

SCHEDULES

SCHEDULE 2

COMPETITION TEST: AMENDMENTS OF SCHEDULE 10 TO THE TRANSPORT ACT 2000

New test for certain agreements, decisions and practices

15 After paragraph 16 insert—

“PART 2

TEST FOR CERTAIN AGREEMENTS, DECISIONS AND PRACTICES

Interpretation

- 17 (1) This paragraph applies for the purposes of the interpretation of this Part of this Schedule.
- (2) A voluntary multilateral agreement (a “VMA”) is a voluntary partnership agreement (within the meaning given by section 153) to which two or more operators of local services are parties.
- (3) A voluntary bilateral agreement (a “VBA”) is a voluntary partnership agreement (within the meaning given by that section) to which only one operator of local services is a party.
- (4) In this Part of this Schedule—
- (a) a “qualifying agreement” is an agreement between bus undertakings only;
 - (b) a “qualifying decision” is so much of any decision by an association of undertakings as relates to the operation of local services;
 - (c) a “qualifying practice” is a concerted practice by bus undertakings only.
- (5) For the purposes of sub-paragraph (4)—
- (a) a bus undertaking is an undertaking which is the operator of a local service;
 - (b) the involvement of a local authority which is not a bus undertaking is to be disregarded;
 - (c) a quality partnership scheme or voluntary partnership agreement is not to be regarded as a qualifying agreement, qualifying decision or qualifying practice.
- (6) In sub-paragraph (5)(b) “local authority” means—
- (a) a local transport authority;

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- (b) a district council in England.
- (7) A provision of this Part of this Schedule which is expressed to apply to, or in relation to, a qualifying agreement is to be read as applying equally to, or in relation to, a qualifying decision or a qualifying practice (but with any necessary modifications).
- (8) A reference to the area of an authority—
 - (a) in relation to a VMA or VBA, is a reference to the area of a local transport authority who are a party to the agreement;
 - (b) in relation to a qualifying agreement, is a reference to the area of a local transport authority in whose area the agreement is, or is to be, implemented.
- (9) The “bus improvement objectives” are—
 - (a) securing improvements in the quality of vehicles or facilities used for or in connection with the provision of local services,
 - (b) securing other improvements in local services of benefit to users of local services, and
 - (c) reducing or limiting traffic congestion, noise or air pollution.

Agreements, decisions and practices to which this Part of this Schedule applies

- 18 (1) This Part of this Schedule applies to—
- (a) VMAs or VBAs falling within sub-paragraph (2), and
 - (b) qualifying agreements falling within sub-paragraph (3).
- This paragraph is subject to paragraph 19.
- (2) A VMA or VBA falls within this sub-paragraph if it has as its object or effect the prevention, restriction or distortion of competition in the area of the authority, or the combined area of the authorities.
 - (3) A qualifying agreement falls within this sub-paragraph if—
 - (a) it has as its object or effect the prevention, restriction or distortion of competition in the area of the authority, or the combined area of the authorities, but
 - (b) the authority, or any of the authorities, has certified that they have considered all the terms and effects (or likely effects) of the agreement and that in their opinion the requirements mentioned in sub-paragraph (4) are satisfied.
 - (4) The requirements are that the agreement—
 - (a) is in the interests of persons using local services within the area of the authority, or the combined area of the authorities, and
 - (b) does not impose on the undertakings concerned restrictions that are not indispensable to the attainment of the bus improvement objectives.
 - (5) For the purposes of sub-paragraph (2)—

- (a) the object or effect of a VMA may be considered either on its own or together with one or more other VMAs, VBAs or qualifying agreements;
 - (b) the object or effect of a VBA is to be considered together with one or more VMAs, other VBAs or qualifying agreements.
- (6) For the purposes of sub-paragraph (3) the object or effect of a qualifying agreement may be considered either on its own or together with one or more VMAs, VBAs or other qualifying agreements.
- 19 (1) This Part of this Schedule does not apply to a VMA, VBA or qualifying agreement if it (or any of its provisions) constitutes a price-fixing agreement within the meaning given by section 39(9) of the Competition Act 1998.
- (2) Where the standard of services specified in a VMA or VBA includes any requirement as to maximum fares (see section 153(3)), any provision of that agreement relating to the setting, review or revision of the maximum fare is not to be regarded as constituting a price-fixing agreement for the purposes of sub-paragraph (1).

The prohibition

- 20 (1) Any VMA, VBA or qualifying agreement to which this Part of this Schedule applies is prohibited unless it is exempt in accordance with the provisions of this Part of this Schedule.
- (2) The prohibition in sub-paragraph (1) applies in place of the Chapter 1 prohibition.
- (3) The Chapter 1 prohibition is the prohibition imposed by section 2(1) of the Competition Act 1998.

Agreements and decisions void

- 21 Any agreement or decision which is prohibited by paragraph 20 is void.

Exempt agreements

- 22 (1) A VMA, VBA or qualifying agreement to which this Part of this Schedule applies is exempt if—
- (a) it contributes to the attainment of one or more of the bus improvement objectives,
 - (b) it does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives, and
 - (c) it does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the services in question.
- (2) In any proceedings in which it is alleged that the prohibition in paragraph 20 is being or has been infringed by a VMA, VBA or qualifying agreement any undertaking or association of undertakings claiming the

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benefit of sub-paragraph (1) shall bear the burden of proving that the conditions of that sub-paragraph are satisfied.

Application of provisions of Competition Act 1998

- 23 (1) The provisions of Part 1 of the Competition Act 1998 (“the 1998 Act”) specified in sub-paragraph (2) apply in relation to the prohibition in paragraph 20 (and a VMA, VBA or qualifying agreement to which this Part of this Schedule applies) as those provisions apply in relation to the Chapter 1 prohibition (and an agreement to which the provisions of that Chapter apply).
- (2) The provisions are—
- (a) in Chapter 1, sections 3, 6, 8, 10 and 11 (excluded agreements and exemptions);
 - (b) Chapter 3 (investigations and enforcement), except sections 36 to 39 (penalties);
 - (c) in Chapter 4, sections 46 to 49 (appeals);
 - (d) Chapter 5 (miscellaneous), except section 54 (regulators).
- (3) The application, by virtue of sub-paragraph (2)(d), of Chapter 5 includes section 52(1) of the 1998 Act; but this is subject to the following modifications—
- (a) the reference to the passing of the 1998 Act is to be read as a reference to the passing of the Local Transport Act 2008;
 - (b) the reference to the Director is to be read as a reference to the OFT.
- (4) The application, in accordance with sub-paragraph (1), of the provisions mentioned in sub-paragraph (2) is to be subject to such further modifications as the Secretary of State may by order provide.”.