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Regulatory Impact Assessment

The Competition Act 1998 (Public Transport Ticketing
Schemes Block Exemption) (Amendment) Order 2005

1 December 2005

URN 05/1900

ORDER VARYING THE PUBLIC TRANSPORT TICKETING SCHEMES BLOCK EXEMPTION

Purpose and intended effect of the Order

- I. In 2001, the then Director General of Fair Trading (now Office of Fair Trading) concluded that agreements between public transport operators on certain types of integrated public transport ticketing schemes were likely to satisfy the conditions for exemption set out in section 9 the Act. Ticketing schemes are considered to promote higher quality bus services and transport networks and improve the viability of public transport networks with resultant reductions in road congestion, air and noise pollution. Following a public consultation, the Office of Fair Trading ('OFT') recommended the Secretary of State make a block exemption order for such agreements, providing greater legal certainty for operators and avoiding the need for large numbers of benign agreements to be notified unnecessarily to the OFT.
- II. The purpose of this order is to extend by a further five years the existing Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order (SI 2001 No 319) ('the block exemption') and introduce certain amendments to it. The block exemption allows operators to develop integrated ticketing schemes subject to conditions designed to maintain competition and protect the interests of passengers. The amendments this order introduces are intended to make it easier for bus operators to develop integrated ticketing schemes, particularly travelcards.

OFT's Public Consultation

- III. In April 2005, pursuant to sections 8(1) and 8(4) of the Competition Act 1998 ('the Act'), the OFT consulted interested parties on proposals to extend and make amendments to the block exemption in the consultation paper set out in the OFT consultation paper *Proposals to recommend varying the public transport ticketing schemes block exemption* ('the Consultation Paper')¹. The Consultation Paper was sent to 276 public transport operators and organisations with an interest in public transport. The OFT received a total of 22 responses, mostly from bus operators and local authorities. All respondents agreed that without the block exemption, there is a risk that operators would not choose to participate in ticketing schemes. There was also broad support for the other amendments OFT proposed to make to the block exemption. A summary of the responses that the OFT received is contained in the *Recommendation to vary the public transport ticketing schemes block exemption*².

¹ The consultation paper is available from <http://www.offt.gov.uk/nr/rdonlyres/056d25ee-7c59-4759-896b-720763073525/0/oft784.pdf>

² The document is available from: <http://www.offt.gov.uk/NR/rdonlyres/D00DB623-9B61-43F3-8827-57C4BED3DD5E/0/oft817.pdf>

extend it might be taken as an indication that it considers such schemes are no longer appropriate. This would have the effect of deterring operators from participating in such schemes; and

- If the block exemption was allowed to expire, it would make it difficult for the OFT to convey the change in approach to how the OFT considers ticketing arrangements should satisfy the Section 9(1) conditions. This could lead to significantly greater resources being expended by the OFT in providing informal guidance to local authorities and operators than would be required if the block exemption remained in place and was varied.
- VII. Additionally, the OFT took the view that it is appropriate to have a block exemption for ticketing schemes because they continue to satisfy the conditions for exempt agreements set out in section 9(1) of the Act and that the benefits of these types of ticketing agreements are likely to outweigh any negative effects on competition. A detailed discussion on the extent to which ticketing schemes fulfil these four conditions is set out in the OFT Consultation Paper.
- VIII. The Secretary of State agrees with the arguments made by the OFT and does not consider it appropriate to allow the block exemption to expire in February 2006.

Reasons for extending the duration of the block exemption by five years rather than another period

- IX. The OFT considered proposals for extending the block exemption for a period of more than five years, for example 10 years. However, this would have given the block exemption a total duration of more than 15 years which would have been inconsistent with the general approach taken with regards to EC block exemptions. These typically have a duration of 10 years. The OFT concluded, that a five-year period would provide sufficient legal certainty to enable operators to invest in ticketing schemes, while allowing for the opportunity for subsequent review to consider changing circumstances.
- X. The Secretary of State agrees that 5 years is the optimum time period for which to renew the block exemption.

Reasons for amending the block exemption as recommended rather than make other amendments or none

- XI. The OFT recommended to the Secretary of State that two substantive changes be made to the block exemption:

combination of the conditions in the block exemption providing that revenue lies where it falls and that the price of MITs cannot be agreed amongst operators provides operators with an incentive to compete. Moreover, the OFT considers that if a MIT is priced above the competitive level then it would be open to operators to introduce their own tickets priced at a level below the price of the MIT. Therefore, the potential for individual operators to offer their own tickets provides an additional constraint on the price of MIT.

- XV. The OFT consulted on whether there are any alternatives to the ticketing schemes covered by the block exemption that would provide greater benefits to consumers. The majority of respondents indicated that they could not think of any alternative schemes that could provide greater benefits to consumers. Only one respondent identified some other ticketing schemes that could provide some benefits to consumers, although this would have been to a smaller more specialised group, and as a result was not considered any further.
- XVI. The Secretary of State does not consider that any other substantive changes need be made to the block exemption other than those recommended by the OFT. The Secretary of State has informed the OFT of some minor modifications made to Article 11 of the block exemption and has taken OFT's comments into account.

Minor variations

- XVII. The OFT also recommended the following minor changes to the block exemption⁵:
- the definition of 'register' in Article 3 should be amended so that it refers to the OFT's Rules which have replaced the Director's rules;
 - Article 21 should be amended so that the provisions by which the OFT must give notice in writing if it wishes to cancel the block exemption in respect of a particular scheme reflect similar provisions in the OFT's Rules for giving notice in writing; and
 - A typographical error in Article 8 should be corrected so that the text 'object or effect or limiting' is replaced with 'object or effect of limiting'.
- XVIII. These changes have been accepted by the Secretary of State.

Risk assessment

⁵ Article 19 is amended to refer to section 9(1) rather than section 9 of the Act, in accordance with changes to the Act made by the *Competition Act 1998 and other enactments (Amendment) Regulations 2004*.

Monitoring and review

- XXIV. The OFT recommends extending the duration of the block exemption by five years to 28 February 2011 but plans to review the case in 2009 to consider changing circumstances.

Summary and recommendation

- XXV. Following consultation, the OFT considers that the risks of reduced competition arising from an increased number of ticketing agreements will be outweighed by the benefits to passengers from improved services and other benefits and that the amendments to the block exemption will continue to allow for competition, ensuring passengers continue to benefit from lower prices and improved services.

DECLARATION AND PUBLICATION

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed **Gerry Sutcliffe**

Date 5th December 2005

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