

Public transport ticketing schemes block exemption review

Final report and recommendations to the
Secretary of State

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Summary

1. The purpose of this document is to make a recommendation to the Secretary of State for Business, Innovation and Skills (the Secretary of State) as to whether the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 (SI 2001 No 319), as amended¹ (the block exemption) should be renewed or varied.² Absent a renewal or variation of the block exemption, it will expire on 29 February 2016.
2. On 5 August 2015, the Competition and Markets Authority (CMA) published a consultation document pursuant to sections 8(1) and 8(3) of the Competition Act 1998 (CA98).³ The consultation document followed a preliminary review of the block exemption and its operation, including meetings with a number of key representative organisations connected to the transport industry and revisiting the reviews carried out by the Office of Fair Trading (OFT) between 2003 and 2005, and in 2010.
3. In the consultation document, the CMA sought views on its proposed recommendation to the Secretary of State to renew the block exemption until 28 February 2026 (subject to consultation views on the duration of the block exemption). The CMA also proposed to revise *Public transport ticketing schemes block exemption: Understanding competition law* (OFT439, November 2006, as adopted by the CMA board) (the guidance document),⁴ to clarify some areas which are thought to be unclear and to update some aspects of the guidance to take account of new formats and products that have emerged with the introduction of smart tickets.
4. On 28 September 2015, the CMA published on its webpages 31 responses to its consultation. Responses suggested areas where the block exemption or the guidance document could be improved and we are grateful for the input and ideas we have had from the industry. This document summarises the main areas where respondents thought that the block exemption should be varied or extended and explains the CMA's view on these. It also sets out the CMA's recommendations to the Secretary of State.

¹ By the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) (Amendment) Order (SI 2005 No. 3347) and the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) (Amendment) Order 2011 (SI 2011 No. 227).

² Section 6 of CA98 provides for the adoption of block exemptions, exempting a category of agreements from the prohibition in section 2 of CA98.

³ CMA (2015), *Public transport ticketing schemes block exemption review: Consultation on renewal of the block exemption* (the [consultation document](#)).

⁴ The [guidance document](#).

CMA recommendations to the Secretary of State:

5. The CMA is recommending that the Secretary of State:
 - renew the block exemption for a ten-year period until 28 February 2026;
 - simplify the definition of multi-operator travel cards in the block exemption to make it easier for operators and local authorities to apply; and
 - make changes to Article 4 of the block exemption to ensure that the block exemption allows for the introduction of smart formats and products.

1. Introduction

- 1.1 By virtue of the block exemption, certain types of transport ticketing agreements are exempted from section 2 of CA98 provided that they comply with the conditions set out in the block exemption.⁵ Section 2 of CA98 prohibits agreements which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom and which may affect trade within the United Kingdom, unless they are excluded or meet the conditions for exemption contained in section 9(1) of CA98 (the Chapter I prohibition).
- 1.2 Benefits for public transport passengers and other consumers can derive from having integrated ticketing schemes (for example, through cost or time savings, or through reductions in external costs such as atmospheric or noise pollution). Certain ticketing schemes are however likely to prevent, restrict or distort competition to an appreciable extent as they rely on a degree of cooperation between competitors to operate and are therefore likely to infringe the Chapter I prohibition, unless they satisfy the conditions in section 9(1).
- 1.3 Where the benefits to consumers outweigh the negative impact on competition, and provided that the restrictive provisions are indispensable and do not go so far as to make possible the elimination of competition, such public transport ticketing schemes should satisfy the conditions in section 9(1) so as not to be prohibited. The block exemption provides comfort that certain agreements between transport operators and others to offer multi-operator tickets which are likely to meet the criteria of section 9 of CA98 are exempt from the prohibitions in section 2 of CA98 provided they meet certain criteria.
- 1.4 On 5 August 2015, the CMA published a consultation document pursuant to sections 8(1) and 8(3) of CA98. The consultation document followed a preliminary review of the block exemption and its operation, including meetings with a number of key representative organisations connected to the transport industry and revisiting the reviews carried out by the OFT between 2003 and 2005, and in 2010.
- 1.5 In its consultation document, the CMA sought views on its proposed recommendation to the Secretary of State to renew the block exemption until 28 February 2026 (subject to consultation views on the duration of the block exemption). The CMA also proposed to revise the guidance document, to

⁵ Transport ticketing schemes are written agreements between operators allowing for passengers to purchase tickets that can be used on the services of the participating operators. Without such schemes, passengers would have to buy from each operator individual tickets valid for use only on that operator's services. The definition of public transport ticketing scheme can be found in Article 4(2) of the block exemption.

clarify some areas which are thought to be unclear and to update some aspects of the guidance to take account of new formats and products that have emerged with the introduction of smart tickets.

- 1.6 In total, the CMA received 31 responses to its statutory review of the block exemption. These came from a variety of private companies, local and national government bodies, public transport representatives and trade associations. Nearly all supported the renewal of the block exemption; one expressed no view and two suggested that it should be replaced by a template agreement.

2. Assessing whether a block exemption remains appropriate

- 2.1 In its consultation document, the CMA sought views on whether the criteria for a sector-specific block exemption continue to be met. In this section, we first outline the ticketing schemes covered by the block exemption, and the criteria we use for assessing whether a sector-specific block exemption is appropriate. We then consider the responses on whether the renewal of the block exemption is justified. The responses relating to proposed changes to the block exemption are considered in Section 3.

Public transport ticketing schemes

- 2.2 Article 4 of the block exemption covers five types of agreement (the ticketing schemes), which may include one or more of the following:
- (a) Agreements for multi-operator travel cards (MTCs), valid on any participating operator's services where there is no restriction (other than, for example remaining in any zone for which the MTC is valid) to starting or ending the journey at a particular point or following a particular route. This includes tickets that enable unlimited travel for a particular period of time within a specified geographical area and carnets of tickets allowing journeys over three or more services and routes within such an area.
 - (b) Agreements for through tickets (TTs), valid for travel on more than one operator's services for the completion of a particular journey where the operators provide complementary services, that is, where the operators do not compete with each other over a substantial part of any of the routes covered by the ticket in question.
 - (c) Agreements for multi-operator individual tickets (MITs), valid for travel on more than one participating operator's services for the completion of a particular journey where those operators provide competing services, for

example, making the outward journey with one operator and returning with another. This could also include route specific carnets.

- (d) Agreements which provide for an operator to offer passengers an MTC as an 'add-on' to that operator single or return ticket (a 'short distance add-on'), for example a ticket that combines travel between two towns on a particular operator's service with unrestricted travel within the defined limits of the destination town.
- (e) Agreements which provide for long distance operators to offer passengers a single operator ticket, an MTC or TT as an 'add-on' to that operator's single or return ticket (a 'long distance add-on'), for example a ticket that combines travel between two cities with travel within the defined limits of the destination city.

2.3 The critical distinctions between the first three ticketing schemes are:

- (a) MTCs, including some types of carnets, provide unrestricted travel for a specified time period or number of journeys. Operators are permitted to agree one single price;
- (b) TTs amount to tickets for particular linked journeys valid on two or more operators' complementary services (that is, services that are not in competition with each other over a substantial part of the route in question); and
- (c) MITs are tickets for a particular journey, valid on two or more competing operators' services.

Exemption

2.4 The consultation document sought views as to whether the ticketing schemes continued to satisfy the conditions for exempt agreements set out in section 9(1) of CA98, as required for a block exemption under section 6(1) of CA98.

2.5 For the purposes of this assessment and as set out in the consultation document,⁶ the CMA considers that the following four criteria should be met for a sector-specific block exemption to be appropriate:

⁶ The [consultation document](#), paragraph 3.1.

- (a) There is a clearly identifiable category of beneficial agreements that appear to meet the **conditions for an exemption under section 9(1) of CA98**, namely that:⁷
- (i) the agreement must contribute to improving production or distribution or promote technical or economic progress;
 - (ii) consumers must receive a fair share of the benefits generated by the restrictive agreement;
 - (iii) the agreement must not impose restrictions that are not indispensable to achieving the benefits; and
 - (iv) the agreement must not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.
- (b) The category of agreements are ‘special’ in that, in comparison with other agreements, they require an **enhanced need for cooperation** for them to be concluded and implemented.
- (c) There is a significant and real risk that the category of agreements will not be entered into in the absence of a sector-specific block exemption.
- (d) **Alternative, reasonable and practicable arrangements cannot be concluded** that would create even greater benefits to consumers or that would otherwise be more appropriate.

A. Conditions for an exemption under section 9(1) of CA98

Condition (i) under section 9 of the CA98 – efficiency gains

2.6 The first condition for exemption is that the agreement must contribute to improving production or distribution or promote technical or economic progress, while allowing consumers a fair share of the resulting benefit. In the

⁷ For the purposes of this assessment, we consider that it is appropriate to invert the order of the second and the third conditions of [section 9\(1\)](#) of CA98 as we did previously in the 2010 recommendation to the Secretary of State and deal with the issue of indispensability before the issue of consumers receiving a fair share of efficiencies. This is because the analysis of whether consumers are receiving a fair share of the benefits arising from the agreement should not include any benefits arising from restrictions that are not indispensable and accordingly do not meet the conditions for exemption in [section 9](#) of CA98. This is consistent with the European Commission’s approach in its guidelines on the application of Article 81(3) of the EC Treaty (now Article 101(3) of the Treaty on the Functioning of the European Union).

consultation document the CMA asked whether such efficiencies were achieved by the schemes.⁸

2.7 The consultation document set out a number of potential benefits for passengers, including the following:⁹

- Better quality bus services and improved transport networks, for example, by offering the ability to travel on the services of several operators on a single ticket.
- Flexibility of choice on specific routes.
- Increased geographical coverage of services for passengers by linking routes of operators.
- Increased patronage on public transport.

2.8 Most respondents agreed that ticketing schemes permitted under the block exemption represented a category of agreements that continued to provide economic benefits for passengers, operators and other consumers, and none disagreed. The vast majority also considered that such benefits were significant.

2.9 In particular, a few respondents noted that consumers benefited from having only one ticket to complete a journey across different modes of transport.¹⁰ This simplicity was identified as a key factor to increase consumers' choice and utility, as without ticketing schemes, passengers 'would either have to buy individual operator tickets or restrict the choice of journeys where more than one operator provides a service'.¹¹ In the same vein, a few respondents indicated that the ticketing schemes were useful to make the passengers' journeys convenient, and increase mobility and accessibility.¹² These aspects would encourage public transport use with consequent economic and environmental benefits.

2.10 South West Trains and Greater Manchester Travelcards Limited identified potential costs savings and better value/flexibility as one of the benefits

⁸ The [consultation document](#), questions 1 to 4.

⁹ The [consultation document](#), paragraphs 3.4 & 3.8.

¹⁰ Ipswich Buses, LGA Public Transport Consortium, National Express and C2C Rail, Passenger Transport Executive Group (pteg), SEStran, Stagecoach, Transport Focus, Transport for Greater Manchester (TfGM), TravelWatch NorthWest.

¹¹ LGA Public Transport Consortium, Association of Transport Co-ordinating Officers (ATCO), Nestrans, Confederation of Passenger Transport UK (CPT), TravelWatch NorthWest, Stagecoach, Welsh government, Greater Manchester Travelcards Limited.

¹² South Western trains, Nexus.

generated by the ticketing schemes. Stagecoach Group (Stagecoach) noted that ticketing schemes were contributing to wider employment opportunities.

- *CMA's view*

2.11 It is widely acknowledged that the ticketing schemes provide efficiency gains, although there may be differing views on the magnitude and relative importance of the different efficiencies identified in the consultation document. We have not found any reasons to alter our previous assessment of efficiency gains.

2.12 Having regard to its initial assessment of this criterion and to the consultation responses, the CMA considers that the ticketing schemes continue to provide efficiency gains within the meaning of section 9(1) of CA98.

Condition (ii) under section 9 of CA98 – fair share for consumers

2.13 The second condition for exemption is that consumers receive a fair share of the benefits generated by the restrictive agreement. The consultation document sought views as to whether the continuation of the block exemption was necessary to deliver ticketing schemes that are beneficial to consumers.

2.14 Responses to the consultation have not highlighted any disbenefits arising to consumers from the operation of ticketing schemes. Thanks to these schemes, consumers continue to be entitled to make individual journeys on the first bus or train that comes along where there is a choice of operators and can complete journeys on multi-operators' services without having to purchase separate tickets. A few respondents provided examples of the benefits enjoyed by consumers as a result of the ticketing schemes (for example, greater travel opportunities and increased flexibility,¹³ more comprehensive and convenient public transport).¹⁴

- *CMA's view*

2.15 On the basis of the above, the CMA considers that consumers continue to receive a fair share of the benefits generated by the ticketing schemes.

Condition (iii) under section 9 of CA98 – indispensability of the restriction

2.16 The third condition for exemption is that the restrictions imposed by the agreement must be indispensable to achieving the benefits arising from the

¹³ ATCO.

¹⁴ TfGM.

agreement. The consultation document requested views on whether the current block exemption contained any restrictions that were not indispensable. The block exemption should not facilitate any conduct that would normally be considered anticompetitive such as aligning prices and services and sharing revenues, unless it is indispensable for the ticketing scheme to operate.

2.17 As noted in the consultation document, the block exemption contains general conditions that apply to all ticketing schemes and also different conditions that apply to each of the different schemes. Those varying conditions were put in place following the OFT's review in 2005 to ensure that the balance of the block exemption satisfied the need to ensure that the ticketing schemes covered by the block exemption do not impose restrictions that are not indispensable to the benefits flowing from the agreement, and the OFT's review in 2010 concluded that there was no evidence to suggest that the situation had changed.

2.18 The consultation document sought views on how some particular restrictions that are permitted in certain schemes are assessed for indispensability. In particular, in the 2005 and 2010 reviews, the OFT noted that:

- common end price is likely to be indispensable for MTCs only;
- revenue sharing for MITs is not permitted as these schemes can generally work by allowing revenue to lie where it falls; and
- timetable sharing is likely to be indispensable for TTs only.

2.19 In the consultation document, our provisional view was that those restrictions would still remain indispensable to attaining the efficiencies. Respondents to the consultation have challenged the principle of common end price being likely to be indispensable for MTCs only and the restrictions on revenue sharing arrangements for MITs. These points are discussed in paragraphs 3.7 to 3.38.

- *CMA's view*

2.20 As discussed and subject to the proposals formulated below (see paragraphs 6.2 and 6.3), we consider it likely that the restrictions currently in place in the block exemption are indispensable.

Condition (iv) under section 9 of CA98 – absence of elimination of competition

2.21 The fourth condition under section 9 of CA98 is that the agreement does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

2.22 The responses during the preliminary review and to the consultation did not indicate that there had been any changes which would mean that the agreements that were covered by the block exemption would result in eliminating competition.

- *CMA's view*

2.23 On the basis of the information collected during the preliminary review and the responses to the consultation, the CMA is of the view that the agreements covered by the block exemption do not have the effect of eliminating competition.

B. Enhanced need for cooperation

2.24 The consultation document set out the CMA's initial view that public transport ticketing schemes require enhanced levels of cooperation in comparison with other sectors of the economy. Consumers highly value the integration of ticketing for transport networks which enables them to travel more easily throughout the ticketing area. Integrated ticketing schemes require cooperation to operate effectively (for example, agreeing a common price in the case of MTCs, having interoperable tickets and distributing revenue).

2.25 Responses to our consultation process confirm that the need for cooperation remains unchanged compared to the previous reviews.¹⁵

CMA's view

2.26 On the basis of the above, there is no reason to depart from the view expressed in the consultation document.

C. Significant and real risk that ticketing schemes will not be entered without the block exemption

2.27 In order to justify a sector-specific block exemption, there should be a significant and real risk that the category of agreements covered will not be entered into/in the absence of the block exemption. In our consultation, we

¹⁵ See paragraph 1.2 above.

requested views on whether the ticketing schemes covered by the block exemption would be likely to continue without the block exemption.

- 2.28 We noted that on the basis of initial discussions with transport operators, there is a significant and real risk that, without the block exemption, some operators would be reluctant to join public transport ticketing schemes (see also paragraph 2.21). Operators in the transport sector are highly aware of the need to ensure competition law compliance, and also appear to be risk-averse in this regard (ie they are unlikely to be satisfied with self-assessing whether the section 9(1) conditions for individual exemption are met). In the consultation document we noted that individual operators are unlikely to be willing to join such schemes in the absence of the block exemption, due to concerns that the agreement could risk infringing competition law with the associated risk of exposure to enforcement action under CA98, including financial penalties and/or risk of director disqualification. Many respondents indicated that if a scheme did not fall within the block exemption then the risk of it being considered a breach of section 2 of CA98 was seen as too great compared to the potential benefits of delivering a multi-operator scheme. Transport operators, government and transport authorities have informed the CMA that the certainty and comfort provided by the block exemption is an invaluable and in some cases the only tool that enables this degree of enhanced cooperation given that very few parties have been willing to undertake self-assessment of the legality of a ticketing scheme under competition law.
- 2.29 Many respondents commented specifically that the cost of setting up schemes could be significant, with commencement representing a substantial commitment. In these circumstances, respondents commented that the risks of participation, and of challenge under CA98, were too great to undertake participation without the certainty and comfort provided by the block exemption.

CMA's view

- 2.30 Having regard to its initial assessment and the responses of operators the CMA remains of the view that this criterion is met.

D. More appropriate alternative arrangements not available

- 2.31 In order to justify a sector-specific block exemption, it must be the case that alternative, reasonable and practicable arrangements cannot be concluded which would create even greater benefits to consumers or which would otherwise be more appropriate. The consultation's provisional finding was that there are currently no alternative, reasonable and practicable arrangements to

facilitate joint ticketing schemes that could deliver even greater benefits to passengers, or which would otherwise be more appropriate.

- 2.32 The CMA received only one alternative suggestion, supported by two respondents. This is addressed at paragraph 3.110 and 3.111.

CMA's view

- 2.33 The CMA accordingly does not consider that there are alternative, reasonable and practicable arrangements that would create even greater benefits to consumers or that would otherwise be more appropriate.

3. Changes to the substance of the block exemption

- 3.1 In the consultation document, we discussed a number of issues that had been raised with us relating to possible changes in the substance of the block exemption. While we indicated that we were not minded to make recommendations of changes on these points, several respondents to the consultation made submissions on these issues, and these are therefore considered below.
- 3.2 In addition, a number of novel points were raised in the consultation responses, see paragraphs 3.97 to 3.116.
- 3.3 The block exemption is intended to provide for certain kinds of ticketing schemes where they are likely to produce benefits outweighing their potential harmful effects on competition. The block exemption imposes conditions subject to which the exemption is to have effect, in order to ensure the potential harmful effects on competition are minimised. If operators choose not to meet the conditions of the block exemption, they would have to consider whether their scheme would still satisfy the conditions of section 9(1) of CA98. The parties to the agreement would have to assess the extent to which the ticketing scheme at stake is generating benefits outweighing any detriment to competition. However, we understand that operators and local transport authorities such as passenger transport executives and councils, can be reluctant to do this, given the cost and legal uncertainty involved, and seek the comfort of block exemption coverage (see paragraph 2.28). Nonetheless neither the conditions nor the scope of the block exemption can be lightly relaxed; the CMA may only recommend exempting a category of agreement where it considers that the ticketing schemes which fall within it are likely to meet the conditions of section 9(1).
- 3.4 Many of the issues raised with us were about public transport policy to encourage use of public transport and facilitate a degree of public control over

transport provision, in part because in some cases local transport authorities (LTAs) and operators aspire to implement transport schemes that fall outside the terms of the block exemption. In this respect, we note that further developments of the transport policy legislation are currently in preparation and that the block exemption is not itself a part of transport policy.

- 3.5 The Transport Act 2000, as amended by the Local Transport Act 2008, (the Transport Act 2000) and the block exemption are different instruments and the purpose of these are different.¹⁶ Section 135 of the Local Transport Act 2008, for example, enables LTAs in England and Wales to make a wide range of ticketing schemes. These will be subject to a competition test (set out in Schedule 10 to the Local Transport Act 2008), which involves a case-by-case assessment of each individual scheme, to be made by the relevant LTA (and the CMA when applying the provisions of the Transport Act 2000). The block exemption, on the other hand, defines particular categories of agreements which are likely to satisfy the conditions for exemption in section 9(1) of CA98.
- 3.6 In this section we first consider changes proposed to the MIT schemes in terms of pricing and revenue sharing arrangements. Then we consider MTC schemes and in particular the definition of MTCs, pricing and revenues share arrangements. We then look at smart ticketing, and finally we consider some other suggestions made by respondents with respect to widening the block exemption.

Multi-operator individual tickets pricing

- 3.7 Article 13(1) of the block exemption prohibits price fixing for, among other things, MITs.
- 3.8 The block exemption allows price fixing for MTCs only (Article 13(2)(b)) (eg all participating operators are permitted to agree on a particular fare for an MTC regardless of which operator sells the ticket and which operators are used for journeys). In particular, price fixing is considered indispensable for MTCs, because price competition could undermine the viability of the scheme and prevent the operation of revenue allocation measures.
- 3.9 In relation to MITs, the block exemption does not allow price fixing because it would eliminate price competition between operators on any one route and it

¹⁶ See the [Guidance on the application of competition law to certain aspect of the bus market following the Local Transport Act 2008](#) (OFT452) for further details. This guidance discusses the application of the relevant competition tests in England and Wales only. While it does not directly apply to Scotland, where different transport legislation applies, the analytical framework set out in this guidance for assessing competition issues should nevertheless be helpful to bus operators and local authorities in Scotland too. The competition tests do not apply to quality contracts made under Quality Contracts Schemes, or to the powers or duties of LTAs in relation to the provision of information about bus services.

was considered that price fixing was not indispensable to the existence of MIT schemes.

- 3.10 In our consultation document, we considered the arguments that had been put forward during the preliminary review and concluded that we were not minded to relax the prohibition for price fixing of MITs.¹⁷ Several respondents have highlighted this issue again and we therefore consider their arguments further below.

Issues raised by respondents to the consultation

- 3.11 Several respondents have told us that the price fixing prohibition discourages the establishment of MIT schemes because it provides disincentives to operators to participate. Absent price fixing, individual operators have an incentive to sell MITs at a low price to get the first sale (and retain all the revenue) and the concern expressed was that this price may fall below the cost of the whole journey. By agreeing a fixed price both operators can be confident that the price will cover costs. We were also told that bus passengers would find it confusing if MITs were offered at different prices by different operators, impeding use of these tickets.
- 3.12 FirstGroup plc (FirstGroup) told us that it would like to see operators permitted to agree the price of MITs to improve the customer proposition. It said that if necessary, this could be conditional on a route having a Joint or Coordinated Services Agreement underpinned by a Qualifying Agreement.
- 3.13 The Wellglade Group considered that customers expected a single brand (ie the MIT) to carry the same price for each product regardless of which operator sold it. It said this made the brand easy to use and thus resulted in higher frequency of use.
- 3.14 Centro and the West Midlands Integrated Transport Authority (Centro/WMITA) have said that the price of any MIT could be set using similar principles that apply to MTC schemes with local authorities acting as broker to further encourage a competitive common price. If each operator participating in a MIT scheme offered their own single operator return tickets in addition to the multi-operator return ticket (the MIT) then the methodology recommended by the Competition Commission (CC) and the Department for Transport (DfT) (see paragraphs 3.64 and 3.65) could be applied to produce a competitive MIT price with operators continuing to compete with each other on single operator tickets and fares. To add a further test of competitiveness, the common price

¹⁷ The [consultation document](#), paragraphs 5.15 & 5.16.

of an MIT could be assessed against the price of equivalent tickets offered by the participating operators on other services outside of the MIT route(s) but within the local geographical network.

- 3.15 The Welsh government said that while some passengers would expect a price differential between operators for the same tickets, new or inexperienced users might be less familiar with the de-regulated environment and the variability of fares could lead to confusion or the perception of being incorrectly charged. It said this would be a particular issue on those operators with an exact fare policy, as passengers might not have the correct change and/or additional funds to mitigate this variability.
- 3.16 Go-Ahead Group plc (Go-Ahead) suggested that public transport fares were often seen as too complex and that consumers wanted a simple set of pricing propositions and it therefore seemed odd, according to Go-Ahead, that the block exemption prevented operators from charging the same fare for what was essentially the same product.

CMA view

- 3.17 Having considered the arguments put forward in the responses to the consultation, we are still of the view that price fixing is not indispensable to achieving the benefits arising from an MIT scheme. The freedom for competing operators to set their own fares encourages competition to offer the best price, and reduces any risk of coordination arising on MIT or single and return single-operator fares. None of the arguments above convince us that common fixed prices are indispensable to MIT schemes, given that existing MIT schemes currently operate successfully without common prices. In addition, we have not had any supporting evidence presented to us to demonstrate that customers are confused by the absence of single prices or that usage is discouraged by this. Nor did we receive evidence of MIT schemes failing, or not being established in the first place because of the prohibition on price fixing. Whilst we accept that operators may be more comfortable entering an agreement with common prices, we do not consider that it is indispensable to the implementation and running of a successful MIT.
- 3.18 The current system provides the correct incentives for operators to continue to compete for customers on price and quality of service, whilst still benefiting consumers by allowing them to use any operator's service on their return journey. Moreover, we consider that the Centro/WMITA suggestion is too complex for the majority of MIT schemes; one of the benefits of MIT schemes is that they are relatively easy to administer, by introducing complicated price setting rules and comparisons with other routes the simplicity of the schemes would be eroded.

3.19 Therefore, we do not propose to allow MIT schemes to charge a common price.

MIT revenue allocation (other than revenue lies where it falls)

3.20 Article 15 of the block exemption requires that revenue lies where it falls for MITs. In the consultation document we stated that where operators sold a number of tickets roughly in proportion to passengers carried, this was likely to be a suitable, and a low-cost arrangement. However, in cases where there is an uneven distribution of ticket sales and passenger numbers across different operators' services, revenue lying where it falls is likely to discourage operators from entering into such schemes. This is because where an operator carries a greater proportion of MIT passengers than it sells MITs, it does not receive reimbursement for all passengers carried, and hence it can be unattractive for that operator to participate in that scheme. For example, this could occur where two operators sell MITs in the morning but only one operator offers services in the evening. In its local bus services market investigation final report, the CC recommended that to give greater clarity, the guidance document should identify what other revenue share arrangements might be acceptable when revenue lies where it falls is not considered suitable.

3.21 In our preliminary review stakeholders did not generally consider revenue distribution a major impediment to the attractiveness of joining an MIT scheme. Some said that as MIT schemes were generally small-scale, they needed a simple and cheap system of revenue distribution.

3.22 We were also concerned that other revenue sharing systems (such as reimbursement based on posted prices, when actual travel use can be tracked using smart ticket data), represents an unnecessary exchange of information between operators and changes in posted prices could be used to coordinate pricing decisions between operators.

3.23 In the consultation document, we requested examples of where MIT schemes have been abandoned or not commenced because of the requirements that revenue lies where it falls. Several respondents argued in general terms that this was likely to occur.

3.24 The Welsh government told us that it had experienced a reluctance of some operators to participate in 'revenue lies where it falls' schemes where passenger demand was 'tidal', with the perception the majority of passengers would initially board a competitor's service. It said that this was a particular issue in some valleys communities, where travel to work patterns were significantly higher towards the main employment centres.

- 3.25 Centro/WMITA was concerned that the revenue allocation method provided a disincentive for operators to participate in MIT schemes, as the operator of the first journey might attract a disproportionate amount of the income, particularly if it offered a reduced level of service later in the day meaning that the return journey, which had no income attached to it, was more likely to occur on a rival operator's service. It said that this issue could be intensified further if the operator of the first journey applied an artificial discount to attract more customers.
- 3.26 National Express & c2c commented that train operators were unlikely to take part in schemes if all the revenue was allocated to the retailing Train Operating Company.
- 3.27 ATCO made similar points and told us it would welcome the removal of Articles 15 and 16¹⁸ of the block exemption.
- 3.28 In our consultation document, we requested proposals of other possible revenue share options that would satisfy section 9(1) conditions of CA98 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.
- 3.29 The Welsh government told us that it had held a number of high-level discussions to ascertain operators' appetite for alternative apportionment arrangements, but the general willingness to consider alternatives was often constrained by their relative business models and operating costs. For example, apportionment based solely on passengers carried does not fully reflect differences in operating costs (number of kilometres operated, fleet type etc). The Welsh government's view was that a combination of factors would be required to provide an attractive and equitable apportionment, although this would increase complexity. It suggested that this could include an element of 'revenue lies where it falls' for selling the ticket, with an element based on kilometres/passengers carried.
- 3.30 Centro/WMITA proposed an allocation method that provided reimbursement proportionate to the share of usage, and thus removed any advantage for the operator of the first journey. Such allocation would also provide a disincentive to apply an artificial discount, should a common price remain prohibited, as the discount would reduce the overall yield to both operators equally. It said that smart ticketing would easily provide the capability to robustly allocate

¹⁸ Article 16 covers the consequences of breaching Article 15, ie cancellation of the block exemption for that scheme.

revenue in such a manner and the local authority could support the process to ensure that the sharing of any commercial data was minimised.

- 3.31 ATCO said that clarification on potential alternative methods or revenue allocation might help encourage participation in MIT schemes so long as they were administratively simple, and as smart ticketing systems became more widespread, revenue apportionment could potentially be more robust.
- 3.32 pteg told us that there would potentially be benefits from allowing MTC schemes to operate on corridors or at times when they might only be used on the services of two different operators, so operators could agree a fair revenue allocation mechanism to support such a ticketing arrangement.

CMA view

- 3.33 Responses highlighted that revenue allocation for MIT schemes remained a concern for many and several respondents believed that alternative revenue allocation systems would be indispensable to some MIT schemes as its absence prevented successful implementation. This caused consumer harm as passengers were not benefiting from the additional frequency and flexibility in service which was provided by the MIT.
- 3.34 However, we are aware that in many cases revenue lies where it falls works well and ensures that the scheme is easy to implement and administer. It allows the operators to be a party to the scheme whilst retaining commercial freedom and minimising exchange of commercially sensitive information. Therefore, we do not consider that there is a need to remove Articles 15 and 16 of the block exemption.
- 3.35 We recognise however that revenue lies where it falls may provide a disincentive to the establishment of MIT schemes in certain cases, such as where operators only overlap in their operating hours to a limited extent. The current guidance document states that MIT schemes that use revenue distribution methods that do not meet the condition of Article 15 cannot benefit from the block exemption. However, it states that alternative methods are likely to satisfy the conditions in section 9(1) of CA98, provided that the revenue distribution method is limited to what is necessary for the MIT scheme to work and does not result in the operators agreeing the price of the MIT, and does not diminish incentives for competition. We note that developments of alternative methods, for example where operators have a limited overlap, might be facilitated by the introduction of smart ticketing and the resulting availability of better travel data (such as data on the number of passengers carried which might be used to apportion revenue instead).

Information sharing might be a concern but this could be overcome by having adequate safeguards, such as a third party administrator.

- 3.36 It is likely that alternative revenue share arrangements will be necessary to achieve the benefits of the MIT scheme in certain circumstances, specifically where there is limited overlap between the operators at key times such that one is likely to sell a disproportionate share of MITs or one is likely to have to carry a disproportionate share of return passengers. As this would only apply to limited cases, it is not appropriate to alter the block exemption to introduce a new revenue allocation method which is less straightforward in its application than the current method.
- 3.37 It is nonetheless likely that for those schemes where revenue lies where it falls would be clearly unfair, the allocation of revenues on the basis of passenger numbers, for example, would meet the section 9(1) criteria of CA98, provided they do not contain unnecessary restrictions or eliminate substantially competition for the services in question.¹⁹ Smart card technology, which allows accurate recording of passenger usage of these tickets, could be used for data collection but alternative survey methods may also be appropriate.
- 3.38 We therefore propose to revise the guidance document to include a detailed description of a scheme which allows for alternative revenue share arrangements and which we consider would meet the criteria of section 9 under CA98. We hope that this will provide extra comfort for operators to agree to participate in these schemes.

Definition of multi-operator travel cards

- 3.39 MTCs are defined in Article 3 of the block exemption:

A ticket (or tickets) entitling the holder to make three or more journeys on three or more specified local public transport services operating on three or more routes provided that:

(a) these routes are not substantially the same;

(b) these local public transport services are not substantially the same; and

¹⁹ So as not to impact on competition there should not be any inappropriate information sharing. This could be addressed by ensuring information on passenger numbers is passed to a third party for the purposes of administering the revenue share arrangements.

(c) for each of these routes and local public transport services, the passenger usage and revenue received from the ticket and other such tickets purchased as a result of the relevant agreement, demonstrate that the ticket is not, in practice, a multi-operator individual ticket or a through ticket.

- 3.40 Go-Ahead felt that some provisions were overly prescriptive such as ‘three or more journeys on three or more specified local public transport services operating on three or more routes.’ It felt that the definition of an MTC could be amended and made as simple and flexible as possible to ensure the full benefit of new ticketing technologies and the plethora of tickets and products that could be offered, and given the government’s wishes to promote their use.

CMA view

- 3.41 We consider that there are likely to be benefits to stakeholders from simplifying the definition of MTC schemes and making it clearer. We understand that the motivation for the drafting of this definition was to distinguish MTC schemes from other ticketing schemes covered in the block exemption. The purpose was to ensure that other schemes such as MIT and TT schemes could not be created under cover of being seen as MTC schemes and thereby benefiting from the dispensation to fix prices.
- 3.42 We are however concerned that the definition in Article 3 is seen as overly restrictive, which may prevent some beneficial MTC schemes from being created or may result in schemes being created that are less effective than they would otherwise be. We also believe that the definition could be simplified (such as removing some of the overlapping requirements for three or more journeys, local public transport services and routes) without risking a negative impact on competition.
- 3.43 Moreover, subparagraph (c) could be shortened and made clearer, in order to emphasise the key point that scheme participants should be able to demonstrate that the MTC ticket is not operating as a MIT or a TT.
- 3.44 Therefore we will be recommending a change in the definition of MTCs in Article 3 of the block exemption.
- 3.45 We will also provide greater clarity of the definition in the revised guidance document, and set out how the scheme’s performance should be assessed to establish it is not in fact operating as an MIT or a TT.

Multi-operator travel cards pricing

- 3.46 Several stakeholders have commented that current price setting negotiations result in MTCs that are overpriced and this reduces take-up of the MTC which makes the scheme less successful and results in higher prices for consumers. Respondents said that the overpricing of MTC schemes was also contrary to the policy objectives of introducing the scheme in the first place and might raise barriers to entry for new operators (as they were less able to compete through participation in the MTC scheme because most customers chose the larger operators' own travel card in preference to the MTC).
- 3.47 In its response ATCO expressed concern that operators sought a significant premium for the MTC price over their own single-operator period tickets to protect their own sales. Similarly, TfGM told us that large operators wanted to retain their market power and therefore had a very strong incentive to ensure that the price differential between their own travel card prices and the price of MTCs was maximised. LGA Public Transport Consortium²⁰ considered that the premium was applied to protect own sales and establishment of schemes had failed due to the pricing mechanism operators sought.
- 3.48 We were told that some operators were pursuing a strategy of pushing the initial price premium on the MTC as high as possible and then lowering their own prices following introduction of the MTC. This has a significant impact on the success of the MTC.
- 3.49 We were also told that revenue from sales of own-operator travel cards are usually far more significant than the MTC revenues. This is supported by evidence from some operators that show very low take up of some MTC schemes. This suggests that operators have a stronger incentive to protect the revenue from own operator travel cards rather than to promote the MTC.
- 3.50 We have been told that MTCs may also carry a price premium because of the costs of administering the scheme, the costs of conducting usage surveys which may be needed to allocate revenue, operators' desire to cover a perceived risk of inaccurate revenue sharing, and also because operators may be uncertain to what extent MTC tickets may encourage additional public transport use rather than just diverting custom from operators' own tickets.
- 3.51 We have looked at the pricing of MTC schemes and individual operator's own travel cards in six areas where these prices were easily available and broadly comparable in geographical coverage. We found that for the areas considered some MTCs were priced in excess of 20% and most were at least 10% more

²⁰ A special interest group of the Local Government Association.

expensive than the leading own-operator travel card. However comparisons were not straightforward as conditions of use were different and in most cases a direct equivalence was difficult to find. This does not suggest widespread and extreme overpricing, but in most of the areas we considered, MTCs were at a price premium of over 10%.

Linking to own operator travel card to prevent overpricing of MTC

- 3.52 To address the concern of overpricing several respondents have suggested an alternative approach whereby MTC pricing would be set with reference to the leading operators' own travel card, possibly limiting the premium to a fixed percentage. Currently, the pricing of an MTC cannot be set by reference to the price of individual operators' own travel cards (see the guidance document, paragraphs 4.22 to 4.24).²¹.
- 3.53 Stagecoach, for example, told us that allowing prices of MTCs to be based at a modest premium to the price of the most relevant own operator travel card would lead to a more competitively priced MTC. It said this was because:
- (a) The MTCs provided additional consumer benefits compared to an own operator travel card and at a lesser cost than purchasing individual operators' own tickets separately. This additional utility should be reflected in the pricing.
 - (b) The prices of goods and services in other markets generally took into account prices of competing and substitute products. It would, therefore, seem somewhat perverse to prohibit this in pricing MTCs.
 - (c) The modest nature of the premium would ensure the MTC, with its greater utility, was a viable competitive alternative to any single operator product. It believed that there was a general consensus among operators and local authorities that a premium of up to 10% would be reasonable in most circumstances. DfT told us it did not favour a premium at all and would not

²¹ The [guidance document](#), part of paragraphs 4.23 & 4.24 state:

...the benefit of the Block Exemption may be withdrawn in respect of a particular agreement if it is not compatible with the section 9(1) conditions. This may be the case 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). However, the need to satisfy the section 9(1) conditions does not prevent the operators from agreeing to increase the MTC price because cost pressures have resulted in some or all of them raising their own ticket prices
...it is unlikely that the section 9(1) conditions will be satisfied if the MTC agreement provides that the MTC price shall be at a premium of say, 7 per cent above the price of the travelcard issued by one or a group of the participating operators. If operators are able to peg the MTC price to their own prices it would make it easier for that group of operators to raise the price of their own travelcard(s) or other fares. Pegging the price of the MTC to the prices of the leading operator's travelcard in an area, to ensure that the MTC is always sold at a premium over the price of its own travelcard, would make the MTC unattractive to passengers, thereby weakening the ability of rival operators to compete through participation in the MTC scheme.

consider a premium of more than 10% to be justifiable in most circumstances.

- 3.54 In our consultation document we argued that a fixed premium could provide the large operator with an incentive to increase prices of its own product (or reduce the disincentive to increase prices because of competition) as the price constraint of the MTC would be removed. Centro/WMITA disagreed, arguing that as it was likely that the market share of the MTC would be secondary to that achieved by the operators' own travel card; a larger operator would have to significantly increase the cost of its own travel card to generate a significant increase in the cost of the MTC. In doing so it would risk losing customers to competing operators offering cheaper travel cards or to other modes (train, metro, car etc). It said there was currently an incentive for the larger operators to negotiate significant premiums as the impact would be to protect the market share of their own travel cards. The incentive for an operator to limit its own travel card prices were the same whether or not a link was applied to the price of an MTC, but the likelihood of achieving a sensible premium for MTC was higher if a link between the prices were to apply.
- 3.55 TfGM argued that the own operator travel card was likely to be priced above the competitive level given the market power of the largest local operator, and the revenue derived from the own operator card was likely to be greater than that of the MTC. Therefore, any incentive to increase prices arising from a link between own operator travel cards and MTC was marginal compared to the incentive to increase prices prior to the introduction of the MTC. TfGM agreed that there should not be a fixed link between the price of MTCs and the price of the own operators' tickets but it considered that there should be a limit on the difference between the price of MTCs and the price of major operators' own tickets.

CMA view

- 3.56 The MTC scheme provides an enhanced product in that it offers more travel options than an own operator travel card and it is to be expected that it may carry a higher price, but the MTC price can be difficult for scheme participants to agree on. In practice, we understand, the prices of some MTCs have been set at a relatively high level resulting in low demand for the MTC.
- 3.57 Some factors which have historically resulted in overpricing of MTCs are likely to be addressed by the introduction of smart ticketing. For example, more accurate revenue allocation based on smart data rather than on passenger surveys, removes the need to increase fares to cover for perceived inaccuracies of the system. Similarly, MTC scheme administration costs may also fall with the removal of needs for surveys thereby placing less upward

pressure on prices. In addition, better data can be used to estimate how the MTC scheme might generate new demand compared to the own operator card and this may also ease the pressure on the MTC price.

- 3.58 A remaining risk that could drive overpricing of MTC schemes is, therefore the possible incentive of operators to protect their own ticket revenue from greater competition. The MTC can be seen as a threat to revenues derived from the own operator travel card or even single ticket sales. To minimise the loss of own ticket sales operators, therefore, have an incentive to increase the premium of the MTC. This in turn will make the MTC less attractive compared to the own operator tickets.
- 3.59 To overcome the incentives to overpricing in response to protecting the own operator ticket sales respondents have suggested either (a) mechanistically linking the premium of the MTC price to the leading own operators travel card price, or (b) providing a maximum premium between the two prices.
- 3.60 As noted in the consultation document linking the MTC price to an operator's own travel card results in reducing or removing the price restraint of the MTC on the operator's own travel card and its fares – an increase in own fares would not result in a diversion of passengers to the MTC if there was a mechanistic link as the MTC price would also increase by the same amount, moreover the increased price of the MTC would also yield more revenue. The linking of prices might also act as a focal point for coordinating fares across operators.
- 3.61 While the use of a maximum premium to limit overpricing of the MTC may indeed restrain its price, or at least mean an increase in own operator prices is not mechanistically passed through to the MTC price. In practice it is difficult to see how a fixed or maximum premium would be determined. Stagecoach noted that it might be difficult to find a suitable single operator ticket providing comparable coverage to compare the price against and our research confirms this. Then, if the maximum premium is too wide MTC prices could be unattractively high, and if it is too narrow it could deter the single operator from lowering its own prices, say in response to other competitive pressures. The appropriate maximum premium might also depend on local circumstances and the additional benefits of the MTC in terms of coverage, improved frequency and choice in a particular area. Therefore an arbitrary 10% premium suggested by some respondents may not be applicable in many areas.
- 3.62 In conclusion, we do not consider that linking the determination of the price of an MTC is appropriate whether by fixed or maximum amounts, because it would be of doubtful efficacy in restraining MTC prices, and could reduce

restraints on operators' own ticket prices or prevent operators from competing on prices.

- 3.63 However, parties' concerns over the appropriate pricing of MTCs remain; in the main the points raised were about the delivery of public transport policy. The block exemption exists to facilitate schemes where it is clear that there is no avoidable substantial adverse impact on competition disproportionate to the public benefits of the scheme, it is not a vehicle to deliver either public transport policy or to provide guidance on running such schemes. Those requirements are met elsewhere, for example DfT provided guidance in its March 2013 publication *Building better bus services: multi-operator ticketing*,²² and public transport policy is addressed directly through specific measures and legislation.
- 3.64 MTC pricing issues were considered at length in the CC local bus services market investigation, and the final report contained recommendations for the pricing of schemes.²³ This is also discussed in the DfT (2013) guidance document, *Building better bus services: multi-operator ticketing*.
- 3.65 Broadly speaking, these documents advocated that an effective governance structure needs to be designed for an MTC where the decisions about the design and operation of an MTC scheme are taken by operators and LTAs together. Voting rights should be assigned such that larger operators would not be able to influence pricing to deter MTC use to protect their own tickets, nor to block changes to a MTC scheme that would increase its popularity and thereby bring passenger benefits, while recognising that these operators have a greater financial exposure to the scheme and so it needs to be resilient to 'gaming' by smaller operators. This requires a balanced set of governance arrangements in which all stakeholders' interests can be taken into account, without any individual stakeholder having a disproportionate level of influence.^{24,25} The CC's final report also proposed that there should be clear objectives for the scheme to which all participants have signed up; the primary objectives should be focused on providing good value and convenient multi-

²² DfT (2013), *Building better bus services: multi-operator ticketing*.

²³ CC (2011), Local bus services market investigation – *final report*, paragraphs 15.48–15.50.

²⁴ *ibid*, paragraph 15.40.

²⁵ We note that the block exemption has no provision for exemption from the Chapter II prohibition of CA98 and public transport operators therefore remain subject to the Chapter II prohibition when making and considering ticketing arrangements. If an undertaking that participates in a public transport ticketing scheme holds a dominant position in a market, it must take care that its conduct does not infringe the Chapter II prohibition including the actions it takes in relation to setting and influencing the prices set for MTCs through its membership of a scheme. A dominant operator that sets excessive fares, for example, may still infringe the Chapter II prohibition whether or not the fares were set in the context of an exempt agreement. Abuse of a dominant position by an undertaking that enters into a public transport ticketing scheme is assessed in exactly the same way as any other type of conduct under the Chapter II prohibition.

operator ticketing products to passengers. Such schemes may also grow demand for bus services, but need to be viable for the operators.²⁶

- 3.66 In such a context, MTC tickets should be considered as separate products in their own right and appropriate pricing determined on that basis (ie in a way that is not directly linked to the individual fares of each of, or any one of, the participating operators). While pegging of the MTC price to the price of the leading operator's own travel card, is prohibited, the guidance document does not indicate a prohibition on scheme administrators from making a sense check against the single operator products in the market and taking a view on whether the price that has been suggested is competitive and reflective of the local conditions. If the proposed MTC price is uncompetitive this can then be used as a reason to revisit the pricing decision, so long as no mechanistic premium system is then established.
- 3.67 The CC recommended a framework for determining the price of MTCs, based on how passengers will evaluate whether a ticket offers value for money,²⁷ ie does it offer them a reason to buy the multi-operator ticket, rather than simply buying own operator ones or individual tickets? As noted in the DfT guidance,²⁸ this framework is not intended to be applied as a mechanistic formula but is a framework to be used as a way of facilitating decisions about an appropriate level of pricing, that allows the scheme to be transparent about how prices are set. It then falls to the scheme's members and administrators themselves to ensure that MTC's are not overpriced given the objectives of the scheme.
- 3.68 Some parties (eg Centro) have told us they have utilised this approach to set ticket prices. Others have indicated concerns over whether it was appropriate and could readily be applied.
- 3.69 We agree that this approach cannot be applied mechanistically and there remains room for debate. However, what it does provide is a structure for discussions on the pricing of MTCs, crucially with regard to the agreed objectives of the scheme.

²⁶ CC (2011), Local bus services market investigation – [final report](#), paragraph 15.41a.

²⁷ Price of MTC = Average or median single fares x Estimated [typical] ticket usage x Passenger discount for purchasing a multi-journey ticket.

²⁸ DfT (2013), [Building better bus services: multi-operator ticketing](#), paragraph 2.39.

MTC revenue sharing

Prohibition on revenue foregone

- 3.70 In the consultation document we raised the concerns of some operators that the development of multi-operator ticketing schemes might be hindered by the restriction placed by the block exemption on the use of revenue foregone (the amount the passenger would have paid if charged the operators' own fares for each journey) as a method of revenue distribution for MTC schemes.
- 3.71 Article 11 of the block exemption requires that a revenue share scheme does not:
- result in an incentive for operators to set their own fares higher than they would have been set in absence of the MTC; or
 - significantly reduce the incentive for each of the operators to compete for passengers.
- 3.72 The current guidance document indicates that any revenue distribution method can be agreed for an MTC provided it meets these two conditions. It outlines several possible methods although the examples given are non-exhaustive.²⁹ However, if operators are reimbursed for their participation in an MTC scheme on the basis of revenue foregone, there is a danger that they will have an incentive to increase their own fares. Under this system, the higher an operator's fares, the bigger the share of the travel card reimbursement pot the operator receives.
- 3.73 The Wellglade Group argued that distributing MTC revenue in relation to fares foregone was a simple method with no adverse consequences for customers in practice. The CPT told us its members sometimes had to adopt burdensome methods for dividing the revenue from MTC schemes, and some CPT members believed that the theoretical disbenefits of allowing operators to distribute MTC revenue in relation to fares foregone would be outweighed by the burden of bespoke calculations by other methods.
- 3.74 Stagecoach told us that whatever method was used to share the revenue, important considerations were the ease of providing the required data and its accuracy. Where these presented problems, there would be a tendency for operators to price the MTC higher in order to mitigate the adverse consequences of the revenue-sharing data being inaccurate leading to a lower market share. Both CPT and Stagecoach noted that the gradual

²⁹ Guidance Document paragraph 4.26

conversion of MTCs to smart media would ease that problem since it would become possible to accurately record passenger usage at lower cost and allocate revenue in direct proportion to actual use. Stagecoach suggested passenger boardings should become the recommended method of revenue sharing for all smart-enabled schemes.

CMA view

- 3.75 As noted in the consultation document, revenue foregone is considered unlikely to meet the first condition in Article 11 of the block exemption.
- 3.76 The guidance document already mentions (paragraph 4.28) that revenue foregone might be used as a revenue sharing method where the MTC revenue is very small compared to the other operators' revenues (representing, say, only a few per cent), and it is unlikely that the share of MTC revenue will become appreciable.³⁰ However, where the MTC share is significant or growing the incentive on operators to increase fares remains strong.
- 3.77 We agree with Stagecoach and CPT that the gradual conversion to smart ticketing schemes is likely to make revenue allocation methods easier and cheaper. Surveys may gradually be replaced as smart usage increases allowing for cheaper management of the revenue allocation. With better data the allocation is likely to be more accurate and lead to fewer concerns over unfair or non-transparent allocation methods. We propose to include revenue allocations facilitated by smart data in the revised guidance document.
- 3.78 On the basis of this and the availability of other methods of revenue allocation, and the potential ability to use revenue foregone where MTC revenue is proportionately very small, we are not persuaded of a need to relax the condition on revenue sharing arrangements.

Smart ticketing

- 3.79 In the consultation document, we set out a number of issues relating to smart tickets. We noted that a variety of smart ticketing technologies have been and will continue to be introduced, resulting in the development and introduction of new ticket formats and new types of tickets (new products) to be offered to

³⁰ The [guidance document](#) paragraph 4.28:

In certain very limited circumstances, schemes where revenue is distributed on the basis of revenue forgone may benefit from the Block Exemption. This could be the case, for example, where for all of the participating operators the MTC revenue is very small compared to the operator's other revenue (representing, say, only a few per cent), and it is unlikely that the share of the MTC revenue will grow appreciably, such that there is no incentive to raise own fares. Operators will therefore need to ensure that their scheme does not result in an incentive to increase their own fares and that it does not significantly reduce the incentive for each of the operators to compete for passengers.

consumers. We stated that it is important that the block exemption continues to facilitate the development of new as well as established schemes that deliver clear benefits for consumers without allowing unnecessary restrictions on competition.

- 3.80 Respondents to the consultation highlighted that all smart ticket types should be covered by the block exemption, and that it should recognise that with electronic ticketing there may not be any specific tickets issued for travel. For example, ALBUM noted that the term ‘ticketing’ needed to be amended to ensure that in any new guidance or other documentation it covered all ‘fare payment methods’, including those where no physical ‘ticket’ was issued.
- 3.81 The block exemption defines a ‘ticket’ in Article 3 as ‘evidence of a contractual right to travel’. In general, the CMA considers that this definition is wide enough to encompass the new ticketing formats and products. The CMA considers that the current definition is both adequate to accommodate smart ticketing and indeed seems flexible enough to allow for new smart ticket types and technologies to emerge.
- 3.82 As noted in the consultation document, we will clarify in the guidance document that the ticket definition includes all forms of smart tickets.
- 3.83 We were told that the block exemption ought to be flexible enough to accommodate all types of tickets that might be introduced in future that are facilitated by smart technologies. Go-Ahead also said that the block exemption must stay relevant for future developments in ticketing, fares and retailing. Similarly Strathclyde Partnership for Transport considered that it was vital that the block exemption did not negatively impact the ongoing development and delivery of smart card integrated ticketing. The LGA Public Transport Consortium said that electronic means of ticketing would increase, with the ability to offer a wider range of products, and the block exemption needed to recognise potential developments.
- 3.84 To ensure that the block exemption is sufficiently flexible to accommodate new ticket products we consider that Article 4(b) of the block exemption, which states that a ticket for each of the ticketing schemes must be purchased in a single transaction, will need to be modified. Some smart products offered, in particular the pay-later with best price guarantee, may not be purchased in a single transaction. We therefore recommend to the Secretary of State that the order should remove the single transaction requirement from the block exemption. We see no adverse competition concerns arising from this requirement.

- 3.85 In the consultation document, we considered whether different smart ticket categories that covered the known smart products under development (paper replacement, pay-as-you-go with cap, and pay-later with best price guarantee) raised issues for the block exemption. However we thought that all such ticketing types could be accommodated within the current rules without raising concerns or restricting their usage. Several respondents³¹ agreed with our assessment.
- 3.86 We consider that all the ticketing categories³² identified in the consultation document are covered by the block exemption, and we are not aware of any that are not. We recognise that it is undesirable to deter useful future innovation, but we cannot assess in advance whether a new product or ticketing formats will or will not be consistent with the block exemption. Therefore, any such developments, if they could not be accommodated within the existing definitions and coverage of the block exemption, would require a new reconsideration of the coverage of the exemption.
- 3.87 In the guidance document we intend to include more reference to smart ticket formats and products to show how these can be accommodated within the block exemption.

Information sharing

- 3.88 Article 9 prevents the exchange of commercially sensitive information, but allows the exchange of information that is directly related and indispensable to the effective operation of the public transport ticketing scheme.
- 3.89 As smart tickets are introduced more widely it is likely that better and more detailed data will become available to scheme administrators and operators, this may result in several improvements. However, with more information available the risks of information sharing between operators become greater and it is therefore important the scheme administrators take strong precautions to ensure that sensitive data is protected. As proposed in our

³¹ Including ATOC and Go-Ahead.

³² **Paper replacement.** This type of smart ticket is simply a replacement of a paper ticket. This category includes prepaid tickets such as a season ticket stored on an electronic device, or a one-day travel card paid in advance of travel on an e-purse or contactless card. Carnet tickets, off-peak tickets and time-limited travel cards stored on smart devices (such as a ticket that allows travel on any operator within a certain time period) also fall into this category.

Pay-as-you-go with cap. This smart ticket allows the consumer to travel on multiple operators and pay standard fares to each operator up to a predetermined price limit (generally the price of an MTC ticket) after which the consumer is deemed to have purchased an MTC and can undertake further travel for free within the MTC area for a limited time period.

Pay-later with best price guarantee. This smart ticket allows for the consumer to undertake travel without any pre-commitment. The customer is charged after the event for travel undertaken over a period (day, week or longer) and is given the cheapest ticket(s) available for the actual journeys undertaken. The final charge to the customer could include a combination of several different tickets including single or multi-operator tickets.

consultation document, we consider that for schemes of a significant size, scheme administrators should be independent and that clear procedures must be in place to ensure that information sharing between operators is limited to information directly related and indispensable to the effective operation of the scheme.³³

- 3.90 Some respondents were concerned about whether the structure of MTC schemes may result in greater information sharing than necessary. For example, where each operator is selling its own version of the MTC they have access to usage data on a competitor's individual services.
- 3.91 Some respondents have raised specific issues in relation to information sharing.³⁴ With data available at an individual passenger level, other risks also arise with respect to the Data Protection Act 1998 and the sharing of this data. The CMA has been asked to include in the guidance document some clarifications about the use of such data:
- (a) Can such data be shared for marketing purposes and other passenger updates?
 - (b) Should data requests from one operator be made available to all other operators?
 - (c) What level of data should be shared? Could an operator see data on routes it does not operate, for example?
 - (d) Who else can access data? Should the LTA have access for example?

CMA view

- 3.92 We acknowledge that with more information available, the risks of information sharing between operators become greater. As explained in the consultation document, it is important the scheme administrators take strong precautions to ensure that sensitive data is protected. We acknowledge that some further guidance specific to transport ticketing schemes would help operators and LTAs comply with competition law and we propose to update the guidance document to give greater clarity on what information can be shared.³⁵ For schemes of a significant size, scheme administrators should be independent

³³ Communication from the European Commission Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, 2011/C 11/01 paragraphs 55 onwards. CMA (2014), [Local authority initiatives: advice on competition law](#) and [Limiting risk in relation to competitors' information](#).

³⁴ Some issues may fall under the data protection which is the remit of the Information Commissioner's Office, see [its guidance](#).

³⁵ Also see CMA (2014), [Limiting risk in relation to competitors' information](#).

and clear procedures should be in place to ensure that information sharing between operators is limited to information strictly necessary for the efficient operation of the scheme.

Barriers to entry

- 3.93 In the consultation document we said that it is important to ensure that smart ticket developments do not result in systems or system costs that are so complex or expensive that they effectively exclude some operators or potential operators. We sought views on what barriers to entry are likely to arise for smart tickets and the extent to which they could prevent participation in the schemes.
- 3.94 Operators have told us that the main costs are new ticketing equipment and back office expenses. Stagecoach identified the main barriers to participation in smart schemes as the costs, in new ticket equipment and back office, and the complexity of operating an ITSO-based scheme.³⁶ Strathclyde Partnership for Transport also identified the main barriers as the cost and practical issue of replacing ageing electronic ticketing equipment.
- 3.95 Often there are schemes in place to help smaller operators to cover these costs either through leasing or financial help. Stagecoach told us that in a number of schemes, the LTA had assisted in offsetting some of these costs for smaller operators to encourage their participation. National Express & c2c said that funding from DfT and Transport for London had supported the setup of smart ticketing schemes on c2c. Stagecoach said that as the LTA would generally want its contracted services to participate in such ticketing schemes, there was a motivation to include a requirement for operators bidding for these contracts to be smart-enabled. In addition, the certainty of accurate revenue reimbursement through 100% smart MTCs facilitated their more widespread use and encouraged smaller operators to participate. However the Welsh government told us that State Aid rules might prevent support from being legally provided.

CMA view

- 3.96 We have no reason to believe that smart ticketing is raising barriers to entry significantly. The industry seems alive to issues of for example the cost of machines and are looking for ways in which smaller operators can be helped to meet the costs.

³⁶ A national standard IT specification for smart ticketing in the UK see www.itso.org.uk.

Other proposals for changing or widening the block exemption

3.97 Respondents to our consultation raised a small number of other issues that were not specifically included in our consultation document. These are briefly discussed below.

MTC common fare geography

3.98 One respondent requested that we should allow common fare geography for MTCs. This would mean that all fare stages and boarding reference points are the same across all operators and that the areas of validity for all MTC products are the same. It said that this would be helpful in managing the scheme and would also create simplicity and comparability for the public.

3.99 We also considered whether allowing operators to collectively agree boundaries to geographic fare zones would facilitate public understanding of their respective offers, aid comparability and encourage greater use of public transport.

3.100 FirstGroup further suggested that it 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.

CMA's view

3.101 Article 7 of the block exemption states that a public transport ticketing scheme must not limit the variety or number of routes each operator operates, nor must it limit the ability of the operators to make commercial decisions about their own single or return fares or the price of single-operator season tickets. A public transport ticketing scheme must not interfere with, for example, the price, fare structure, geographic validity or availability of single operator tickets. This is to preserve the competition existing between operators on the basic building blocks of single and return tickets and to preserve the freedom of operators to provide services that meet passengers' needs.

3.102 A common fare geography would have an impact on the fare structure and geographic validity of single and return tickets and therefore it does not fall within the current block exemption. We recognise that potential consumer benefits could arise from removing confusing differences between different operators' offers, but we have seen no evidence to suggest that common fare geography is indispensable for MTCs such that a block exemption facility is appropriate. Typically an MTC will have a single geographic coverage

definition for all operators and it would be open for schemes to undertake their own section 9 self-assessment under CA98 if geographical alignment of different single-operator tickets is a particular issue in that area. In this regard we note that the CMA has recently given advice relating to proposals for a bus scheme which included the establishment of common fare zones across all operators. We were able to advise that under the planned scheme we did not expect that there was likely to be any significant adverse impact on competition from this.

- 3.103 On the proposal by FirstGroup, we note that common zonal fares are currently not permitted under Article 7 of the block exemption as it would remove the ability of operators to determine their own fare levels and therefore remove price competition between operators. The CMA is not recommending that the block exemption is extended to permit zonal fares as this is not indispensable to the creation of schemes under the block exemption.

Inclusion of schemes and products approved by LTAs

- 3.104 The DfT initially proposed that schemes approved by a local statutory authority or DfT should be included with the categories of the block exemption and pteg put forward a suggestion by one of its members to exempt any smart products falling outside the precise definitions set in the block exemption, following a certification process whereby the LTA would verify that the proposed ticketing product complied with the relevant aspects of the Part 2 competition test in the Transport Act 2000.
- 3.105 CA98 and the Transport Act 2000 are different instruments with different purposes. Section 135 of the Transport Act 2000, on the one hand, enables LTAs to make a wide range of ticketing schemes. These will be subject to a case-by-case competition test (set out in Schedule 10 to the Transport Act 2000). The block exemption, on the other hand, defines particular categories of agreements which are likely to satisfy the conditions for exemption in section 9(1) of CA98, without any further assessment needed regarding the specific agreement.
- 3.106 Schemes approved by LTAs under the Transport Act 2000 would therefore not necessarily comply with the conditions of the block exemption and an automatic exemption of such schemes or products would be contrary to the purpose of the block exemption to create a safe haven only for schemes that meet certain criteria. The CMA considers this proposal unnecessary and contrary to the purpose of the block exemption.

Removing own operator travel cards

- 3.107 One member of pteg has suggested that there could be benefits to passengers (for example, in the form of simpler and more attractive fares structures or a market more open to entry and expansion) if individual operators were to agree to withdraw their own discounted products that are in competition with a multi-operator ticket. While such a decision, made unilaterally by an individual operator, is unlikely to fall foul of competition law, that member asked for a coordinated removal of individual operator tickets to be permitted under the block exemption.
- 3.108 This suggestion has also been made in our conversations with the industry about overpricing. Removal of own operator travel cards would reduce the incentive to overprice the MTC and would be likely to increase demand for the MTC where alternatives are not available.

CMA view

- 3.109 The CMA cannot support this suggestion as removal of the own operator travel cards would result in decreased choice for the consumer, more expensive travel options for some consumers and a reduction in competition. It is also not indispensable for the operation of MTCs.

The block exemption should be replaced by a template

- 3.110 ALBUM, supported by Ipswich Buses, proposed that the block exemption should be replaced with a framework or template in terms of what behaviours and effects are not acceptable (such as certain price fixing or anticompetitive behaviour etc) and allow the market to develop its own products accordingly. It suggested regulation should concentrate on issues of 'abuse of dominant position' rather than setting precise conditions for fare coordination. It said this would facilitate the industry's ability to meet passenger needs as identified by Transport Focus and react positively to technological developments.

CMA view

- 3.111 We do not see clear benefits in replacing the block exemption with a template agreement. To the extent that such a template is intended to provide an overall framework, the block exemption already itself creates frameworks allowing for various schemes. By contrast, if the template is intended to be more detailed, then it risks chilling innovation by being incompatible with allowing undertakings to develop their own schemes, and preventing developments of new ideas and would be more restrictive than the current arrangements. If the requirements of the proposed template were less

restrictive on the freedom to establish ticketing schemes, there is a significant risk that adverse consequences would result for competition and the other criteria set out in paragraph 2.5 may not be met. Moreover any detailed template would need to be tailored to local conditions and transport modes, which the CMA would not be able to take account of in advance.

MITs should be treated as a type of MTC

- 3.112 A few respondents have argued that the MIT definition should be removed and MTCs should be used to provide MIT-type multi-operator ticketing.
- 3.113 Go-Ahead questioned whether there needed to be a separate definition for MITs and whether these could be brought within the general (and more flexible) MTC definitions. pteg told us that there would potentially be benefits from allowing MTC schemes to operate on corridors or at times when they may only be used on the services of two different operators, so operators could agree a fair revenue allocation mechanism to support such a ticketing arrangement.
- 3.114 DfT thought that there had been some confusion concerning the difference between MITs and MTC products which may be addressed in revised guidance.

CMA view

- 3.115 Some parties have suggested MTCs should be used to provide MIT-type multi-operator ticketing. This would provide for greater flexibility in the design of the MIT and allow for common pricing to be agreed. However, we have not seen persuasive evidence that more MITs would be established under more flexible systems. In particular, we are concerned about facilitating price fixing where this is not indispensable, for the reasons set out in paragraphs 3.17 to 3.19. The block exemption is intended to provide for price fixing only in the very specific circumstances of an MTC, so as to minimise any loss of incentives to compete that would be harmful to consumers. In contrast to MTCs, price fixing is not indispensable to the MIT scheme. As discussed at paragraphs 3.33 to 3.38, concerns about revenue allocation for MIT schemes can be otherwise addressed. We also note that MTC schemes tend to be more complex to administer than MIT schemes and so are less suited to what are generally smaller-scale arrangements.
- 3.116 Therefore the CMA does not consider that the MTC definition is appropriate or necessary for the effective running of MIT schemes.

4. Changes to the review period of the block exemption

- 4.1 In our consultation document, we asked for views on the proposal that the block exemption is renewed for ten years, rather than the five-year period recommended at the last review. The rationale for this proposal is to lighten the burden on business as well as on government from the review process, and to provide more legal certainty.
- 4.2 However, we recognised that given the rate of change of technology, it is possible that new ticketing formats and products of an unanticipated type, and which are substantially different in their execution, or impact on competition and operator incentives might emerge during the duration of the block exemption. Also it is likely that significant changes in the policy or regulatory environment, or the competitive landscape around public transport would happen. It would be open for the CMA to launch a review of the block exemption ahead of its expiry if there have been significant changes.
- 4.3 21 respondents stated that they would support the block exemption being renewed for a ten-year period. TfGM, for example, agreed that the block exemption should be extended from five to ten years to reduce the burden on business and government of a further review in five years' time and to provide more legal certainty. The DfT response also welcomed the proposed extension to ten years on the basis that the block exemption would apply explicitly to smart ticketing schemes.
- 4.4 pteg thought that greater long-term certainty was generally of value to the industry, provided that there was an opportunity to periodically review and, if appropriate, extend the block exemption. pteg noted that, after several years of working with the block exemption, it had no evidence that it had any adverse effect on the functioning of the local public transport market.
- 4.5 On the other hand, Stagecoach's view was that five years would be sufficient and that a longer duration ran the risk of becoming out-of-date for developments in technology and/or retail channels. Currently, changes in ticketing and payment technology were the fastest moving aspects of the public transport industry and, given the pace of change, it said it would be wise to review the block exemption after five years.
- 4.6 Several respondents said that they would want the CMA to be able to review if there were significant changes in the industry.

CMA view

- 4.7 There is substantial support for renewing the block exemption for ten years rather than the previous five. We consider that the extended period may

overcome some of the reluctance to enter into agreements by giving greater legal certainty and will represent cost savings by reducing the burden on business and government.

- 4.8 If it were necessary for the CMA to undertake a review earlier, we would expect the trigger for a review to come either from industry or public authorities explaining why the block exemption needed reviewing and the detriment incurred in the absence of a review.

5. Revisions to the guidance document

- 5.1 We have highlighted several areas above where we consider that the guidance document could be revised or improved to create clarity. Other areas were also suggested by the respondents to the consultation.
- 5.2 We intend to update the guidance document to reflect the introduction of smart technology, this includes:
- (a) making more references to smart formats and products throughout (see paragraph 3.87);
 - (b) clarifying that the ticket definition includes all forms of smart tickets (see paragraph 3.82); and
 - (c) providing guidance on possible methods of revenue sharing for MTCs using smart data (see paragraph 3.77).
- 5.3 For MTC schemes we propose to revise the guidance document to provide greater clarity in line with any changes made to the block exemption by the Secretary of State in order to simplify the definition of MTCs. One aspect where greater clarity would be particularly helpful is in how it is shown that an MTC is not in practice operating as an MIT, see paragraph 3.45.
- 5.4 For MIT schemes, we intend to provide a description of how alternative revenue share arrangements can be used in a scheme that meets the criteria of section 9 under CA98 (see paragraph 3.38 above).
- 5.5 For information sharing, we propose the guidance document gives greater clarity on what information can be shared and advises on the appropriate arrangements to minimise the risk of inappropriate information sharing (see paragraph 3.92).
- 5.6 Other changes to the guidance document proposed by respondents include:
- (a) ensuring it is up to date with relevant legislation and references to other guidance;

- (b) recognising that smart technology will continue to develop;
- (c) clarifying definitions of MIT and MTC further;
- (d) clarifying the meaning of 'Joint Marketing' for ticketing schemes;
- (e) adding a two-page summary that enables a quick assessment as to whether a particular scheme is likely to need reviewing in detail against the full guide;
- (f) greater clarity on whether a multi-operator single journey carnet ticket falls within the block exemption; and
- (g) adding examples and illustrations of the application of the block exemption.

5.7 We propose to consult on the revised guidance document in early 2016.

6. Concluding remarks/decision

Recommendation to the Secretary of State

- 6.1 As discussed above we recommend that the block exemption is renewed. We consider it appropriate that the duration of the extension should be for ten years to give greater legal certainty and to lower the administrative burden. The new order should therefore run until 28 February 2026.
- 6.2 We also recommend that the Secretary of State should simplify the definition of MTCs to make it easier for operators and local authorities to apply.
- 6.3 Finally we recommend that the Secretary of State should make changes to Article 4 of the block exemption to ensure that the block exemption allows for the introduction of smart formats and products, in particular by removing the 'single transaction' requirement.