

# CMA CONSULTATION ON DRAFT GUIDANCE ON THE PUBLIC TRANSPORT TICKETING SCHEMES BLOCK EXEMPTION GUIDANCE

## FIRSTGROUP PLC RESPONSE

### BACKGROUND

FirstGroup plc (“**First**”) is a public limited company operating public transport services in the UK, Ireland and North America. It is listed on the London Stock Exchange and operates five business divisions:

- (a) First Student: this business division provides student transportation services in North America;
- (b) First Transit: this business division provides public transit management and contracting in North America;
- (c) Greyhound: this business division provides scheduled intercity passenger services in North America;
- (d) First Bus: this business division operates local bus services in the UK and Ireland; and
- (e) First Rail: this business division provides passenger rail services in the UK.

This response forms a combined response on behalf of FirstGroup plc and its UK divisions, First Rail and First Bus.

### RESPONSE

The points below follow the structure of the consultation document, with other comments interspersed between the appropriate consultation questions. First does not consider this response to be confidential.

#### **Question 1:**

**2.16 This section has been shortened and simplified to make the guidance more user-friendly: (a) Do you consider that this section (read in conjunction with the rest of the guidance, in particular Appendix B) is providing you with appropriate level of detail?**

*Yes, First considers that this section provides us with an appropriate level of detail.*

**(b) What changes, if any, do you suggest?**

*None.*

#### **Question 2**

**3.30 This section has been expanded to set out what is meant by ‘substantially the same’. We use examples and route maps to illustrate the points:**

**(a) Do you think that it is clear what is meant by ‘substantially the same’?**

*Yes, First considers that it is clear.*

**(b) Do you find the examples and route maps helpful?**

*Yes, we consider that they will be helpful in practice. See also comments at (d) below.*

**(c) Is the information required to make an assessment easily available?**

*Yes, it is easily available.*

**(d) Do you have any suggestions to make this section clearer?**

*3.7 d We consider that the current drafting is potentially misleading and would prefer to see the words “and return” deleted. Whilst a single operator return ticket might remain available, when an MIT is introduced the default is, to prevent passenger confusion or boarding time delay, to offer only “a return” which defaults to the MIT and not the operator’s own return. If the CMA wished to give another example here, it could refer to “single operator network tickets” rather than returns.*

*3.19 We consider that the wording in this paragraph (e.g. “...as an extension to a ticket (or tickets) already entitling the holder...” ) would benefit from further clarification – we believe that the description of a short-distance add-on set out at paragraph 4.48 is clearer and should perhaps also be adopted here to avoid any inadvertent confusion.*

**(e) Do you have any further comments on this section?**

*No further comments.*

**Question 3**

**3.36 This section reflects changes to the definition of MTC in the block exemption. We explain what is meant by ‘in practice, not substantially used as an MIT or TT’. We use examples and route maps to illustrate points:**

**(a) Do you think that it is clear what is meant by ‘in practice, not substantially used as an MIT or TT’?**

*Yes, we believe that the guidance on this point is clear.*

**(b) Do you find the examples and route maps helpful?**

*Yes, we consider that they will be helpful in practice.*

**(c) Is the information required to make an assessment easily available? If not, please explain what the obstacles are and what alternatives might be used instead.**

*Yes, it is easily available.*

**(d) Do you have any suggestions to make this section clearer?**

*We believe that the final few words of paragraph 3.35 (“(these tests do not apply to single operators)”) would benefit from further clarification – the meaning is unclear.*

**(e) Do you have any further comments on this section?**

*No further comments.*

**Question 4**

**4.5 This section has not been changed substantially:**

**(a) Do you consider that the examples are relevant?**

*Yes, we consider that the examples are potentially relevant.*

**(b) Would any of the examples cause you concern?**

*Example (4) in Box 3 causes us some concern, as it could inadvertently lead to additional administrative burden and costs in calculating the proportion of costs to be allocated to each operator, particularly on smaller schemes. In First’s view, it would be better to suggest that costs be apportioned “on the same basis as any revenue*

*apportionment" - so for any smaller scheme, costs would be apportioned (as would revenues) on the basis of eligible mileage.*

**(c) Would you like to add further examples?**

*No.*

#### **Question 5**

**4.9 In this section we have introduced some examples:**

**(a) Do you consider that the examples are relevant?**

*Yes, we consider them to be relevant and potentially helpful in practice.*

**(b) Would any of the examples cause you concern?**

*No, we have no particular concerns.*

**(c) Would you like to add further examples?**

*No – see answer to (a) above.*

#### **Question 6**

**4.11 In this section we have introduced some examples.**

**(a) Do you consider that the examples are relevant?**

*Yes, we consider them to be relevant and potentially helpful in practice.*

**(b) Would any of the examples cause you concern?**

*No, we have no particular concerns.*

**(c) Would you like to add further examples?**

*No – see answer to (a) above.*

#### **Question 7**

**4.22 In this section we have added more explanation and introduced some examples of information which can and cannot be exchanged.**

**(a) Does this draft help you to understand what information you can and cannot exchange?**

*Yes, we believe that it will be helpful in practice.*

**(b) Do you consider that the examples are relevant? Are there any omissions or points which would cause difficulty in operating the schemes effectively? Please give details of the nature of information exchanged and why it is necessary for the effective operation of the scheme.**

*We consider that the examples are relevant and that there are no omissions or points which would cause difficulty in operating the schemes effectively.*

**(c) Would you like to add further examples?**

*No – see answer to (b) above.*

**(d) Do you have any further comments on this section?**

*We believe that the third bullet of paragraph 4.17 could benefit from further clarification by adding some extra detail, for example "...not as a proportion of **any or all operators'** total revenue" (new wording in bold and underlined).*

#### **Question 8**

**4.29 This section is largely unchanged:**

**(a) Do you consider that the example is still relevant? If not please explain why and provide an alternative example.**

*We believe that the example is still relevant.*

**(b) Would you like to add further comment on this section?**

*No further comments.*

#### **Question 9**

**4.36 We have changed this section slightly to make it clearer:**

**(a) Do you have any comments on this section?**

*No, we believe that it is clear.*

#### **Question 10**

**4.47 In this section we have provided more clarification on agreeing the price of MTCs and we have added a revenue share example:**

**(a) Do you consider that the guidance on agreeing prices is helpful?**

*Yes, we believe that it will be helpful in practice.*

**(b) Would any of the examples cause you concern?**

*As we have communicated to the Office of Fair Trading and Competition Commission previously, we still consider that the approach set out at paragraph 4.45 is potentially illogical, given the small proportion of operator revenue that such schemes generally account for. We are pleased to see that there seems to be some acknowledgement of this in paragraph 4.46 – we believe that it would be helpful to have some further clarity over what is meant by "only a few percent" in paragraph 4.46, for example "less than [X]%".*

**(c) Would you like to add further examples?**

*No, subject to the point at (b) above, we believe that the examples are clear and sufficient.*

*We also have some further comments on the sections of the draft guidance that fall between consultation questions 10 and 11:*

- We consider the section at paragraphs 4.48 et seq to be unnecessarily complex and we do not believe that it adds much clarification to the wording of the Block Exemption itself. However, given that tickets of these types are so uncommon (other than the PlusBus type add-on) this concern is not material.*
- We believe that the sudden isolated use of "undertaking" at paragraph 4.54 would perhaps merit a reference back to the glossary, given that this is the only time that the term is used in the substantive section of the guidance.*

- *We believe that paragraph 4.61b would benefit from a layman's explanation, in keeping with the rest of the guidance.*
- *Paragraph 5.6 seems potentially inconsistent with the wording of paragraph 4.46 and therefore likely to cause confusion. We suggest that paragraph 5.6 cross refers specifically back to paragraph 4.46.*

## Question 11

**5.10** In this section we have introduced an example of a section 9(1) self-assessment to give an indication to operators that wish to develop MIT-type schemes which fall outside the block exemption of the kinds of factors which could be relevant.

**(a)** Do you consider that the example here is helpful? Or do you think that there are still areas which need more guidance?

*See comments at (b) below.*

**(b)** Do you have any further comments on this section?

*Paragraph 5 of the worked example suggests that revenue could be distributed on the basis of passenger numbers, but we cannot readily see how this would be possible in practice.*

*We consider that this needs some more thought as a practical application, although it is worth noting that we are not aware of any MITs that distribute revenue. In the example given it is more than likely that the evening service would be tendered and the local authority would specify acceptance of the daytime operator's commercial returns as a condition of tender, with the tendered operator building an allowance for this into their priced bid.*

*We believe that the reference at line 2 of paragraph 4 to "journey" should be to "service".*

*We also have some additional comments that cover Appendix A of the guidance. In Appendix A, we recommend that a paragraph is added which reminds operators and local authorities that the latter may include conditions in tendered contracts that operators must allow for the acceptance of other operators' commercial single operator travelcards, return tickets etc and of MTCs within their bids. This will potentially benefit both local authorities and the travelling public, as well as ensuring clarity for bidding operators.*

## Question on short guide

**1.** Do you think the short guide is sufficiently clear and easy to understand? If not please suggest what needs to be changed.

*Yes, subject to the following two comments.*

### Comment 1

*The example at paragraph (c) on page 1 refers to quality partnership schemes ("QPS") rather than a ticketing scheme. While a QPS may specify as a standard of service that an operator must participate in multi operator ticketing, in respect of one or more specific arrangements, a QPS does not specify the details of how any such arrangement would work. An agreement underpinning a QPS will be a Multilateral Voluntary Quality*

*Partnership or a Qualifying Agreement, and will refer to services, timings and frequencies rather than ticketing. Such agreements are subject to the competition test in Schedule 10 of the Transport Act 2000 (as amended by the Local Transport Act 2008) (the "TA2000").*

*Indeed, if it was a statutory ticketing scheme, that would need to be made under s135 of TA2000 in any event. Sections 135-138 of the TA2000, under which authorities can introduce a statutory ticketing scheme, do not give authorities the power to set pricing in such a scheme (as reflected in the DfT guidance). Therefore, any agreement between operators to implement a statutory scheme made under section 135 of the TA2000, including as to fares, will not benefit from the "legal requirement" exemption under the Competition Act, since such arrangement would not be "imposed by or under" the statute. Such an agreement would therefore need to be in the form prescribed by the Block Exemption, or benefit from some other exemption, to comply with Chapter 1 of the Competition Act 1998.*

*We are concerned that the example given is inaccurate and could lead to potential confusion without significant further clarification (which would be inappropriate in the context of a "short guide"), and inadvertently expose operators and authorities to the risk of breach of the Competition Act. We therefore suggest that the specific example is deleted.*

#### Comment 2

*On page 2, we consider that the list of requirements for all schemes would benefit from an additional bullet: "must have a written scheme agreement".*

## **2. Do you consider that this short guide is providing you with an appropriate level of detail?**

*Yes, subject to the comments above.*

*Finally, we have a comment on the consultation document itself. Paragraph 2.2 inadvertently perpetuates the misconception that three operators are needed for an MTC – this is not the case; the requirement is for just three or more journeys on three or more routes. We fully understand that this will not be a "live" document in future, but we consider this to be directly relevant to any guidance on this subject.*

24 May 2016