
STATUTORY INSTRUMENTS

2001 No. 319

COMPETITION

The Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001

Made - - - - *8th February 2001*
Laid before Parliament *8th February 2001*
Coming into force - - *1st March 2001*

Whereas the Director has recommended that the Secretary of State make an order specifying a category of agreements relating to public transport ticketing for the purposes of section 6 of the Competition Act 1998(1);

And whereas before making the said recommendation the Director published details of his proposed recommendation and considered the representations about it which were made to him;

Now therefore the Secretary of State in exercise of the powers conferred on him by sections 6(2), (5), (6) and (7), 8(6), 71(3) and 75 of the Competition Act 1998 hereby makes the following Order:

Citation, Commencement, Duration and Interpretation

1. This Order may be cited as the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 and shall come into force on 1st March 2001.

2. This Order shall have effect from the beginning of 1st March 2000 and shall cease to have effect at the end of the period of five years commencing on 1st March 2001.

3. In this Order—

“the Act” means the Competition Act 1998;

“block exemption” means the exemption from the Chapter I prohibition arising by virtue of this Order for the category of agreements specified in this Order;

“bus service” has the meaning given in section 159(1) of the Transport Act 1968(2) but excludes a bus service which is a tourist service;

“chartered service” means a public transport service:

(1) 1998 c. 41.

(2) 1968 c. 73; the definition of “bus service” in section 159(1) was substituted by the Transport Act 1985 (c. 67), section 1 and Schedule 1, paragraph 1.

- (a) for which the whole capacity of the vehicle, vessel or craft supplying that service has been purchased by one or more charterers for his or their own use or for resale;
- (b) which is a journey or trip organised privately by any person acting independently of the person operating the vehicle, vessel or craft supplying that service; or
- (c) on which the passengers travel together on a journey, with or without breaks, from one or more places to one or more places and back;

“complementary services” means local public transport services which are not in competition with each other over a substantial part of the route covered by the ticket in question;

“connecting service” means a service (other than a bus service, a chartered service or a tourist service) for the carriage of passengers by road, tramway, railway, inland waterway or air which is a long distance service and which runs between—

- (a) a station or stopping place at or in the vicinity of which the relevant local public transport service stops; and
- (b) any other place;

“inland waterway” includes both natural and artificial waterways, and waterways within parts of the sea that are in the United Kingdom;

“journey” means any journey made by an individual passenger and includes a return journey;

“local public transport service” means:

- (a) a bus service; or
- (b) a scheduled public transport service (other than a bus service) using one or more vehicles or vessels for the carriage of passengers by road, railway, tramway or inland waterway at separate fares other than a long distance service, a chartered service or a tourist service;

“long distance add-on” means:

- (a) a ticket (or tickets) entitling the holder to make a journey solely on the local public transport services of any one operator;
- (b) a multi-operator travelcard; or
- (c) a through ticket,

each being purchased as an add-on to a ticket (or tickets) entitling the holder to make a particular journey on one or more connecting services;

“long distance operator” means an undertaking (other than an operator) supplying a scheduled long distance service using one or more vehicles, vessels or craft for the carriage of passengers by road, railway, tramway, inland waterway or air at separate fares other than a chartered service or a tourist service;

“long distance service” means a public transport service in relation to which (except in an emergency) one or both of the following conditions are met with respect to every passenger using the service:

- (a) the place where he is set down is fifteen miles or more, measured in a straight line, from the place where he was taken up;
- (b) some point on the route between those places is fifteen miles or more, measured in a straight line, from either of those places,

and where a public transport service consists of one or more parts with respect to which one or both of these conditions are met, and one or more parts with respect to which neither of them is met, each of those parts shall be treated as a separate public transport service;

“members of the public” means any person other than an operator, potential operator, long distance operator or potential long distance operator;

“multi-operator individual ticket” means a ticket (or tickets) entitling the holder, where a particular journey could be made on local public transport services provided by any of two or more operators, to make that journey or any part of it on whichever service the holder chooses;

“multi-operator travel card” means 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
- (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;

“operator” means an undertaking supplying local public transport services;

“posted price” means, where a ticket is purchased from one undertaking (the seller), a wholesale price set independently by another undertaking (“the creditor”) for the carriage of passengers bearing that ticket on the public transport services of the creditor;

“public transport ticketing scheme” has the meaning given in Article 4(2);

“the register” means the register maintained by the Director under rule 8 of the Director’s rules set out in the Schedule to the Competition Act 1998 (Director’s rules) Order 2000(3);

“short distance add-on” means a multi-operator travelcard purchased as an add-on to a ticket (or tickets) entitling the holder to make a particular journey on a local public transport service pursuant to an agreement which provides for onward travel connections for passengers on complementary services;

“stopping place” means a point at which passengers are taken up or set down in the course of a public transport service;

“through ticket” means a ticket (or tickets) entitling the holder to make a particular journey on two or more local public transport services provided that such a journey is made on complementary services;

“ticket” means evidence of a contractual right to travel;

“tourist service” means a public transport service where the price charged for that service includes payment for a live or recorded commentary about the locality being a service primarily for the benefit of tourists;

“vehicle” includes vehicles constructed or adapted to run on flanged wheels but excludes hackney carriages, taxis, cabs, hire cars and any vehicle propelled by an animal; and

“working day” means a day which is not a Saturday, Sunday or any other day on which the Office of Fair Trading is closed for business.

Block Exemption

4.—(1) The category of agreements identified in paragraph (2) as public transport ticketing schemes is hereby specified for the purposes of section 6 of the Act.

(2) For the purpose of this Order a public transport ticketing scheme is one or more of the following:

- (a) a written agreement between operators to the extent that it provides for members of the public to purchase, in a single transaction, a multi-operator travelcard;

- (b) a written agreement between operators to the extent that it provides for members of the public to purchase, in a single transaction, a through ticket;
- (c) a written agreement between operators to the extent that it provides for members of the public to purchase, in a single transaction, a multi-operator individual ticket;
- (d) a written agreement between operators to the extent that it provides for members of the public to purchase, in a single transaction, a short distance add-on;
- (e) a written agreement between one or more operators and one or more long distance operators to the extent that it provides for members of the public to purchase, in a single transaction, a long distance add-on;

5. This block exemption has effect subject to the conditions and the obligation specified in Articles 6 to 17.

Conditions and consequences of breach of conditions

6. Unless there is an objective, transparent and non-discriminatory reason, a public transport ticketing scheme shall not, directly or indirectly, in isolation or in combination with other factors under the control of the parties:

- (a) have the object or effect of preventing any operator or potential operator from participating in that public transport ticketing scheme; or
- (b) to the extent that the scheme provides for members of the public to purchase a long distance add-on, have the object or effect of preventing any operator, potential operator, long distance operator or potential long distance operator from participating in that public transport ticketing scheme.

7. A public transport ticketing scheme shall not, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have the object or effect of limiting:

- (a) the variety or number of routes on which any operator or long distance operator provides or may provide public transport services; or
- (b) the freedom of operators or long distance operators to set the price or availability of, the fare structure relating to, or the zones or geographical validity applicable for, any ticket entitling the holder to make a journey solely on the public transport services of any one operator or any one long distance operator.

8. A public transport ticketing scheme shall not, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have the object or effect of limiting the frequency or timing of any public transport services operated by any operator or long distance operator, unless such restriction is indispensable to the effective operation of that scheme, pursuant to an agreement which provides for onward travel connections for passengers.

9.—(1) Subject to paragraph (2), a public transport ticketing scheme shall not, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have the object or effect of facilitating an exchange of information between the parties to that public transport ticketing scheme.

(2) Paragraph (1) shall not prevent an exchange of information between the parties to a public transport ticketing scheme which is directly related and indispensable to the effective operation of that scheme, provided that the relevant provision under which the information is exchanged is objective, transparent and non-discriminatory and that it does not breach any of the other conditions imposed by this Order.

10. Breach of any of the conditions imposed by any of Articles 6, 7, 8 or 9 shall have the effect of cancelling the block exemption in respect of that public transport ticketing scheme.

11. The parties to a public transport ticketing scheme which provides for members of the public to purchase a multi-operator travelcard shall not distribute between themselves the revenue received by virtue of the operation of that scheme other than pursuant to terms contained in that scheme which reflect, as far as is reasonably practicable, the actual passenger miles travelled on the vehicles or vessels of each party by passengers using tickets issued under that scheme during the accounting period in which such revenue was received.

12. Breach of the condition imposed by Article 11 shall have the effect of cancelling the block exemption in respect of the relevant public transport ticketing scheme to the extent that such scheme provides for members of the public to purchase a multi-operator travelcard.

13.—(1) Subject to paragraph (2), a public transport ticketing scheme which provides for members of the public to purchase a through ticket, multi-operator individual ticket, short distance add-on or long distance add-on, shall not directly or indirectly, in isolation or in combination with other factors under the control of the parties have the object or effect of fixing a price at which the respective through ticket, multi-operator individual ticket, short distance add-on or long distance add-on is offered for sale.

(2) Paragraph (1) shall not prevent:

- (a) the parties to a public transport ticketing scheme from agreeing to charge each other non-discriminatory posted prices for sales of the respective through ticket, short distance add-on or long distance add-on; or
- (b) operators from fixing the price of a multi-operator travelcard which may be purchased as a short distance add-on or long distance add-on

provided that such action does not breach any of the other conditions imposed by this Order.

14. Breach of the condition imposed by Article 13 shall have the effect of cancelling the block exemption in respect of the relevant public transport ticketing scheme to the extent that such scheme provides for members of the public to purchase the relevant through ticket, multi-operator individual ticket, short distance add-on or long distance add-on.

15. The parties to a public transport ticketing scheme which provides for members of the public to purchase a multi-operator individual ticket, shall not:

- (a) include an operator as a party to that scheme unless that operator also makes available, concurrently with making available that multi-operator individual ticket, single and return tickets entitling the holder to make the particular journey covered by that multi-operator individual ticket solely on the local public transport services of that operator; or
- (b) distribute between themselves the revenue received by virtue of the operation of that scheme other than pursuant to terms contained in that scheme whereby the operator which sells any particular multi-operator individual ticket retains exclusively all the revenue received from that sale.

16. Breach of the condition imposed by Article 15 shall have the effect of cancelling the block exemption in respect of the relevant public transport ticketing scheme to the extent that such scheme provides for members of the public to purchase a multi-operator individual ticket.

Obligation

17. A person shall, within ten working days from the date on which it receives notice in writing under this Article, supply to the Director such information in connection with those public transport ticketing schemes to which it is a party as the Director may require.

Cancellation by notice

18. If there is a failure to comply with the obligation imposed by Article 17 without reasonable excuse, the Director may, subject to Article 20, by notice in writing cancel this block exemption in respect of any public transport ticketing scheme to which the relevant request for information under Article 17 relates.

19. If the Director considers that a particular public transport ticketing scheme is not one to which section 9 of the Act applies, he may, subject to Article 20, by notice in writing cancel this block exemption in respect of that scheme.

20. If the Director proposes to cancel the block exemption in accordance with Article 18 or Article 19, he shall first give notice in writing of his proposal and shall consider any representations made to him.

21. For the purpose of Articles 18, 19 and 20, notice in writing is given by:

- (a) the Director giving notice in writing of his decision or proposal to those persons whom he can reasonably identify as being parties to the relevant public transport ticketing scheme; or
- (b) where it is not reasonably practicable for the Director to comply with paragraph (a), the Director publishing his decision or proposal in the register and:
 - (i) the London, Edinburgh and Belfast Gazettes;
 - (ii) at least one national daily newspaper; and
 - (iii) if there is in circulation an appropriate trade journal which is published at intervals not exceeding one month, in such trade journal,

stating the facts on which he bases it and his reasons for making it.

Peter Hain
Minister for Energy, and Competitiveness in
Europe,
Department of Trade and Industry

8th February 2001

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is a block exemption Order under section 6 of the Competition Act 1998 ('the Act'). It gives effect to the Director General of Fair Trading's recommendation that public transport ticketing schemes (as defined in the Order) for local public transport services constitute a category of agreements which are likely to be agreements to which section 9 of the Act applies. Agreements which fall within the category specified in the block exemption Order are exempt from the prohibition in Chapter I of the Act.

The recommendation was made by the Director following consultation in accordance with section 8(1) of the Act.

The block exemption has effect subject to certain conditions and obligations and concerns particularly agreements between local public transport operators (and in one case, together with long distance public transport operators) which provide for the purchase, in a single transaction, of:

- (a) multi-operator travelcards (MTCs)
- (b) through tickets (TTs)
- (c) multi-operator individual tickets (MITs)
- (d) short distance add-ons
- (e) long distance add-ons

as defined in the Order.

The block exemption applies to such agreements to the extent that they fall within the scope of section 2 of the Act (agreements etc. preventing, restricting or distorting competition (the Chapter I prohibition)).

The Order includes provisions concerning the cancellation of the block exemption.

The block exemption is retrospective and has effect from 1st March 2000 and will cease to have effect at the end of the period of five years from the date of coming into force of the Order.

Guidance on the block exemption is available from the Director General of Fair Trading at www.offt.gov.uk.