

It is difficult to manage this position equitably other to have a general presumption that prices will only change annually and then only by established externally driven values. This perhaps serves the interests of users generally and effectively means that all participants are required to manage their businesses efficiently and cannot expect to be able to overcome a failure so to do by simply resorting to short term price relief.

ends

[✂]

Appendix 2

Broad Outline of a Model Distribution Regime for an MTC

NOTE: Italicised elements are replaced by smart data – see below.

(A) Sales revenue is divided into a series of 'pools' each arising from a specific product. +

(B) An MTC is an **apportionment** scheme. An individual operator's payments therefore depend on:-

(1) Total MTC Income per pool less commissions and expenses.
(2) Total MTC passenger boardings and kilometres per pool*
(3) The individual operator's share of total boardings and kilometres per pool*
(4) Values used are a 13-period rolling average; this allows for varying levels of survey in each period. Surveys are created, by operator, to ensure they reflect the totality of its operations. They are usually conducted by the LTA as part of a broad menu of on bus/tram/train operations.

(C) For each apportionment period:

1. Establish Total Value of each Pool **£A**
2. Establish total number of passengers across all operators *by survey/scale** **P**
3. Establish total distance travelled (km) across all operators and all passengers by *survey/ scale** **D**
4. Establish 2 and 3 for each operator *from data collected/13 months* **OP and OD**

Where a boarding charge is used:

- Calculate pool value after deducting boarding **payment i.e. £A minus Px10p = £T**
- Calculate distance payment per kilometre **(£K) i.e. £T divided by D = £K**

Then each operator receives

- OP x 10p = **£OP**
- OD x £K = **£OD**
- £OP + £OP = **Operator Travel Payment £**
- **Less** value of sales, (minus commission if paid), made by operator on vehicle or at an Office to give **Operator Payment NET £**

- The sum of all the individual pool amounts is the total payment made.

- Simply dividing Operator payment by the total number button pushes on an ETM does not represent the value of a passenger on a specific service.
- Reflecting revenue foregone as a means of reaching reimbursement would be illegal under TSBE as it would encourage manipulation of fares to increase allocation under an MTC Scheme.

NOTE Smart Data Sources*

	Old Methodology	**New Digital Methodology**
P Passenger Count	Survey/Scale over rolling 13 month period	Quantum of passengers 'checking' in using data reported to Scheme Managers Back Office on HOPS/HOPS basis. Normally no enhance for uncontrolled circumstances
D distance	Survey/Scale over rolling 13 month period	Reverse journey Matching: Uses data in Scheme Managers Back Office as above and agreed Fare Geography as noted in narrative.

- **P** will be determined by smart data for those operators thus equipped.
- **(D)** will be made by 'Reverse Journey Matching' or exit data if available (railway)
- Survey/Scale will be used for other participants although an MTC Board could approve the imposition of charges incurred for this option.