COMPETITION COMMISSION

# LOCAL BUS SERVICES MARKET INVESTIGATION

## Provisional decision on remedies

Published: 6 October 2011

The Competition Commission has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive alternative wording is also indicated in square brackets.

# Provisional decision on remedies

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## Summary

1. On 7 January 2010 the Office of Fair Trading (OFT) referred local bus services to the Competition Commission (CC) for investigation. The reference was made under section 131 of the Enterprise Act 2002 (the 2002 Act). In accordance with section 133(2) and (3)(a) of the 2002 Act, the OFT required the CC to confine its investigation to the effects of features of such market or markets for local bus services as exist in connection with the supply of such services in the UK excluding Northern Ireland and London.

2. On 6 May 2011 we issued a Notice of Possible Remedies[1] (the Remedies Notice), which invited comments on the actions we might take, or recommend for implementation by others, to remedy, mitigate or prevent the adverse effect on competition (AEC), or resulting detrimental effects on customers, identified in our provisional findings published in full on 10 May 2011. We separately published our provisional findings on tacit coordination on 4 August 2011, but this did not lead us to identify any possible remedies additional to those set out in the Remedies Notice. Since publication of our provisional findings on tacit coordination, we have received further evidence in relation to the issue of coordination. We will shortly publish an addendum to our provisional findings on geographic market segregation.

3. This document presents our provisional decision on the package of remedies required to remedy the AEC and related customer detriment that we have provisionally identified. This is based on our consideration of responses to the Remedies Notice, response hearings, further submissions from parties and analysis by the CC of various remedy options. A detailed summary of each of the proposed remedies is set out at the start of each section. An overview of the key components of these

[1] www.competition-commission.org.uk/inquiries/ref2010/localbus/pdf/Notice_of_possible_remedies.pdf.

remedies is set out in paragraphs 4 to 6 below. The remedy package has three main elements: market-opening measures in relation to commercial bus services; measures to promote competition in relation to supported services; and recommendations about the wider policy and regulatory environment.

4. The main focus of our remedy package is on three market-opening measures aimed at reducing barriers to entry and expansion in markets for commercial bus services and providing an environment in which competition is likely to be sustained:

   *(a) Ticketing :* recommendations to give Local Transport Authorities (LTAs) additional powers to determine the characteristics of mandatory multi-operator ticketing schemes and for the OFT to review certain aspects of the competition law framework governing voluntary ticketing schemes.

   *(b) Operator behaviour:* recommendations for restrictions on changes in service frequency through increased registration notice periods and changes to frequent service registrations. We also provisionally decided to recommend that Traffic Commissioners be given the powers to introduce and enforce a local bus operator Code of Conduct and that there should be specific protection for Municipal bus companies being sold.

   *(c) Access to bus stations*: an order on local bus operators that manage bus stations to provide other local bus operators access to bus stations on fair, reasonable and non-discriminatory (FRND) terms and to publish the Conditions of Use, which contains, among other things, information about the allocation of stand and layover capacity and a list of departure charges.

5. We have provisionally decided on the following measures in relation to supported services:

   *(a) Best practice guidance:* recommendations that the Department for Transport (DfT) update its best practice guidance on tendering for supported services for

LTAs, and that the Scottish and Welsh Governments develop similar but suitably tailored guidance.

(b) *Information about newly deregistered services:* recommendations that LTAs are given powers to request information about revenue and patronage of services being deregistered.

6. In support of the above measures, we have provisionally decided to make the following recommendations for changes to the wider regulatory and policy environment that applies to bus markets:

(a) *Effective competition enforcement*: recommendations that the OFT applies a high priority to identifying bus mergers between competing operators, routinely follows up bus mergers and takes a cautious approach in exercising its discretion not to refer small bus mergers to the CC. We also provisionally decided to recommend that the OFT publishes revised Frequently Asked Questions (FAQs) about the application of competition law to the bus industry.

(b) *Partnerships:* a recommendation that LTAs consider the potential for introducing partnerships as a means of facilitating increased competition within their local areas. In considering the introduction of partnerships, LTAs should also take full account of the potential risks of raising barriers to entry and facilitating coordination between competitors that goes beyond what is acceptable under competition law and is necessary to deliver passenger benefits. We also provisionally decided to recommend that LTAs and the OFT establish a regular forum to discuss issues relating to the competition assessment of partnership arrangements.

(c) *Bus Service Operators Grant (BSOG):* a recommendation that as part of its current review of BSOG in England, the DfT considers ways of incentivizing the development of, and participation in, a number of the remedies we are proposing.

This recommendation may also be of interest to the Scottish and Welsh Governments.

7. We expect that the above measures taken together as a package will be effective and proportionate in remedying the AEC. We expect this remedy package to result in a substantially improved environment for competition in local bus markets and to do so within a period of three to five years of publication of our final report.

8. We gave careful consideration to whether franchising should be introduced, either instead of or alongside our other measures. Our proposed remedy package directly addresses the AEC, is at least as effective in addressing the associated customer detriment and is less costly and therefore provides a more proportionate solution to the AEC than franchising. As a result, we have provisionally decided not to recommend franchising as a remedy to the AEC that we have provisionally found. However, we recognize that there is a clear legal basis for LTAs to introduce franchising in England, Scotland and Wales and we would not wish to rule out its future application in particular local markets to address significant market failure. We also note that LTAs have wider social and policy objectives that are not relevant to this investigation, but which may legitimately lead them to take a different view on the desirability of introducing franchising in relation to the local bus markets for which they are accountable.

9. We have provisionally decided that this package of measures represents as comprehensive a solution as is reasonable and practicable to the AEC and resulting customer detriment that we have provisionally found.

10. The CC invites views in writing on the provisional decision and its underlying analysis by **5pm on 27th October**. Interested persons should also note that we have

specifically invited further representations about the costs of these measures in Appendix J and about other factors regarding the detailed implementation of particular remedies in paragraphs 124, 181, 251, 297, 319 and 390.

## Introduction

11. We received 57 written responses to the Remedies Notice. In addition, we held 37 response hearings with bus operators, passenger groups, LTAs, Traffic Commissioners, the DfT and the Scottish and Welsh Governments. Non-confidential versions of responses to the Remedies Notice and summaries of response hearings can be found on our website. We have considered carefully all the evidence we have received.

12. We have now come to a provisional decision as to the package of remedies that we consider would be effective and proportionate in addressing the AEC and customer detriment that we have provisionally identified. This document sets out this proposed package of remedies and our reasons for selecting it.

## The AEC and the resulting customer detriment

13. In our provisional findings, published in full on 10 May, we concluded that features of relevant markets prevented, restricted or distorted competition and that these gave rise to an AEC within the meaning of section 134(2) of the 2002 Act. In this section we summarize the nature of the AEC and the resulting customer detriment that we have provisionally identified. In particular, we summarize:

*(a)* the nature of the AEC as set out in our provisional findings (see paragraphs 15 to 19);

*(b)* our assessment of further evidence in relation to coordination, including the addendum to our provisional findings published on 4 August 2011 (paragraphs 21 to 23); and

*(c)* our assessment of the customer detriment that results from the AEC (paragraphs 24 to 28) including further analysis in Appendix A.

14. We have not, at this stage, made a final decision regarding the existence and form of any AEC and/or resulting customer detriment. We have based this document on our provisional findings. In doing so, we have had particular regard to the risks of coordination highlighted in paragraphs 21 to 23. Our final decisions on any AEC, and appropriate remedies, will take into account responses to our provisional findings and to this provisional decision on remedies.

### *Adverse effect on competition*

15. In our provisional findings, we found that competition for the supply of local bus services in a market was prevented, restricted or distorted where a combination of the features identified in paragraphs 16 to 18 below were present in a relevant market. The extent to which competition in a relevant market was adversely affected would depend on the extent to which the combination of features was present.

16. The first of these features is the existence of high levels of concentration in the relevant market. This refers both to high levels of concentration in terms of limited overlap between operators' services on particular passenger flows and to high levels of concentration in terms of the limited presence of operators within the wider local area.

17. The second feature is that one or more of the following aspects of the relevant market act as a barrier to entry and expansion:

*(a)* sunk costs of entry (particularly the cost of bringing a route to profitability);

*(b)* the expected intensity of post-entry competition, which depends on the incumbents' reactions to entry which can increase costs, risks and uncertainty;

*(c)* incumbents' advantages arising from network strength;

*(d)* the incumbents' advantages arising from an ability to offer more attractive multi-journey tickets than smaller operators, particularly where there is no effective multi-operator ticketing scheme available;

*(e)* the ability to find suitable depots;

*(f)* costs or ease of access to bus stations; and

*(g)* 'cheap exclusion' engaged in by incumbents.

18. The third feature is customer conduct. There are two aspects of customer conduct. First, some customers commit to a particular operator by purchasing a multi-journey ticket. Second, customers place a high value on time saved and certainty, relative to other factors such as price or quality. This means that for customers who are not already committed to an operator there is a general preference to catch the first available bus when at the bus stop and to minimize waiting time.

19. In relation to competition for the tendering of supported local bus services, we provisionally found that competition in local markets is prevented, restricted or distorted because the number of operators bidding for the tender contract and the intensity with which operators compete for these tenders can be limited by one or both of the following features:

*(a)* the way LTAs design tenders; and

*(b)* the limited number of potential bidders in local areas.

20. We will shortly publish a working paper on Route and urban area analysis which will set out in more detail the extent to which the features giving rise to an AEC are present in particular local markets.

### *Coordination*

21. On 4 August 2011, we published an addendum to our provisional findings setting out the evidence that we had received and evaluated at that date on the issue of tacit coordination. On the basis of this evidence, we provisionally concluded that tacit coordination could not be said to be a feature of local markets giving rise to an AEC. However, we found that the conditions for coordination were met and we observed that some operators had on occasions tried to coordinate. Therefore, we were unable to dismiss the possibility that operators in some local areas may have achieved, or may in the future achieve, a tacit understanding to refrain from head-to-head competition. Based on this evidence, there seemed to be every reason to be concerned about the potential for tacit coordination.

22. Since publication of this addendum to our provisional findings, we have received further evidence in relation to particular geographic areas, which reinforces these concerns substantially. We will shortly publish an addendum to our provisional findings on this issue.

23. In light of these concerns about coordination, we were mindful in developing our package of remedies to ensure that we would not be introducing or recommending measures that would increase the likelihood of geographic market segregation, or other forms of coordination between operators that would adversely affect competition and/or harm the interests of bus passengers.

### *Detrimental effects on customers*

24. We considered the nature and extent of detrimental effects on customers resulting from the AEC.

25. Paragraphs 14.20 to 14.41 of our provisional findings identified the detrimental effects on customers which resulted from, or might be expected to result from the AEC. We considered that detrimental effects arise where customers have little or no choice of bus operator and the competitive pressure arising from operators that might begin offering directly competing services is limited. When this happens, incumbent bus operators are able to reduce the quality of service they offer to customers (through shorter hours of operation and less frequent services, or otherwise lower quality or reliability of services), or increase fares above the level that would otherwise apply. Higher fares may also increase the costs of concessionary fare reimbursement.

26. We also found detrimental effects in relation to competition for the tendering of supported services, relating to reduced choice and innovation, higher costs and/or reduced quality of service.

27. Overall, we provisionally found that the detriment to customers and taxpayers as a result of the AECs that we have found in the operation of local bus services (both commercial services and tendered services and the tendering of supported services) was likely to be in excess of £70 million a year.

28. Since publication of our provisional findings, we have conducted further analysis of detrimental effects on consumers of the AECs we have found in the operation of local bus services. This analysis is reported in Appendix A. We estimate that the detrimental effect on customers as a result of the AECs in the operation of local bus services is likely to be between £58 million and £148 million per year. We consider

that the value of the detriment to customers is more likely to fall within the upper half of this range (ie £103 million to £148 million), than in the lower half.[2]

29. The estimate provided in Appendix A does not include the detrimental effects of the AEC we have provisionally found in the tendering of supported services. In our provisional findings we found that the value of the detriment to taxpayers as a result of the AEC we have found in the tendering of supported services was between £5 million and £10 million a year.[3] The overall detriment as a result of both the AEC in the tendering of supported services and the AECs in the operation of local bus services is therefore likely to lie within the range of £63 million to £158 million a year.

30. We also received comments about our profitability analysis. We will take these into account in our final report, though our present view is that the issues raised by these comments are unlikely materially to affect our estimates of the scale of detriment resulting from the AEC.

31. We also received a number of comments about the performance concentration analysis (PCA) and the calculation of detriment based on that analysis. Our response to the comments on the PCA analysis is set out in our working paper entitled Update on the performance concentration analysis published today. Our present view is that the issues raised by these comments are unlikely materially to affect our estimates of the scale of detriment resulting from the AEC.

[2] In Appendix A we have also identified some scenarios in which our estimate of detriment falls below the bottom of this range. Our lower bound estimate of customer detriment is £42 million per year, however, because this lower bound figure is based on some deliberately extreme assumptions, we consider it unlikely that this figure gives an accurate reflection of the detriment.
[3] Provisional findings, paragraphs 14.38 & 14.39 and Appendix 14.2.

## Framework for consideration of remedies and relevant customer benefits

32. Having provisionally found that there are features of local bus markets that give rise to an AEC, the CC is required to decide the following additional questions:[4]

*(a)* whether action should be taken by the CC for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;

*(b)* whether the CC should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and

*(c)* in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

33. A detrimental effect on customers is defined as one taking the form of:[5]

*(a)* higher prices, lower quality or less choice of goods or services in any market in the UK (whether or not the market to which the feature or features concerned relate); or

*(b)* less innovation in relation to such goods or services.

34. Whether action should be taken involves consideration both of the action the CC can take and the action the CC can recommend others to take. Whether taking action itself or making recommendations to others, the CC will state the action that should be taken and what it is designed to address. In practice, the CC may decide to take several discrete actions itself and/or make several discrete recommendations. This combination of measures is often referred to as a package of remedies.

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[4] Section 134(4).
[5] Section 134(5). The reference to customers includes future customers.

35. The 2002 Act requires the CC, in considering these questions:

> in particular to have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition and any detrimental effects on customers so far as resulting from the adverse effect on competition.[6]

36. In deciding the question of remedies, the CC may also in particular 'have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned' (see paragraphs 449 to 456 below).[7]

37. When deciding on an appropriate remedy, the CC will have regard to the effectiveness of different remedies and their associated costs and will have regard to the principle of proportionality.[8]

## Structure of our provisional decision

38. The remainder of this provisional decision is structured as follows:

*(a)* First, we look at the remedy options that we have provisionally decided should form part of our remedy package (paragraphs 43 to 396).

*(b)* Next we discuss the other remedy options that we have considered, which do not form part of our proposed remedy package (paragraphs 397 to 448).

*(c)* We then consider whether there are any relevant customer benefits (RCBs) arising from the features giving rise to the AEC which would be lost if we imposed our proposed remedy package and if so whether we should seek to ensure that we retain any such benefits by modifying our remedy package (paragraphs 449 to 456).

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[6] Section 134(6).
[7] Section 134(7).
[8] *CC3, Market Investigation References: Competition Commission Guidelines,* June 2003, paragraph 4.9.

*(d)* Finally, we assess the overall effectiveness and proportionality of the proposed remedy package (paragraphs 457 to 523).

## Remedy options that we are proposing to take forward

39. In this section, we discuss the remedy options that we propose to take forward as our preferred remedy package. We have proposed remedies in relation to the following areas:

*(a)* ticketing (Figure 1 and paragraphs 42 to 134);

*(b)* operator behaviour (Figure 2 and paragraphs 135 to 207);

*(c)* access to bus stations (Figure 3 and paragraphs 208 to 265);

*(d)* supported services (Figure 4 and paragraphs 266 to 311);

*(e)* effective competition enforcement (Figure 5 and paragraphs 312 to 341);

*(f)* partnerships (Figure 6 and paragraphs 342 to 390); and

*(g)* BSOG (Figure 7 and paragraphs 391 to 396).

40. For each of these remedy options, we discuss:

*(a)* a summary of our provisional decisions in relation to the remedy option;

*(b)* a description of the remedy option under consideration;

*(c)* how the remedy addresses the AEC and/or resulting customer detriment;

*(d)* the key considerations relating to the design of the remedy option; and

*(e)* how the remedy should be implemented.

41. In our evaluation of remedy options, we were conscious that there could not be a 'one size fits all' approach to remedial action. As a consequence, we have considered the appropriate geographic scope of each remedy option and the role that local market participants, in particular LTAs, could play in determining the precise action to be taken in particular local markets.

### *Ticketing*

*Summary of proposed remedy*

42. Figure 1 summarizes our proposed remedies in relation to ticketing.

FIGURE 1

**Summary of proposed remedies relating to ticketing**

We have provisionally decided to recommend that:

- The Secretary of State for Transport (following consultation with the Welsh Government) and the Scottish Government introduce legislation to give LTAs additional powers to introduce mandatory multi-operator ticketing schemes that have the following characteristics:

  *(a) Effective governance:* Decisions about the design of a multi-operator travelcard (MTC) scheme should be taken by operators and LTAs, by voting. In paragraph 87 we set out principles for an effective voting mechanism that ensures no individual operator can unilaterally set the terms of a scheme, and also gives representation to LTAs and to small operators.

  *(b) Access to schemes:* In paragraph 88 we set out principles that ensure new entrants are able to participate in local multi-operator schemes upon commencing the supply of local bus services in an area.

  *(c) Bus-only schemes:* There should be a bus-only MTC as part of any MTC scheme (alongside any multi-modal products).

  *(d) Zonal coverage:* MTC schemes should be available, at a minimum, for individual zones broadly corresponding to those of the main operators in the area covered by the scheme. Tickets should also be available for travel-to-work areas.

  *(e) Ticket types available:* MTC ticket types should broadly correspond to the main ticket types offered by individual operators.

  *(f) Sales channels through which tickets are available:* MTCs should be available to passengers through the same channels as the single-operator multi-journey tickets, including on-bus.

  *(g) Competitive pricing:* Prices of MTCs should be based on the formula and parameters set out in paragraphs 93 and 94.

- Pending the new legislation that we recommend above, we recommend that the Secretary of State for Transport (following consultation with the Welsh Government) and the Scottish Government develop guidance, based on the principles we have outlined and that operators and LTAs work together to develop voluntary schemes that meet these characteristics. In Table 1 we set out those areas where there currently does not exist an MTC scheme and where we recommend that LTAs review the case for implementing a multi-operator scheme. We also recommend that LTAs and operators work together to amend existing voluntary schemes in line with these characteristics.

- The OFT reviews, at the earliest possible opportunity, the Public Transport Block Exemption (Ticketing Block Exemption) in relation to:

*(a)* the revenue-sharing arrangements that are acceptable for multi-operator individual ticket (MIT) schemes;[9] and

*(b)* the types of e-purse schemes[10] that are acceptable under competition law.

- The Secretary of State for Business, Innovation and Skills makes any changes to the Ticketing Block Exemption that are necessary in light of the OFT recommendations.
- As part of its current review of BSOG in England, the DfT considers ways of incentivizing development and participation in effective multi-operator ticketing schemes (see Figure 7 in paragraph 391). This recommendation may also be of interest to the Scottish and Welsh Governments, should they decide to undertake a similar review at some future date.

*Description of remedy option*

43. In the Remedies Notice we set out the following options for multi-operator ticketing remedies:

*(a)* measures to increase the number of multi-operator ticketing schemes in existence (paragraphs 21 to 23 of the Remedies Notice);

*(b)* measures to increase the effectiveness of new and existing multi-operator ticketing schemes (paragraphs 24 to 28 of the Remedies Notice); and

*(c)* any additional measures necessary to prevent large incumbent operators from undermining the effectiveness of multi-operator ticketing schemes (paragraphs 29 and 30 of the Remedies Notice).

44. We set out three potential ways in which increasing the number of multi-operator ticketing schemes could be achieved: *(a)* by recommending that LTAs introduce statutory schemes; *(b)* by requiring operators to enter into new schemes; or *(c)* by requiring operators to facilitate the creation of schemes by third parties.

[9] MIT schemes are multi-operator ticketing schemes under which two or more different operators provide services which can be used to make a particular journey and ticket holders can choose whichever service they use to make part or all of that journey.
[10] An electronic purse (e-purse) product from which money is deducted for each journey.

45. We also set out various options to improve the effectiveness of new and existing multi-operator tickets, in particular by improving the governance of multi-operator ticketing schemes, by ensuring fair and open access to these schemes and by establishing principles for pricing, structure and/ or promotion of multi-operator tickets.

46. We also noted that there was a risk that large incumbent operators may seek to undermine the impact and viability of multi-operator ticketing schemes by changing their own multi-journey tickets. We therefore said that we would consider restrictions on the operation of single-operator multi-journey tickets, either through restrictions on the prices or on the types of tickets operators are able to sell, which could be used in support of other measures.

*Statutory and competition law framework*

47. There currently exist two mechanisms by which multi-operator schemes can be set up: voluntary agreements between operators and LTAs, or mandatory schemes set-up by the LTA in which LTAs are able to make participation compulsory. In this section we set out how both of these forms of multi-operator ticketing schemes fit in the existing statutory and competition law framework.

48. Operators can cooperate to form multi-operator ticketing schemes. Where these schemes come within the terms of the Ticketing Block Exemption they can benefit from automatic exemption from Chapter I prohibition of the Competition Act 1998 (the 1998 Act).[11] We discuss in more detail the Ticketing Block Exemption in Appendix B, paragraphs 3 to 9. The Ticketing Block Exemption identifies several categories of ticketing schemes and requires that these different categories of ticketing schemes

[11] Where an agreement falls outside the Ticketing Block Exemption, there is no automatic presumption that it falls foul of the 1998 Act, ie while something may be unsuitable for blanket automatic exemption from the 1998 Act, an individualized assessment may show that the section 9(1) exemption criteria are met.

satisfy different requirements in order to come within the terms of the Ticketing Block Exemption:

*(a)* MTCs: entitle ticket holders to make multiple journeys on a number of different operators' services across a number of different routes. The Ticketing Block Exemption allows this type of scheme provided that these routes and services are not substantially the same (at least three substantially different routes and services).

*(b)* Through tickets (TTs): entitle ticket holders to make a particular journey using two or more services run by different operators. To come within the terms of the Ticketing Block Exemption, these schemes must cover only services where those operators do not compete with each other over a substantial part of the route covered by the ticket in question.

*(c)* MITs: where two or more different operators provide services which can be used to make a particular journey and ticket holders can chose whichever service they use to make part or all of that journey.

*(d)* Long- and short-distance add-ons: these allow passengers to purchase an MTC as an extension to a ticket on an individual long-distance (long-distance add-on) or local (short-distance add-on) route.

49. In addition, local authorities in England and Wales have the power to impose mandatory multi-operator ticketing schemes under the Transport Act 2000, and local authorities in Scotland have similar powers under the Transport (Scotland) Act 2001. Where LTAs make a ticketing scheme under these Acts, a scheme needs to meet the requirements of a competition test in these Acts.[12] We discuss in more detail LTAs' existing powers under this legislation in Appendix B, paragraphs 10 to 15.

[12] See Appendix 12.1, Annex 1 of the provisional findings.

*How this remedy addresses the AEC and/or resulting customer detriment*

50. This remedy option addresses aspects of the AEC in relation to both the supply of local bus services and competition for tendering for supported services, as outlined in paragraphs 51 to 59 and further in Appendix C.

*Supply of local bus services*

51. In our provisional findings we found that aspects of a local market can act as a barrier to entry or expansion (see paragraph 14.7). Our aim in relation to this remedy option is to substantially reduce or remove the barriers to entry and expansion associated with network effects and incumbent operators' network strength advantages. The mechanism by which this aim is achieved is by increasing the proportion of passengers using multi-operator tickets through increasing the number and/or attractiveness of schemes, thereby increasing the proportion of passenger journeys (and hence revenue) that are contestable for a new entrant or expanding operator.

52. In Appendix C we set out our analysis of how an increase in the usage of multi-operator ticketing schemes reduces barriers to entry. In our provisional findings we defined two forms of network effects, between-route[13] and within-route[14] effects. We find that this remedy is likely to reduce the impact of barriers to entry and expansion arising from between-route and within-route network effects. As a result of the remedy, a small-scale, incremental entry or expansion strategy is more likely to be viable, without this triggering unstable competition.

53. We find that between-route effects are more likely to be present in large and/or more complex bus networks (see paragraph 9.57 of the provisional findings). As set out in

[13] Where customers travelling on more than one route in a network are likely, all else being equal, to prefer a season ticket offered by an operator with more bus routes in the area (see paragraph 8.32 of the provisional findings).
[14] Where at a given price, customers are likely to prefer a return or season ticket offered by the operator with the greatest frequency or comprehensiveness of service on a route (see paragraph 8.31 of the provisional findings).

detail in Appendix C we have conducted further analysis into the presence of within-route effects across the reference area. This analysis shows that within-route effects are likely to be present on almost all routes at least to some degree, but are strongest on those routes with both a relatively high proportion of revenue accounted for by single-operator multi-journey tickets and a relatively high frequency of service. We also find that larger Urban Areas tend to have more routes characterized by relatively strong within-route effects.

54. Rural areas on average have fewer high-frequency services, and so overall are less likely to be characterized by strong within-route effects (see Appendix C). As a result, it is likely that rural areas tend to have lower barriers to entry and expansion as a result of network effects. However, some individual routes in rural areas may still be characterized by relatively strong within-route effects.

55. We recognize that multi-journey tickets (including single-operator multi-journey tickets) give rise to benefits for passengers. These include the discount for extra journeys compared with the sum of single fares, the convenience of not having to make a cash transaction on every boarding and reduced boarding times. Multi-operator ticketing preserves and enhances these passenger benefits as customers purchasing multi-operator multi-journey tickets are still able to achieve a discount for regular travel and convenience benefits. In addition, we have provisionally found that an increase in competition is associated with an increase in overall frequency of service (see paragraph 7.42 of the provisional findings), though this overall frequency is split between a larger number of operators. Multi-operator tickets therefore allow passengers to benefit more straightforwardly from this increase in overall frequency of service as they allow passengers to board any operator’s buses.

*The supply of tendered services*

56. We provisionally found that the nature of some tendered contracts makes them less attractive for bidders, and hence an LTA receives fewer bids for these contracts. This in turn is likely to lead to higher prices. Some of those less attractive contracts include extensions of commercial services, for example into the evening or on Sundays.

57. We have heard from a number of LTAs[15] that commercial extension contracts were often more attractive to the incumbent commercial operator, since that operator's return or other multi-journey tickets were usually accepted as part of the contract terms. For example, on a tendered evening extension to a commercial service, the operator of the tendered contract might be required to accept the commercial operator's return, day or longer duration tickets. LTAs often require tendered operators to accept commercial operators' multi-journey tickets, as otherwise passengers would have to buy more than one ticket, or buy repeat single tickets, resulting in higher prices and reduced convenience. (See also paragraphs 13.92 to 13.97 of the provisional findings).

58. Accepting the commercial operator's multi-journey tickets will not be a deterrent for bidding for a gross cost contract but the LTA (and hence the taxpayer) would in effect pay for the reduced revenue associated with accepting the commercial operator's tickets. For a net cost contract, where the tendered services operator bears the revenue risk, if revenue lies where it falls for these return, day and longer duration ticket sales, then whenever the tendered operator is not the commercial operator it will be required to carry passengers who have bought these tickets in the day from the commercial operator but will not receive a share of this revenue. A reduction in

[15] Nottingham City Council response hearing summary, paragraph 19; Cornwall Council; ATCO response hearing summary, paragraph 12; TfGM response hearing summary, paragraph 11; SEStran response hearing summary, paragraph 9.

competition for tendered services will tend to make the winning bid price higher and lead to greater LTA (and taxpayer) expenditure on tendered contracts.

59. An increase in the usage of multi-operator tickets with revenue distribution among operators according to the number of passengers carried would reduce this problem. If the multi-operator ticketing scheme includes effective methods for revenue sharing then an operator of a tendered evening extension will not be disadvantaged from carrying multi-operator ticket holders, as it would be for single-operator ticket holders. Therefore an increase in the usage of multi-operator tickets, whether area-specific or route-specific, is likely to increase the number of bidders for commercial extension tendered contracts, all else equal, and to reduce the costs of these contracts to the public purse. The extent to which this increases the number of bidders for such contracts will depend on the size of the increase in usage of multi-operator tickets and on whether there are any other factors making such contracts less attractive.

*Views of parties*

60. In this section we set-out the high-level views of parties on the remedies options, as set out in our Remedies Notice and summarized in paragraphs 43 to 46 above. We present further views of parties in Appendix E, when we consider in more detail aspects of the design of this remedy.

*Strength of network barriers to entry and overall support for the remedy*

61. The Large Operators argued that network effects were not a barrier to entry.[16] However, several other operators told us that they viewed the ability of larger incumbent

[16] FirstGroup response to provisional findings, paragraphs 3.4–3.8; Stagecoach response to provisional findings, paragraphs 4.23–4.28; National Express response to provisional findings, paragraph 4.5; Go-Ahead response to provisional findings, paragraph 4.7.4; Arriva response to provisional findings, paragraphs B3-37–B3-42.

operators to offer more attractive multi-journey tickets as hampering their ability to compete.[17]

*More schemes*

62. The Large Operators discussed only travelcard schemes in their responses to the Remedies Notice, and have emphasized the importance of introducing them only where it would be proportionate to do so, although there is some variation on the degree of support for introducing further schemes among the Large Operators.[18] FirstGroup also told us that it was considering schemes in Bristol and Swansea.[19] Most Small and Mid-Sized operators had fewer comments on where there should be additional schemes, although Lothian Buses suggested that schemes should only be recommended for those local areas where they would alleviate the detrimental effects of an AEC[20] and The Association of Local Bus Company Managers (ALBUM) said that multi-operator tickets should be recommended only where they were expected to be beneficial.[21]

63. Passenger Transport Executive Group (PTEG), Transport for Greater Manchester (TfGM) and Luton Borough Council all suggested that travelcard multi-operator schemes would be more likely to be beneficial or proportionate in larger and/or urban areas.[22] Aberdeenshire Council suggested that multi-operator schemes could be beneficial in all local areas, including rural areas (it was not specific about whether

[17] Huyton Travel; ABus; Rotala response to Remedies Notice; Bluebird Bus told us that larger operators' fares were structured in a way that made their single fares particularly expensive and encouraged people to buy their day tickets but that the multi-operator ticketing scheme in Manchester allowed people to use other operators.
[18] Stagecoach highlighted three areas (Aberdeen, Dundee and Hull) where a scheme did not currently exist (Stagecoach response hearing summary, paragraph 14); Go-Ahead argued that in many local markets there would be limited (if any) demand for multi-operator tickets (Response to Remedies Notice, paragraph 2.3); Arriva argued that the CC had not identified any demand for multi-operator schemes beyond those that already existed (Response to Remedies Notice, paragraph B5).
[19] FirstGroup response hearing summary, paragraph 14.
[20] Lothian Buses response to Remedies Notice, paragraph 25.
[21] ALBUM response hearing summary, paragraph 10.
[22] Responses to Remedies Notice: PTEG paragraph 8.1; Luton Borough Council Issue 1a; TfGM said that the remedy was to be welcomed in urban areas such as Greater Manchester (paragraph 1.2.1).

this applied to MTC schemes or any multi-operator ticketing agreement).[23] Other LTAs did not comment on where multi-operator ticketing schemes should apply.

64. Two PTEs also commented that the current guidance on the Ticketing Block Exemption limited the number of smaller multi-operator schemes (for example, route-level schemes, that do not fall within the definition of an MTC within the Block Exemption guidance).[24] ALBUM also told us that in the last few years it had been difficult to establish multi-operator ticketing schemes, mainly because the OFT had made it difficult to set one up.[25] Luton Borough Council also emphasized the value of a simple paper-based system with revenue lying where it falls, which could be implemented quickly and would be easy to confirm came within the terms of the block exemption.[26]

*LTA powers and compulsory participation*

65. Most of the Large Operators[27] emphasized that LTAs already had powers to set up statutory schemes mandating operator participation, and beyond these powers did not recognize the need for widespread compulsory participation.[28] Large Operators noted, however, that were the CC minded to enforce compulsion, this should apply to all operators.[29] Some LTAs commented that they were not able to set prices (or other aspects of a scheme's design) which limited the competitive impact from any statutory scheme,[30] and some commented that powers should be extended to be able to define such terms.[31]

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[23] Response to Remedies Notice.
[24] SYPTE response to Remedies Notice, paragraph 7f; TfGM response to Remedies Notice, paragraph 1.2.10.
[25] ALBUM response hearing summary, paragraph 9.
[26] Response to Remedies Notice, Issue 1d and f.
[27] Responses to Remedies Notice: Stagecoach, paragraph 3.4; FirstGroup, response to 23e); Go-Ahead, paragraph 2.3.
[28] Responses to Remedies Notice: Stagecoach, paragraph 3.12; FirstGroup, response to 23e); Go-Ahead, paragraph 2.8.
[29] Responses to Remedies Notice: FirstGroup, response to 23e); Go-Ahead, paragraph 2.18.
[30] Responses to Remedies Notice: TfGM p2; SYPTE paragraph 2.
[31] Responses to Remedies Notice: PTEG paragraph 8.7; TfGM p3.

*Disincentives to compete*

66. Stagecoach and Go-Ahead told us that any restrictions on operators' own ticketing products (for example, a restriction on the price or a restriction on the ticket types that could be offered) would reduce the incentive on incumbent operators to compete on ticket prices and offer attractive ticket options.[32] However, these operators did not raise this concern in relation to other remedy options such as increasing the number or effectiveness of multi-operator schemes, where this did not restrict single-operator products.[33] We discuss remedies in relation to restricting individual operators' ticket types in paragraphs 95 to 98 below.

## *Design issues*

67. In the following sections we set out the evidence and analysis relevant to the design of this remedy option. We have identified a number of different types of ticketing arrangements, for which the design of the appropriate remedy is likely to vary. We therefore present separately the evidence and analysis in relation to:

*(a)* urban area-level MTCs (see paragraphs 68 to 94);

*(b)* route-level schemes (see paragraphs 99 to 104); and

*(c)* smart ticketing arrangements (see paragraphs 105 to 114).

*Urban area-level travelcard multi-operator ticketing schemes*

68. In this section we present the evidence and our analysis of the design of MTC schemes. We first set out proposals for more schemes and then set out character-istics of an effective scheme.

[32] Stagecoach response to Remedies Notice, paragraph 3.14; Go-Ahead response to Remedies Notice, paragraph 2.28.
[33] Go-Ahead response to Remedies Notice, paragraph 2.28.

- *More schemes*

69. In this section we consider increasing the number of MTC schemes. We find that there are relatively large Urban Areas without MTC schemes, as set out in Table 1, and that in these areas an effective scheme will address the AEC, as set out in paragraphs 50 to 59.

70. We note that in 291 towns and cities there exists a PlusBus ticket. PlusBus tickets are a form of MTC as they allow travel on any local bus service within a specified area. The widespread availability of these tickets illustrates the practicability of introducing multi-operator tickets into a large number of diverse areas. However, these tickets are available only when purchased as an add-on to a train ticket and we therefore do not include PlusBus further in our analysis.

71. We collected detailed evidence on the MTCs (both voluntary and mandatory schemes) that are in existence throughout the reference area and have analysed in which of our Urban Areas (as defined in Section 4 of the provisional findings) an MTC scheme exists. We distinguish between those travelcard schemes that encompass a number of Urban Areas and those that correspond to individual bus networks. The former are less likely to be viewed by passengers as a substitute to single-operator tickets, which largely correspond to individual bus networks. A full list of our Urban Areas and the multi-operator tickets that apply to those areas is contained in Appendix D. As set out in Appendix C, paragraph 53 in more detail, within-route and between-route effects are more likely to apply to larger areas.

72. As an indication of the largest urban bus networks without MTC schemes, in Table 1 we list those Urban Areas with a population of more than 150,000 in which an Urban

Area-level travelcard scheme does not exist.[34] Ultimately an LTA will need to determine whether the benefits of an MTC scheme in any individual Urban Area outweigh the costs (see Appendix J).

73. There are also 16 Urban Areas[35] that are part of broader MTC schemes in the West Midlands, Greater Manchester or West Yorkshire, but where there is not an MTC, or zone within a wider MTC scheme, covering the individual Urban Area. We present further detail on the MTC schemes in the West Midlands, Greater Manchester and West Yorkshire, as part of our analysis of existing MTC schemes in paragraphs 82 to 85. In paragraph 90 we conclude that an effective MTC would have zones broadly corresponding to these individual bus networks (ie the Urban Areas), where the main operators offer tickets covering these networks.

[34] This is not to say that smaller areas would not justify an MTC scheme (for example, a multi-operator scheme exists in Bath, an Urban Area with a population of 90,000, which involved very low costs of set-up and ongoing administration).
[35] Birmingham, Manchester, Leeds, Bradford, Bolton, Wolverhampton, Walsall, Huddersfield, Wigan, Rochdale, Leigh, Wakefield, Halifax, Castleford, Keighley, Coventry.

TABLE 1 **Urban Areas with a population of more than 150,000 without an (Urban Area-level) MTC scheme**

| *Urban Area* | *Government Office Region* | *Population (Census 2001)* |
|---|---|---|
| Bristol | South West | 577098 |
| Southampton | South East | 410,842 |
| Cardiff | Wales | 335,748 |
| Portsmouth | South East | 334,818 |
| Kingston upon Hull | Yorkshire and The Humber | 319,482 |
| Reading | South East | 318,858 |
| Aldershot | South East | 289,537 |
| Blackpool | North West | 271,671 |
| Plymouth | South West | 268,331 |
| Brighton | South East | 258,884 |
| Preston | North West | 250,411 |
| Derby | East Midlands | 245,028 |
| Chatham | South East | 244,104 |
| Luton | East of England | 240,922 |
| Middlesbrough | North East | 238,660 |
| Swansea | Wales | 211,846 |
| Aberdeen | Scotland | 208,860 |
| Worthing | South East | 202,297 |
| Basildon | East of England | 200,854 |
| Wolverton/Stony Stratford | South East | 190,032 |
| Hatfield | East of England | 188,163 |
| Watford | East of England | 185,389 |
| Fareham/Portchester | South East | 184,850 |
| Warrington | North West | 169,263 |
| Mansfield | East Midlands | 168,313 |
| Epsom and Ewell | South East | 168,063 |
| Dundee | Scotland | 165,339 |
| York | Yorkshire and The Humber | 161,910 |
| Slough | South East | 157,546 |
| Stockton-on-Tees | North East | 156,607 |
| High Wycombe | South East | 150,871 |

*Source:* CC analysis.

*Note:* We have included Bristol in this list. In Bristol there exists the Bristol Freedom Travelpass, but we understand that this is primarily used by train users, as it is priced to reflect train prices rather than being comparable to bus multi-journey tickets (Bristol City Council meeting summary, paragraph 37).

74. In Table 2 we present evidence on the proportion of Urban Areas without an Urban Area-level travelcard scheme; with only a wider-area travelcard scheme; and without any travelcard scheme. We present this as a proportion of all Urban Areas and as a proportion of Urban Areas with a population above 150,000. This shows that the majority of all Urban Areas have no MTC scheme, and even among the 60 larger Urban Areas, only 35 per cent have an Urban Area-level MTC scheme and 33 per cent have no travelcard scheme at all (ie not even one covering a wider geographic area).

TABLE 2 **The proportion of Urban Areas without MTC schemes**

| | *Number* | *%* |
|---|---|---|
| *All Urban Areas* | *239* | |
| Urban Areas with an area-specific MTC scheme | 38 | 16 |
| Urban Areas with only a wider-region MTC (excluding Explorer schemes) | 60 | 25 |
| Urban Areas with no MTC scheme | 141 | 59 |
| *Urban Areas with a population of more than 150,000* | *60* | |
| Urban Areas with an area-specific MTC scheme | 21 | 35 |
| Urban Areas with only a wider-region MTC (excluding Explorer schemes) | 19 | 32 |
| Urban Areas with no MTC scheme | 20 | 33 |

*Source:* Operators' questionnaire responses and desk research.

*Note:* We exclude Explorer schemes as the evidence suggests that these cover a very large area and have very limited take-up. They have been in existence since pre-deregulation. We also exclude PlusBus, as set out in paragraph 70.

- *Reasons for the lack of Urban Area-level MTC schemes*

75. Several Large Operators told us that the reason why MTC schemes did not exist in certain areas was that there was no demand for these products (see the first footnote to paragraph 62). These operators have not, however, provided any further research into the demand for MTC schemes to support their argument. As set out in paragraph 53, our analysis suggests that between-route effects are likely to be present in larger or more complex bus networks and within-route effects are likely to be present on almost all routes, at least to some degree. Take-up of single-operator multi-journey tickets is high (see Section 5 of the provisional findings), indicating that there is likely to be passenger demand for multi-operator tickets if sold at a reasonable price on attractive terms.

76. In addition, we have reviewed evidence from a survey of 3,800 bus passengers in England outside London, called 'Bus passenger priorities for improvement', published by Passenger Focus in March 2010.[36] This survey found that, across all areas surveyed, passengers on average ranked as their fourth highest unprompted priority for improvement 'tickets and passes are available that entitle you to travel on all bus services in your local area, not just those operated by a specific bus company'—in

[36] www.passengerfocus.org.uk/research/bus-and-coach/content.asp?dsid=3253.

other words multi-operator ticketing.[37] This survey indicates that, contrary to the views expressed by certain operators, there is unsatisfied demand for multi-operator ticketing across England.[38] The DfT also commissioned consumer research[39] into the demand for integrated ticketing (which it defines as the provision of ticketing that is valid for a number of operators and/or a number of modes) in three urban areas[40] and found that integrated ticketing was broadly welcomed.[41]

77. We have gathered further evidence on the reasons why Urban Area-level schemes do not exist in certain towns or cities. In particular we asked the LTAs corresponding to all the Urban Areas listed in Table 1 why in their view there did not exist a multi-operator ticketing scheme specific to that Urban Area. There were 30 such Urban Areas where schemes did not exist and we received responses relating to 23 of these areas.

78. The most common factor cited by LTAs as a reason why a scheme did not exist was the difficulty in getting all the operators to participate or agree appropriate terms (cited as a reason for the lack of a scheme in ten Urban Areas).[42] Where the LTAs provided more information on the nature of the difficulty of achieving operator agreement, several noted that operators had expressed concerns about apportioning

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[37] Multi-operator ticketing was also ranked as the fourth highest priority by non-concessionary passengers. The research found that every English region rated this factor highly, ranging from the third highest priority in Eastern England to the eighth highest priority in the North-West. Multi-operator ticketing was ranked as a greater priority for improvement in metropolitan and urban areas than rural areas, but rural passengers also rated it as a relatively high priority.

[38] The City of York Council, which does not currently have in place a multi-operator ticketing scheme, also provided us with results from a survey it had conducted in July 2010. This survey asked passengers, for those journeys currently made on other modes of transport which factors (prompted) would encourage them to travel by bus. It found that the third highest ranked factor (28 per cent of responses) was 'one ticket accepted by all bus operators', ranked behind lower fares (40 per cent) and more frequent services (30 per cent). However, the survey also found that more than one-third (39 per cent) of the respondents said they would use a multi-operator ticket infrequently, whilst 30 per cent said they would never use such a ticket. Overall these results are difficult to interpret, as on the one hand multi-operator ticketing is ranked as the third highest priority for improvement, whereas on the other hand a large proportion of passengers said they would use one at most infrequently. In addition, this survey relates only to York and it is difficult to extrapolate to other areas. However, it is indicative of the sort of local survey that could usefully be conducted within a local area to better understand local passenger demand.

[39] www.dft.gov.uk/pgr/regional/policy/smartticketing/pdf/smartticketingtravellerbehaviour.pdf.

[40] This survey consisted of focus groups and a large number of face-to-face interviews with passengers in three urban areas (Manchester, the West Midlands and Bristol).

[41] 69 per cent of respondents said that they would probably or definitely use at least one of the four new integrated ticketing offers that the research proposed.

[42] Southampton City Council, Portsmouth City Council, Lancashire County Council (in relation to the Preston urban area), Derby City Council, Aberdeen City Council, Warrington Borough Council, Dundee City Council, City of York Council, Stockton-on-Tees Borough Council and Buckinghamshire County Council (in relation to the High Wycombe urban area).

revenue accurately while several also referred to the difficulty in achieving an attractive price and/or the ability for operators to undercut the MTC prices with the prices of their own multi-journey products. We discuss methods for revenue reimbursement in Appendix E and principles for the pricing of MTC schemes in paragraphs 93 and 94.

79. The next most common factor cited by LTAs as a reason why a scheme did not exist was that one operator operated the large majority of services, and hence that there was no real need for an MTC scheme (this was cited as a reason for the lack of a scheme in seven Urban Areas).[43] We note, however, that in all of these Urban Areas there is more than one operator, and hence it is not clear that there is no need for an MTC scheme. We would acknowledge that in the most heavily concentrated Urban Areas, the short-term benefits from introducing a scheme based on current market shares might be perceived as relatively low. However, we would expect the introduction of an effective multi-operator scheme to stimulate competition and provide opportunities for entry and market expansion by smaller operators and these longer-term, dynamic benefits should form part of the assessment of the case for whether to introduce a scheme. We briefly discuss the other benefits of multi-operator ticketing schemes further in Appendix J. City and County Council of Swansea told us that the operators in Swansea did not want to participate in a multi-operator ticketing scheme on competing commercial services.

80. Two other categories of reasons were cited by a small number of LTAs: concerns about the costs of an MTC scheme (mentioned four times) and concerns about falling foul of competition law (mentioned twice).

[43] Cardiff Council, Hampshire County Council (in relation to the Aldershot urban area and the Fareham/Portchester urban area), Brighton and Hove City Council, City and Council of Swansea, West Sussex County Council (in relation to the Worthing urban area), Milton Keynes Borough Council and Nottinghamshire County Council (in relation to the Mansfield urban area).

81. We also asked Large Operators whether, in any areas in which they operate, the LTA or some other stakeholder had put forward proposals to introduce a multi-operator ticketing scheme that had ultimately proved unsuccessful, along with the reasons why the proposals were unsuccessful (in the operator's view). Stagecoach referred to attempts to set up an MTC scheme in Aberdeen that had foundered because the operators could not agree on prices.[44] Aberdeen City Council told us that while operators were willing to participate, they were unable to agree terms. Arriva also told us that an MTC scheme in Derby had not been followed through because of the withdrawal of one operator. This accords with the LTAs' views of why attempts to set up these schemes were unsuccessful (see the footnote to paragraph 78). Stagecoach told us that other proposals (in Hull and Dundee) had not led to an MTC scheme because they were not ultimately pursued by the relevant LTAs and Stagecoach told us that it thought there did not appear to be any passenger demand for schemes in these areas. Go-Ahead told us that proposals for MTC schemes in Durham and Surrey were not successful because the LTA chose not to pursue them.

- *Analysis of existing MTC schemes*

82. In Appendix 9.5 of our provisional findings we published the information we had received on the take-up of multi-operator ticketing schemes, and found that the take-up was generally low. Since our provisional findings we have sought further, more detailed and comprehensive evidence on the take-up of MTC schemes. This evidence is set out in detail in Appendix E.

83. The evidence from both operators and LTAs shows that the take-up of multi-operator ticketing schemes by customers varies across different MTC schemes and across operators within a scheme, ranging from approximately [less than 5] to [15 to 20] per

[44] Stagecoach told us that it wanted a day ticket price of £[✂], the council wanted a price of £[✂] and FirstGroup wanted a price of £[✂].

cent of an operator's revenue depending on the scheme and on the operator. It is striking that the West Midlands MTC scheme accounts for a much smaller proportion of National Express's revenue than the proportion of other Large Operators' revenue accounted for by other PTE schemes (Manchester, West Yorkshire (Metro), South Yorkshire, Tyne and Wear and Merseyside), and somewhat lower (though the difference is less marked) than the [✂].[45] With the exception of the [✂], the take-up of non-PTE schemes appears to be low.

84. Table 3 sets out the characteristics of the existing MTC schemes about which we have comprehensive information.[46]

[45] We note that these schemes all have different characteristics which might influence the take-up.
[46] The urban area-level MTC schemes for which we do not have this information are the Leicester Flexi, the North Staffordshire smart (Stoke-on-Trent), the Southend-on-Sea Octopus, the Swindon Travelpass and Dayride, the Colchester Boroughcard and the Dumfries and Galloway Day Discoverer.

TABLE 3 **Existing (urban area-level) MTC schemes for which we have information**

| *LTA* | *Multi-operator ticketing scheme* | *Date established* | *Is the scheme mandatory?* | *Is there a bus-only scheme?* | *Is there a multi-modal scheme?* | *Are there smaller zones?* | *Ticket types available* | *In what sales outlets are multi-operator ticketing schemes available?* | *Is the scheme managed by a consortium?* | *Method of revenue redistribution* | *LTA role in governance?* | *How are the costs of the scheme covered?* |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Nexus (Tyne and Wear PTE) | Network One | 1988 | No | No | Yes | Yes | 1 day,1 week, 4 weeks, 1 year | On-bus (day tickets only) and off-bus | Yes | In proportion to survey estimates of market share | A vote on the board | Deducted from total revenue before redistribution |
| SYPTE (South Yorkshire PTE)* | TravelMaster | Mar-89 | No | No | Yes | Yes | 1 day, 1 week, 4 weeks, 52 weeks | On-bus and off-bus | Yes | In proportion to patronage, average journey length and a boarding charge | Can offer guidance/proposals only—no formal vote | Deducted from total revenue before redistribution |
| TfGM (Manchester PTE) | System One | Jan-94 | Yes | Yes | Yes | No | 1 day, 1 week, 4 weeks, 1 year | On-bus (day tickets only) and off-bus | Yes | | Vote as tram operator | Deducted from total revenue. TfGM makes a contribution to marketing costs |
| Centro (West Midlands PTE) | nBus | 1986 | No | Yes | Yes | No | 1 day, 1 week, 4 weeks, 52 weeks | On-bus (day tickets only) and off-bus | Yes | In proportion to drivers' recording of ticket sales (button push) | Can offer guidance/proposals only—no formal vote | Deducted from total revenue before redistribution |
| Merseytravel | Solo | 1986 | Yes | Yes | Yes | Yes | 1 week, 1 month, term time, 1 year | Off-bus only | No | In proportion to survey estimates of market share | Sets prices and other aspects of schemes design | All costs are met by Merseytravel |
| Metro (West Yorkshire PTE) | Metrocard | 1986 | No | Yes | Yes | No | 1 week, 1 month, 1 quarter, 1 year | Off-bus only | Yes | In proportion to survey estimates of passenger mileage† | A vote on the board | Operators are charged an administration fee which covers some but not all administration costs. |
| SPT (Strathclyde Regional Transport Partnership) | ZoneCard | May-89 | No | No | Yes | Yes | Adult: 1 week, 4 week, 10 week and 1 year; Child: 1 week, 4 week | Off-bus only | Yes | In proportion to survey estimates of market share | Can offer guidance/proposals only—no formal vote | Scheme operating costs capped and balance of revenue redistributed. SPT meets balance of costs. |
| SEStran (South East Scotland RPT) | One Ticket | Apr-01 | No | Yes | Yes | Yes | 1 day, 1 week, 4 week, 1 year | Off-bus only | Yes | In proportion to passenger mileage | Representation on the board | Deducted from total revenue before redistribution |
| Bath and North East Somerset | BathRider | Jul-09 | Yes | Yes | No | No | Adult: 1 day, 1 week; Child 1 day, 1 week | Off-bus only (3 locations) | Yes | In proportion to registered mileage | Casting vote in the event of a deadlock but it has never been used. | Deducted from total revenue before redistribution |
| Norfolk County Council | Norwich Fusion | Jan-10 | No | Yes | No | No | 1 day | On-bus | Yes | In proportion to registered mileage | Has a seat on the management committee | Deducted from total revenue before redistribution |
| Nottingham City Council | Kangaroo | 2004 | No | No | Yes | No | 1 day | On-bus and off-bus | No | In proportion to journeys made | Part of the small operators block vote | Covered by the Council |
| Oxfordshire County Council | Plus Pass‡ | 1998 | No | Yes | No | No | 1 day, 1 week, 2 weeks, 4 weeks. | On-bus | Yes | By operator agreement | None | Not known |
| Surrey County Council | Woking Travelwide | mid-1990s | No | Yes | No | No | 1 day, 1 week, 1 month | On-bus (day tickets only) and off-bus | No | Day tickets: lies where it falls. Week/month tickets: in proportion to registered mileage | Can offer guidance/proposals only—no formal vote | Costs covered by Arriva (costs of reimbursement) and by Council (costs of marketing) |
| Luton Borough Council | Hip Hop | Jun-11 | No | Yes | No | No | 1 day, 1 week (adult only) | On-bus | Yes | Lies where it falls | Each of the partner Council has a vote | Costs of marketing shared by LTAs and operators |
| Darlington Borough Council | Local Mover | Nov-09 | No | Yes | No | No | 1 week, 4 week | On-bus (weekly only) and off-bus | Yes | In proportion to registered mileage | | Deducted from total revenue before redistribution, and some covered by the Council |
| Northampton Borough Council | Buzzcard | Apr-06 | No | Yes | No | No | 1 day, 1 week, 1 month | On-bus (day and week only) and off-bus | Yes | On-bus lies where it falls. Off-bus distributed according to registered mileage | Can offer guidance/proposals only—no formal vote | Deducted from off-bus revenue before redistribution |

*Source:* Operators' questionnaire responses and desk research.

*The SYPTE TravelMaster scheme is one of a number of multi-operator ticketing schemes available in South Yorkshire, including TravelMaster Direct, South Yorkshire Day Tripper and the Sheffield Citywide. We include only TravelMaster in this table as we understand it is the principal scheme in the area.
†Metro told us that distribution was based on data from Metro's continuous on bus/train survey system. The actual distribution uses a notional fare scale, which in effect reflects the tapering of fares at longer distances.
‡PlusPass has since been withdrawn and instead a smart multi-operator ticketing scheme called SmartZone has been introduced.

85. Based on the above assessment, we concluded that all of the MTC schemes about which we have comprehensive information have one or more of the following characteristics that are likely to limit their attractiveness to passengers and hence their take-up by passengers:

*(a)* there is no bus-only travelcard available, and so the only MTC available is a multi-modal ticket which tends to be more expensive;

*(b)* the travelcard covers only a wide area and does not have zones corresponding to individual bus networks;

*(c)* there is not a full range of ticket types available (for example, day, week, month tickets, or student tickets); and/or

*(d)* the travelcard is available for sale only off-bus (and often in a limited number of locations).

- *Proposals for an effective MTC scheme*

86. In Appendix E we set out our analysis of the characteristics of an effective MTC scheme, drawing on evidence on the characteristics of existing multi-operator ticketing schemes. In Appendix E we also make some specific observations about existing schemes in certain local areas, and analyse the pricing of certain existing schemes. In this section we summarize our findings, setting out the characteristics of an effective MTC scheme.

87. *Effective governance:* decisions about the design of an MTC scheme should be taken by operators and LTAs, *by voting.* The following governance and voting arrangements are likely to provide the basis for an effective scheme (our analysis and reasoning for this finding is presented in Appendix E, paragraphs 6 to 16):

*(a)* Clear objectives for the scheme to which all participants have signed up: these should be focused on providing good value, and convenient multi-operator ticketing products to passengers and thereby growing demand for bus services.

*(b)* A third party administrator of the scheme, which would also handle commercially sensitive data (such as that required to calculate prices of the MTC) and manage revenue reimbursement. In existing schemes this role is often performed by the LTA.

*(c)* LTA representation on the Board, including a vote in its own right (not as part of a block vote). This is proposed for a number of reasons, including in recognition of the LTA's financial interest in the scheme as the funding body of tendered services and through funding of some marketing and/ or administration costs. LTAs can also provide representation of passengers' interests. There may also be a role for passenger representation on the governance board, where the LTA and operators believe there is scope for it. In addition, LTA representation can mitigate potential concerns in relation to small operator gaming as set out in more detail in Appendix E.

*(d)* Small operators should have a clear mechanism for representing their views on the scheme, either directly or as part of a voting 'block'.

*(e)* No individual operator should have more than 49 per cent of the votes, which ensures that no operator is able to dominate the voting mechanism.

*(f)* Subject to this cap, operators' voting rights should be apportioned on the basis of some broad measure of market share (such as registered mileage or weekly services). This need not be entirely pro rata—for example, operators with more than a certain share of the market may have an additional seat on the board. This reflects the greater financial exposure of larger operators to schemes and provides some protection against 'gaming' by smaller operators;

*(g)* Decisions should be taken by a simple majority.

88. *Access to schemes:* a new entrant should be able to sell tickets for an existing MTC scheme upon commencing supply of local bus services, provided it abides by the terms and rules of the scheme, and should be reimbursed for the multi-operator ticket

passengers it carries according to the revenue reimbursement principles of the scheme. A new entrant should be able to participate in the governance of the MTC scheme, according to the governance principles of the scheme at the earliest practical opportunity (for example, the next meeting of the governance board). (Our analysis and reasoning for this finding is presented in Appendix E, paragraphs 17 to 19.)

89. *Bus-only schemes:* any MTC scheme should include a bus-only MTC. This can sit alongside any multi-modal products that are also offered. (Our analysis and reasoning for this finding is presented in Appendix E, paragraphs 20 to 22.)

90. *Zonal coverage:* MTC schemes should be available, at a minimum, for individual zones broadly corresponding to those of the main operators in the area covered by the scheme. Tickets should also be available for travel-to-work areas. (Our analysis and reasoning for this finding is presented in Appendix E, paragraphs 23 to 27.)

91. *Ticket types available:* MTC schemes should have ticket types available broadly corresponding to the main individual operator ticket types, for example in terms of the time duration of tickets, or in terms of discounts given to certain groups (such as students). (Our analysis and reasoning for this finding is presented in Appendix E, paragraph 28.)

92. *Sales channels through which tickets are available:* MTCs should be available through the same sales channels as the single-operator multi-journey tickets, including on-bus. Individual operators' marketing of tickets should not discriminate against multi-operator ticket types (for example, by not referring to them on websites or in published marketing material). (Our analysis and reasoning for this finding is presented in Appendix E, paragraphs 29 to 31.)

93. *Competitive pricing:* the price of an effective multi-operator ticketing scheme should be built up from single fares, according to the following framework (further analysis of multi-operator ticket pricing is presented in Appendix E, paragraphs 35 to 56):

> Multi-operator ticket fare = average or median single fare * estimated ticket usage * discount for a multi-journey ticket.

94. Using such a framework for pricing would increase the transparency of how prices of multi-operator tickets are set and of the relevant information used to determine these prices. The multi-operator ticket price would be determined by three parameters:

*(a)* Single fares: we understand that single operators generally set their own multi-journey ticket prices by reference to their own single fares. Similarly, we propose that MTC fares should be set by reference to single fares within an area, according to the formula in paragraph 93. In using single fares in this way, we recognize the need to guard against the risk that individual operators might try to manipulate the price of the multi-journey ticket by setting an extremely high or an extremely low single fare (even on one individual route) and therefore suggest that the median of individual operators' single fares will be the most appropriate measure, as the median is not distorted by extreme values.[47] To avoid exchange of confidential information between operators an LTA could calculate a suitable median fare, based on information provided to it by operators, though this function could also be carried out by an independent third party.

*(b)* Estimated usage: the estimated number of journeys made on the multi-operator ticket. This will need to be determined locally for each MTC scheme. We propose that a starting point for this should be an estimate of the average usage of single-operator multi-journey tickets within the area. Current usage of existing multi-operator tickets is likely to be an overestimate of the number of journeys made

[47] If for some reason an average (ie mean) is thought to be more appropriate, the top and bottom fare should be removed so as to reduce the potential for extreme values to distort the average.

per ticket in a more effective scheme, if current prices are set so high that only customers with a very high usage find it worthwhile to purchase the ticket (ie if the scheme is established as a 'niche' product). Usage could be measured empirically using surveys or, if available, operators' data on the usage of their own multi-journey tickets. The LTA is likely to be the most appropriate party to receive and consolidate this sensitive commercial information. As a consequence, the LTA is likely to be in the best position to reach a judgement on the estimated usage, drawing on the evidence available to it. The LTA should not share this information among operators in a non-aggregated form.

*(c)* Discount for multi-journey tickets: a discount over the repeat purchase of single fares. This is likely to be the main area for discussion among operators and with the LTA when setting the price for a scheme, since the other two parameters can be established empirically. Relevant information on this parameter will include the volume discounts offered by operators for their own multi-journey tickets. Voting on the size of this discount might also be conducted using the principles set out in paragraph 87.

- *Preventing operators from offering single-operator multi-journey tickets*

95. In the Remedies Notice we said that we would consider whether restrictions on individual multi-operator tickets might also be necessary.

96. All of the Large Operators opposed restricting the ability of operators to offer their own multi-journey tickets,[48] with most[49] emphasizing that such restrictions would distort or restrict price competition and/or competition to innovate. Several LTAs also noted that restricting the ability of operators to offer single-operator tickets might

[48] Responses to Remedies Notice: FirstGroup, paragraph 2.11; Stagecoach, paragraph 4.23; Arriva, paragraph D1; Go-Ahead, paragraph 2.28; National Express, paragraphs 3.39 & 3.40.
[49] Responses to Remedies Notice: Stagecoach, paragraph 4.23; Arriva, paragraph D1; Go-Ahead, paragraph 2.28; National Express, paragraphs 3.39 & 3.40.

mean that customers would have to buy more expensive products or reduce passenger choice.[50]

97. Rotala, on the other hand, argued that only by restricting the incumbent operator's own multi-journey tickets would a multi-operator scheme be effective.[51] Its concern was in particular in relation to the West Midlands where it argued that barriers to entry associated with National Express's (the large incumbent operator's) multi-journey tickets were particularly strong.[52] Three LTAs also argued that restricting the ability of operators to offer their own single-operator multi-journey tickets would be appropriate in order to increase the effectiveness of multi-operator tickets.[53]

98. We considered that restricting the ability of operators to offer their own individual multi-journey tickets would prevent operators competing on the price of multi-journey products and on competing to innovate with new multi-journey products. These aspects of competition can provide passengers with significant benefits in the form of lower prices, greater choice and more convenient tickets. We were therefore concerned that restricting these dimensions of competition could give rise to adverse effects that would outweigh the benefit associated with lowering barriers to entry and expansion and therefore preferred to focus on improving the availability and attractiveness of multi-operator ticketing products in order to address these barriers.

*Route-level schemes*

99. In paragraph 53 we conclude that almost all routes exhibit within-route effects to some extent. Our analysis also shows that larger Urban Areas tend to have the highest proportion of routes with relatively strong within-route effects. However, there

[50] Responses to Remedies Notice: PTEG, paragraph 8.13; Nexus; SPT, paragraph 4.39; City of York Council, Comment 3 paragraph a; Luton Borough Council, Issue 3a; Cheshire West and Chester Council, paragraph f; Edinburgh City Council.
[51] Response to Remedies Notice, paragraph 4a.
[52] Rotala response hearing summary, paragraph 4.
[53] Response to Remedies Notice, TfGM pp2&3; SYPTE p8; B&NES Council p4.

are likely to be some routes in smaller Urban Areas or rural areas that also exhibit relatively strong within-route effects. In such cases a route-level multi-operator ticket would address these network effects and encourage competition on that route, while being less costly to implement than a travelcard scheme.[54] In addition, a route-level scheme may increase competition for certain types of supported services (see paragraphs 56 to 59). Such route-level schemes could involve operators agreeing to accept each other's multi-journey tickets, or might involve a separate multi-operator ticketing arrangement. To satisfy the definitions in the Ticketing Block Exemption, these route-level schemes would be considered to be MITs (as set out in paragraph 48(c)).

100. The Ticketing Block Exemption requires that revenue lies where it falls for MITs. Where operators sell a number of tickets roughly in proportion to passengers carried, this is likely to be a suitable, and 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 more multi-operator ticket passengers than it sells multi-operator tickets, it does not receive reimbursement for all passengers carried, and hence it can be unattractive for that operator to participate in that scheme. One example where this occurs is where an evening or weekend service is operated by a different operator (often on a supported service) from the day peak-time services, where the majority of tickets are sold. See paragraphs 56 to 59.

101. OFT guidance on the Exemption recognizes that revenue lying where it falls may not be suitable in the circumstances described above. However, the guidance is not very

[54] We note that some route-level schemes might cross LTA boundaries, and so may be more likely to be initiated by operators,

specific about what alternative revenue-sharing arrangements might allow such ticketing agreements still to come within the terms of the Block Exemption:

> Although MIT schemes that use a different revenue distribution method do not meet the conditions of Article 15 and hence cannot benefit from the block exemption, the OFT considers that these schemes are likely to satisfy the conditions in section 9(1) of the Act […] 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.[55]

102. As set out in paragraph 57 a number of LTAs have told us that commercial extension contracts are more attractive to the incumbent commercial operator in part because revenue in practice tends to lie where it falls.

103. We consider that the current lack of clarity about what types of reimbursement arrangements are lawful is likely to create a barrier to implementing route-level schemes that could address the AEC that we have provisionally found. We therefore provisionally decided to recommend to the OFT that it reviews, at the earliest possible opportunity, the Ticketing Block Exemption in relation to the revenue-sharing arrangements that are acceptable for MIT schemes. We also propose to recommend that the Secretary of State for Business, Innovation and Skills makes any changes to the Ticketing Block Exemption that are necessary in light of the OFT recommendations. This would contribute to addressing or reducing the AECs we have provisionally identified in both the commercial and tendered market. In this context we note that new technology (see paragraphs 105 to 114) may also facilitate the more accurate redistribution of revenue.

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[55] OFT 439,'Public transport ticketing schemes block exemption', paragraph 4.43, available at www.oft.gov.uk/shared_oft/business_leaflets/ca98_guidelines/oft439.pdf.

104. The Ticketing Block Exemption precludes price-setting on MITs. The reason for this is because if operators come together to set the price of a multi-operator ticket on a single route where they overlap, this risks effectively removing price competition on that route. These schemes are not the same as travelcard schemes where operators offer different, albeit overlapping, networks. For example, an MIT might involve operators agreeing to accept each other's multi-journey tickets, and allowing price fixing in such a scheme would amount to fixing the prices of operators' own multi-journey tickets. We share the OFT's concerns about potential coordination and hence do not propose any changes to the Ticketing Block Exemption to allow price-setting of route-level multi-operator schemes (MITs).

*Smart ticketing*

105. The DfT and several LTAs argued that smart technology and associated ticketing products might facilitate the effectiveness of multi-operator schemes, either by providing ticketing products such that customers do not have to pre-commit to a single-operator multi-journey product but can still realize the multi-journey savings (using capping technology)[56] and/or by facilitating better revenue redistribution.[57] National Express also told us that smart ticketing would facilitate more accurate recording of passenger numbers.[58]

106. Most of the smart technology rolled out to date across the bus fleet in the reference area is compatible with the ITSO specification, which is an open specification designed for transport ticketing.[59] The roll-out of this technology is at different stages throughout the reference area:

[56] Centro response to Remedies Notice, p3.
[57] Centro response to Remedies Notice, p6 ; City of York Council response to Remedies Notice, comment 1 paragraph g; DfT response to provisional findings and Remedies Notice, paragraph 35; SYPTE.
[58] National Express response hearing summary, paragraph 2.
[59] Although we understand that in certain instances technology is compatible with EMV (a global standard for certain forms of payment cards) as well as or instead of ITSO standards.

*(a)* England: from 2009 to 2011 the DfT provided funding to the nine largest urban areas in England (outside London) to facilitate the introduction of ITSO smart technology on public transport. In addition the DfT has provided incentives to roll-out the technology on to buses through BSOG. The roll-out of technology is at different stages throughout these nine areas.

*(b)* Scotland: all buses have been equipped with ITSO smart technology and this is used for the national concessionary fares scheme. This investment was publically funded.

*(c)* Wales: all buses have been equipped with ITSO smart technology and this is used for the national concessionary fares scheme. This investment was publically funded.

107. The technology to support smartcards has been therefore rolled out or is in the process of being rolled out in all of Scotland and Wales and in several regions in England.[60] However, relatively few areas have developed specific plans for multi-operator bus tickets to be available for passengers using that technology: two PTEs are prioritizing the development of the technology on their light rail systems[61] and several other authorities told us that at this stage developments were being made in terms of single-operator smart ticketing products before multi-operator products were developed.[62] However, Centro told us that it was in the process of introducing an e-purse card for the West Midlands and was working towards establishing a fare-capping regime to simplify ticketing for customers and Merseytravel told us that its smartcard (the 'Walrus') would initially have a multi-operator ticket that would replace

[60] Merseytravel assisted five small operators to equip their buses with ITSO-compliant technology and the larger operators were equipping their own fleets (Merseytravel response hearing summary, paragraph 10); Cornwall Council told us that it hoped to have the majority of technology in place by end of 2011 (Cornwall Council response hearing summary, paragraph 9); Metro told us that it acquired the back office systems necessary to facilitate smart ticketing (Metro response hearing summary, paragraph 15); SYPTE told us that operators in South Yorkshire were currently rolling out smart technology and that SYPTE had the back office technology (SYPTE response hearing summary, paragraph 34); Centro told us that all buses in the West Midlands were equipped with smart technology, and that any new entrant would have the technology provided by Centro (Centro response hearing summary, paragraph 12).

[61] TfGM response hearing summary, paragraph 16; Nexus response hearing summary, paragraph 16.

[62] Scottish Government response hearing summary, paragraph 10; Cornwall Council response hearing summary, paragraph 9; Metro response hearing summary, paragraph 15; Welsh Government response hearing summary, paragraph 15.

existing paper multi-operator tickets.[63] Overall, smart technology appears to be currently more widely used for single-operator tickets[64] and concessionary travel than for multi-operator tickets.[65]

108. In addition to the beneficial effects for competition and passengers of paper-based multi-operator ticketing schemes, smart technology has the potential further to reduce barriers to entry associated with network effects. Smart technology is likely to facilitate more accurate revenue redistribution and estimates of ticket usage, which will contribute to a more efficient and effective scheme. In addition, smart technology allows an additional benefit of flexibility to passengers if capping to the best available fare is used. This would require an e-purse product from which money is deducted for each journey, and which can be used on any operator's services where the prices is set (or capped at) the best available fare (whether this is a single- or multi-operator fare). Capping limits could also be set, for example, for a geographic area within a certain period (eg daily, weekly, monthly, annually). In order to secure the competition benefits whilst retaining the ability for operators to compete on price and quality, we considered such a product should be developed with the following broad approach to pricing (as was also advocated by the DfT):

*(a)* Single-operator cap: if a customer travels on the services of only one operator, then there will be a cap on the total amount that can be deducted from their e-purse each day (or week), set by each individual operator. These might correspond to the single-operator multi-journey ticket levels in a paper-based ticketing system.

[63] Centro response hearing summary, paragraph 12; Merseytravel response hearing summary, paragraph 10.
[64] For example, Trent Barton's Mango products in Nottingham are available on smart technology (Nottingham City Council response hearing summary, paragraph 14) and NCT told us that [✂]; Lothian Buses' own single-operator products (with the exception of its single tickets and day tickets) are smart tickets (Lothian Buses response hearing summary, paragraph 13); the Cardiff Bus Iff card uses smart technology.
[65] Concessionary passes already use smart technology in Scotland, Wales and the West Midlands (see Centro response hearing summary, paragraph 12). In addition, SYPTE told us that its priority was to implement smart technology for concessionary fares (SYPTE response hearing summary, paragraph 34).

*(b)* Multi-operator cap: if a customer travels on the services of more than one operator the cap on the total amount that can be deducted from their e-purse each day (or week) will be set at a different level, the multi-operator cap. The level of this cap should be set using the same principles as used for paper-based multi-operator tickets, as set out in paragraphs 93 and 94.

109. Capping to the best available fare therefore gives rise to the same benefits as non-smart multi-operator ticketing schemes. However, it also gives rise to an additional passenger benefit of increased flexibility and convenience. This is because passengers would not need to pre-commit to single-operator or multi-operator tickets in advance, but could rather make their choice when waiting at the bus stop, conditional on which operator's service arrives. As such we would expect uptake to be greater and the impact in reducing barriers to entry and expansion more substantial.

110. Some PTEs pointed out that there was currently no legislation that allowed LTAs to compel operators to participate in an LTA-led *smart* scheme, with PTEG and Centro arguing that these powers would be beneficial.[66] PTEs also argued that there was likely to be a need for reform of the Block Exemption to provide guidance on the development of revenue-sharing arrangements between operators in e-purse plus capping arrangements.[67] In response to the OFT's consultation on the Ticketing Block Exemption in 2010, the DfT argued that since smart ticketing enabled new ticketing products (such as the capping system outlined above), the Ticketing Block Exemption might require revision to provide guidance on appropriate revenue-sharing in such a setting. The DfT argued that given the current state of investment in and development of smart ticketing technology and products, the Ticketing Block Exemption should be re-evaluated sooner than the OFT's proposed five years,

[66] Responses to Remedies Notice: PTEG paragraph 8.16; SYPTE paragraph 7g; Centro p9.
[67] Responses to Remedies Notice: PTEG paragraph 8.17; TfGM paragraph 1.2.11; SYPTE paragraph 7g.

perhaps in April 2012.[68] The OFT found that, given its view of the state of current smart ticketing investment, the Ticketing Block Exemption did not need revision in 2010 to take account of smart technology, but that it should be open to the OFT to consider at any time whether changes to the Ticketing Block Exemption would be necessary as a result of smart ticketing developments.[69]

111. In our view, the considerable public and private sector investment in smart technology that has already been undertaken or is underway creates an important opportunity for increased competition (by reducing the barriers to entry that we have identified), and for delivering increased benefits to passengers through convenient and interoperable tickets. We find that the following three factors are the key to ensuring that this opportunity is taken.

112. First, the principles of an effective multi-operator ticketing scheme as set out in paragraphs 87 to 94 should apply equally to ticketing products that are available on smart technology. For example, the multi-operator cap on an e-purse should be set in accordance with the principles we define for multi-operator tickets in paragraph 94.

113. Second, given the investments that have already been made and which we expect to be made in the near future, it is important that a clear competition law framework be established for the development of smart ticketing schemes. In this context, we noted the DfT's submission that some smart ticketing products, such as e-purses do not fit neatly within the categorization of the current block exemption. We therefore provisionally decided to recommend that the OFT reviews, at the earliest possible opportunity, the Ticketing Block Exemption in order to set out the types of e-purse schemes[70] that are acceptable under competition law. We also provisionally decided

[68] DfT response to OFT consultation on the Ticketing Block Exemption, July 2010.
[69] Public Transport Ticketing Schemes Block Exemption Review, December 2010.
[70] An e-purse product from which money is deducted for each journey.

to recommend that the Secretary of State for Business, Innovation and Skills makes any changes to the Ticketing Block Exemption in light of the OFT's recommendations.

114. Third, the principle of interoperability is important in maximizing the benefits from smart ticketing and this principle should be built into the development of smart ticketing schemes. Interoperability has two dimensions:

*(a)* Smartcards (or other smart media such as bank cards and mobile phones) should be interoperable across different operators in an area covered by a smart scheme so that a customer can board any bus using its smartcard. We understand that whilst smart-compatible ticket machines rolled out to date are ITSO compatible, in the future, new designs of bus ticket machines may also be able to accept standard cards and NFC[71]-enabled mobile phones.

*(b)* The additional benefits in terms of competition, flexibility and convenience are likely to be maximized if customers are able to use a single e-purse within which single-operator and multi-operator caps are set. If there are different e-purses for single-operator and multi-operator capped products, then customers will have to commit in advance to which e-purse they use at the start of the day depending on their expectations of the usage they will make of the network and there may be restrictions on acceptability by different operators which may undermine the value of interoperability.[72]

### *Implementation of remedy*

115. In this section we present our provisional decisions on the multi-operator ticketing remedies and how these will be implemented. Specifically we present our provisional decision on remedies to:

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[71] Near field communication, which allows for simplified transactions, data exchange, and wireless connections between two devices in close proximity to each other.
[72] This would require additional business rules on ticket machines regarding the order in which different e-purses may be read.

*(a)* increase the number of effective ticketing schemes;

*(b)* increase the effectiveness of existing ticketing schemes; and

*(c)* maximize the competitive impact from the introduction of smart ticketing.

*Increasing the number of effective ticketing schemes*

116. In paragraph 52 we found that the introduction of an effective multi-operator ticketing scheme is likely to reduce the barriers to entry and expansion associated with network effects.

117. In paragraph 12.110 of our provisional findings we recognized that there were currently two ways in which a ticketing scheme could be introduced in an area:

*(a)* First, operators could voluntarily agree to set up a scheme, on the condition that such a scheme complied with the 1998 Act. For these purposes, there is a Ticketing Block Exemption, which allows for ticketing schemes that fall within the terms set out in the Block Exemption, to be exempt from the Chapter I prohibition (see paragraph 47).

*(b)* Second, LTAs can require operators in an area to set up a multi-operator ticketing scheme. These statutory schemes need to satisfy a competition test set out in the Transport Act 2000 for England and Wales and the Transport (Scotland) Act 2001 for Scotland (see paragraph 49).

118. In principle, the timeliest and simplest solution to this aspect of the AEC would be for operators to work in partnership with LTAs to develop new schemes and reform existing schemes and in accordance with the principles set out in this provisional decision, without the need for further changes to the policy framework. Such new or reformed schemes could be either voluntary or statutory in nature.

119. However, we have provisionally found that existing avenues for setting up ticketing schemes did not adequately address the barriers to entry and expansion associated with network effects for a number of reasons explained in details in paragraphs 9.76 to 9.91 of our provisional findings and in paragraphs 69 to 81 of this provisional decision. In short, not enough ticketing schemes have been introduced and the ticketing schemes that have been introduced are not sufficiently effective in reducing the barriers to entry we have found associated with network effects.

120. We considered that there were three ways to increase the number of effective ticketing schemes across the reference area:

*(a)* First, we provisionally decided that changes should be made to the Ticketing Block Exemption that would facilitate the introduction of more voluntary schemes (see paragraphs 122 to 124).

*(b)* Second, we provisionally decided that legislation should be created or existing legislation should be amended to give LTAs the power to set up multi-operator ticketing schemes in their area that would be more attractive to passengers and hence would be more effective in addressing the network effects we have identified. Pending the creation of this legislation, LTAs and operators should work together to set up or amend existing voluntary schemes to have the characteristics we set out in paragraphs 87 to 94. There is little in the current regulatory framework to inhibit LTAs and operators from working together to develop and reform travelcard schemes in line with these principles.

*(c)* Third, we provisionally decided that LTAs should review the case for implementing MTC schemes in the largest areas where there currently exists no multi-operator ticketing scheme (see Table 1).

121. We describe each of these in more detail in the following paragraphs.

- *Changes to the block exemption*

122. The existing block exemption provides a framework for operators to develop voluntary schemes in compliance with the 1998 Act. However, in paragraph 103 we found that operators are discouraged from entering into voluntary arrangements to set up multi-operator ticketing schemes. This was in part as a result of general concerns about compliance with competition law, and because the existing block exemption provides insufficient clarity on the revenue-sharing arrangements for non-MTC schemes (that would still allow such schemes to fall within the terms of the block exemption (see paragraph 101)) and on applicability to smart ticketing schemes (see paragraph 113).

123. If the following changes were made to the Ticketing Block Exemption and accompanying guidance we would expect there to be greater uptake of voluntary ticketing schemes:

*(a)* additional guidance about the types of revenue-sharing arrangements would be acceptable on MITs; and

*(b)* additional guidance about the types of e-purse scheme that are acceptable under competition law.

124. We therefore provisionally decided to recommend to the OFT that it reviews the Ticketing Block Exemption in light of these issues at the earliest possible opportunity. We also provisionally decided to recommend to the Secretary of State for Business, Innovation and Skills to make the changes to the Ticketing Block Exemption as recommended by the OFT. We also seek views on whether, as an interim arrangement, we should recommend to the OFT that it issues a Short Form Option. We seek views on whether this would provide greater legal certainty as to the scope of the Ticketing Block Exemption, and whether, as a result, this would be an effective way of facilitating the introduction of MIT and e-purse schemes.

- *Increasing the powers of the LTA to set up schemes*

125. The amendments that we have provisionally decided to recommend to the Ticketing Block Exemption are likely to go some way towards mitigating the barriers to entry we have identified where these result from operators being discouraged from setting up schemes due to the terms of the block exemption. However, such remedial action will not address the limited incentives that operators have in setting up such schemes voluntarily particularly where they have a single-operator scheme in the same geographic area.

126. We have therefore provisionally decided to recommend to the UK Government and the governments of the devolved administrations that LTAs are given additional powers to determine, in greater detail than at present, the form that such LTA-led multi-operator ticketing schemes should take. We provisionally decided to recommend that LTAs are given the power to determine that the schemes have certain characteristics in relation to governance, access, bus-only schemes, zonal coverage, ticket types available, sales channels and marketing and pricing, set out in paragraphs 87 to 94. We expect that these changes are likely to require further legislation.

127. We note that there is little in the current legislative framework to prevent operators from working together with LTAs to develop and reform travelcard schemes that have these characteristics. We therefore provisionally decided to recommend as an interim solution that the DfT (following consultation with the Welsh Government) and the Scottish Government develop guidance setting out the characteristics that we propose to recommend that LTAs have the powers to determine in relation to multi-operator ticketing schemes. We recommend that LTAs and operators have regard to this guidance and work together to amend existing travelcard schemes accordingly, in advance of legislation being brought into force.

- *Increasing LTA uptake of schemes in certain areas*

128. We set out in Table 1 the largest Urban Areas where ticketing schemes do not currently exist where LTAs may consider introducing a statutory ticketing scheme. In addition, in paragraph 85 we found that the existing voluntary MTC schemes, for which we have information, do not have the characteristics set out in paragraphs 87 to 94.

129. We provisionally decided to recommend that LTAs consider using their existing powers to set up statutory ticketing schemes under existing legislation ahead of the legislative changes that we have recommended in paragraph 126. Pending the implementation of this legislation, we also provisionally decided to recommend that operators and LTAs should work together to set up voluntary schemes having all of the characteristics set out in paragraph 87 to 94 above, or amend their existing voluntary ticketing arrangements to have these characteristics. During this transitional period we provisionally decided to recommend that the Secretary of State for Transport and the Scottish and Welsh Governments monitor progress of LTAs and operators to achieve these outcomes.

130. In addition, we provisionally decided to recommend to the DfT that, as part of its current review of BSOG in England, it considers ways of incentivizing development and participation in effective multi-operator ticketing schemes (see Figure 7 in paragraph 391). This recommendation may also be of interest to the Scottish and Welsh Governments, should they decide to undertake a similar review at some future date.

*Increasing the effectiveness of existing LTA-led MTC schemes*

131. There are a very small number of existing LTA-led MTC schemes. In our view, these schemes as currently constituted are insufficient to address the barriers to entry and expansion that we have found as each scheme's characteristics are to some extent

unattractive to consumers, and the take-up of these schemes is generally low (see Appendix E).

132. We provisionally decided that these schemes should have the characteristics set out in paragraphs 87 to 94.

133. We therefore provisionally decided to recommend that any legislative change by the Secretary of State for Transport (following consultation with the Welsh Government) or by the Scottish Government should also enable LTAs to make changes to existing LTA-led schemes so that such schemes meet the characteristics set out in paragraphs 87 to 94.

*Maximizing the competitive impact from the introduction of smart ticketing*

134. In paragraphs 105 to 114 we discussed the potential impact from the introduction of smart ticketing technology on the use of multi-operator schemes and the substantial investments by both the public and private sector in smart-enabled ticket machines. We consider that our remedies in this section should be technology neutral so allowing effective multi-operator ticketing schemes to operate both within and outside a smart ticketing context. We recommend that the Secretary of State for Transport and the Scottish and Welsh Governments take this into account when considering our recommendations.

### *Operator behaviour*

*Summary of proposed remedy*

135. Figure 2 summarizes our proposed remedy in relation to operator behaviour.

FIGURE 2

**Summary of proposed remedy relating to operator behaviour**

We have provisionally decided to recommend that:

- The Secretary of State for Transport (following consultation with the Welsh Government) makes changes to the notice period and requirements relating to the registration and operation of a local bus service in England (excluding London) and Wales as follows:

  *(a)* a 14-day pre-notification period to LTAs by operators prior to any registration application to enable LTAs to review and comment on the proposals;

  *(b)* a minimum standard notice period of 90 days following acceptance of a **change** to an existing service registration by the Traffic Commissioner before such change can be made; and

  *(c)* a restriction on making changes to any registration application during any notice period except by making a short-notice application and the alignment of the reasons for any short-notice application to those used in Scotland.

- The Scottish Government and the Secretary of State for Transport (following consultation with the Welsh Government) make changes to the relevant national legislation and regulations relating to the operation of local bus services to:

  *(a)* require operators to detail and then to operate within registered hourly frequency bands any services that are registered as frequent services;

  *(b)* require Traffic Commissioners to introduce and enforce a local bus operator; Code of Conduct; and provide them with the ability to attach the conditions of such a Code of Conduct to operator licences and/or to local bus service registrations; and

  *(c)* enable Traffic Commissioners to restrict local bus service registration applications for (new of changed services) for up to 90 days (in any two-year period) in an area in which a Municipal bus company operates when such business is being sold and on request from the relevant local authority owner.

- Traffic Commissioners work in consultation with the local bus industry to agree, introduce and enforce compliance with an industry Code of Conduct which will preclude 'cheap exclusion' and emphasize the need to comply with existing competition laws.

- As part of its current review of BSOG in England, the DfT considers ways of incentivizing compliance with our proposed Code of Conduct (see Figure 7 in paragraph 391). This recommendation may also be of interest to the Scottish and Welsh Governments, should they decide to undertake a similar review at some future date.

*Overview of options considered*

136. We set out in the Remedies Notice that we would consider whether to introduce constraints on certain forms of unilateral operator behaviour. Our thinking has

developed as a result of the responses we have received and the subsequent response hearings we have held.

137. The remedies that we are proposing are in the areas of:

*(a)* restrictions on changes in frequency through increased notice periods and changes to frequent service registrations;

*(b)* an industry Code of Conduct to prohibit cheap exclusion; and

*(c)* specific protection for Municipal Businesses that are being sold.

138. We are not proposing any specific restrictions on pricing behaviour, in addition to the existing requirement to comply with the 1998 Act, but deal more generally with issues relating to competition enforcement in paragraphs 312 to 341.

*How this remedy addresses the AEC*

139. In our provisional findings we found that bus operators have an incentive to compete in ways which are likely to create overcapacity and to compete in a way that is aimed at promoting a rival's exit. We found that these incentives can result in unstable competition.[73] We also found that the potential for unstable competition to arise following entry through the reactions of incumbent operators can increase entry costs, risks and uncertainty and act as a barrier to entry or expansion. We found that 'cheap exclusion' can also form a barrier to entry.[74]

140. The remedy options in this section seek to address the distortions of competition arising from the state of affairs that we referred to in our provisional findings as

[73] By 'unstable' competition we refer specifically to the finding that operators in head-to-head competition on a route may face incentives to each compete in ways which increase service frequency and make the service loss-making, until one or other exits. Without this instability (which derives, in part, from our feature of customer conduct), we would expect sustained head-to-head competition to be possible where operators are engaged in active rivalry, such as on fares and service levels, where competition continues in the long term on the merits of their offers, as one would normally expect of a competitive market. No agreements or understanding between operators on a route or over a wider area, or external control of the market is implied.
[74] See paragraphs 11.69–11.71 of the provisional findings for a description of the practices that constitute cheap exclusion.

unstable competition. It also addresses the barriers to entry and expansion caused by the expectation of such forms of competition and by cheap exclusion.[75] Our remedial measures seek to achieve this in the following ways:

*(a)* First, by restricting the ability of operators to change frequencies. By increasing notice periods for changes to registered local bus services, the number of changes an operator can make to its services in any period is reduced. The application of longer notice periods also makes any potential response by an incumbent operator to a service change by an entrant or another competitor slower. These effects and the requirement to pre-notify LTAs of service changes are aimed at reducing the incentive and ability for an operator to take a short-term approach to making decisions about service frequency. As a result, an operator seeking to enter or expand services in competition with an incumbent operator would expect less instability of competition, less opportunity for 'tit for tat' competition and hence lower barriers to entry or expansion.

*(b)* Second, the proposed Code of Conduct discourages operators from engaging in practices of cheap exclusion or other anti-competitive practices in order to damage or discourage a competitor. This is the expected result of being clear about the type of such behaviour that is prohibited and then by there being the appropriate deterrent or punishment for breaches. As a result, the barriers to entry and expansion as a result of cheap exclusion are reduced.

*(c)* Third, the proposed protection for municipals, through local restrictions on relevant service changes for a maximum period, aims to prevent damaging behaviour by other operators during a sales process. Such behaviour can arise from operators taking advantage of the instability of head-to-head competition.[76] The remedy is expected to remove the potential for the viability of a municipal to

[75] See paragraphs 14.11 & 14.12 of our provisional findings.
[76] As set out in Section 14.11 of our provisional findings.

be undermined and thus its sale to a rival either prevented or the business and its competitive position weakened before the sale.

*Design issues*

141. In this section we explain the way in which the proposed remedies have been designed and the factors we have taken into consideration. We look at:

*(a)* the general considerations that shaped our approach to remedies to address operator behaviour;

*(b)* the design of the changes proposed to the registration process;

*(c)* the proposed Code of Conduct;

*(d)* the protection for municipal businesses during a sales process; and

*(e)* the geographic scope of the remedy options that we are minded to pursue.

*General considerations that shaped our approach*

142. We considered a variety of potential approaches to the design of this remedy option and asked a number of detailed questions in the Remedies Notice about different aspects of the design and effectiveness of the remedy.

143. In order to guide our approach we started by looking at some general considerations. We considered whether it would be possible for a body such as Traffic Commissioners or LTAs to determine what inappropriate operator behaviour was and as a result make decisions about restricting such behaviour on a case-by-case basis. Alternatively we considered whether it was possible for the CC to specify clear rules which would draw a line between appropriate and inappropriate operator behaviour. We considered whether such rules should be highly-specified and tailored or simple and universal and who should monitor and enforce them.

- *An appropriate body to make judgements*

144. We considered first whether the Traffic Commissioners, LTAs or a new regulator could make judgements on whether any specific action by an operator (eg a service registration or a price change) was likely to distort competition. We received a significant number of responses on this point.

145. There were common views emerging from the feedback about Traffic Commissioners. The current resources available to assist Traffic Commissioners are under review and many parties thought that these were insufficient to cover an extension in the role.[77] There is a related move away from monitoring of local bus services by Vehicle and Operator Services Agency (VOSA) compliance officers to a partnership approach with the industry and Traffic Commissioners have expressed concerns to us about how well they will be supported as a result in future.[78] Many parties told us that Traffic Commissioners had already said that they did not necessarily have the current skill set to investigate matters of anticompetitive behaviour by operators.[79] Traffic Commissioners themselves and the DfT thought that than an extension in the role could be possible, although difficult.[80]

146. We provisionally decided that an extension, if any, to the role of the Traffic Commissioners should be modest, build on their existing strengths of independence and industry credibility and be relatively light in terms of additional demands on VOSA. However, for the reasons set out in paragraph 145 we did not consider that it would be practicable for Traffic Commissioners to make judgements on a case-by-

[77] For example, NCT response to Remedies Notice, p7; Go-Ahead response to Remedies Notice, p10; PTEG response to Remedies Notice, p16.
[78] Deputy Senior Traffic Commissioner response hearing summary, paragraph 2; Scottish Traffic Commissioner response hearing summary, paragraphs 2 & 3.
[79] For example, Arriva response to Remedies Notice, p27; FirstGroup response to Remedies Notice, p19, Rotala response to Remedies Notice, p4; and PTEG response to Remedies Notice, p16.
[80] Deputy Traffic Commissioner response hearing summary, paragraph 8.

case basis as to whether a registration application or price change was likely to be anticompetitive.

147. Next, we considered what role LTAs could play. Here a wider range of views were expressed both by parties, ranging from LTAs being formal regulators to them having a monitoring role of some sort.[81]

148. We recognized the specific strengths of LTAs that are relevant to this remedy. They have local knowledge and are responsible for local transport plans. All LTAs are involved to some extent in the local bus market. Against this, LTAs had a range of views as to their willingness or ability to extend their role.[82] There were also some concerns expressed that LTAs could be subject to political influence and were therefore not fully independent.[83] Based on this evidence our provisional view was that we were concerned that LTAs would not be seen as being sufficiently independent to make decisions about what constituted inappropriate behaviour by operators. But, we considered that it would be important to involve the LTAs, in some other way, as their local knowledge and contacts with operators would enhance the effectiveness of this remedy.

149. Whilst recognizing that Traffic Commissioners and LTAs play an important role in the local bus market we concluded that it was not practical for their role to be extended to include assessing the competitive implications of price or frequency changes on a case-by-case basis. Nor did we consider that any other regulatory option including the creation of a new bus regulator would be likely to be effective as such a regulator

[81] For example, PTEG response to Remedies Notice, pp15–17; ALBUM response hearing summary, paragraph 18; and DfT response hearing summary, paragraph 30.
[82] For example, Dorset County Council response hearing summary, paragraph 29; Centro response hearing summary, paragraph 22; and PTEG response to Remedies Notice, p16.
[83] For example, National Express response hearing summary, paragraph 29; Arriva response hearing summary, paragraph 19.

would not have local knowledge, nor was it likely that there would be resources to fund such a body.[84]

- *Use of tailored rules to identify inappropriate behaviour*

150. Recognizing that an assessment of frequency or price changes by LTAs or Traffic Commissioners on a case-by-case basis would not be a practicable solution we considered whether tailored rules could be established to determine the circumstances in which an action by an incumbent operator in response to entry was likely to be inappropriate.

151. Some parties told us that it would not be possible to define the sort of operator behaviour that was inappropriate.[85] Several operators emphasized the practical difficulties in specifying the remedy.[86] We were told that:

*(a)* a decision would need to be taken on what constituted an incumbent and what constituted an entrant. For example, there are relatively few services that overlap completely so clear criteria would need to be set, as to what extent of overlap would constitute entry on to a particular route and what would constitute an incumbent reaction on that route; and

*(b)* such a rule-based approach could bring potential distortions, especially given that this would provide favourable treatment to the entrant and might in contrast prevent an incumbent reacting to customer demand.

152. We noted that there was also little evidence to guide us in determining the extent of any protection for the entrant and particularly the period of time over which this would be required.[87]

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[84] We took account here of the views of PTEG in its response to the Remedies Notice, p16.
[85] For example, Arriva response to Remedies Notice, pp26, 28 & 29; Lothian response to Remedies Notice, p17; PTEG response to Remedies Notice, p17.
[86] For example, National Express response to Remedies Notice, pp17&18; Stagecoach response to Remedies Notice, pp23&24; and FirstGroup response hearing summary, paragraph 25.

153. In light of these considerations we recognized the significant difficulty in tailoring rules designed to afford a degree of protection to an 'entrant' from an 'incumbent operator'. We agreed with the points made about the difficulty in defining the relevant circumstances in which to provide such protection. Being clear on these areas would be fundamental to the successful operation of a tailored rules-based approach.

154. Based on the above considerations, we concluded that there was a significant risk of error in the design and execution of tailored rules, which could lead to distortions in the competitive process. We recognized that the nature of such distortions depended on the specification of the remedy but we judged that the scope for such distortions was likely to increase were the remedy to be more complex.

- *Simple universal rules*

155. As a result of our assessment in paragraphs 144 to 154 of the feedback we received, we provisionally concluded that only simple and universally applied rules could be effective and practicable in addressing this aspect of the AEC.[88] For the reasons set out in paragraphs 144 to 149, we did not consider that it would be practicable for LTAs, Traffic Commissioners or a new regulator to assess, on a case-by-case basis, whether individual pricing or service changes would distort competition. Likewise, for the reasons set out in paragraphs 150 to 154, we considered that seeking to design tailored rules to identify and deal with specific instances of anticompetitive behaviour risked causing significant distortions or errors. Rather we considered that rules aimed at improving the general stability of services and increasing the visibility of operator behaviour were more likely be more effective.

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[87] A response from G Howle, Transport Consultant, to the Remedies Notice on behalf of a number of operators in the West Midlands suggested a period of 12–24 weeks' grace to enable a new entrant to establish itself.
[88] In making this assessment we agreed with the view of the DfT that if rules were clear and simple and minimized the degree of judgement, a rule-based approach could be made effective. (Response hearing summary, paragraph 31.)

156. We took the view that if it were possible to deliver remedies affecting the frequency of services through the existing registration process with the Traffic Commissioners then this would minimize the costs involved and make implementation easier. We considered that this would be a practicable approach, as we intend to recommend general and relatively modest changes to registration procedures for all operators.

*Restrictions on frequency changes*

157. Having considered the views on the remedy options we have identified three proposed changes to the registration process:

*(a)* 14-day pre notification period to LTAs;

*(b)* extend period for a change to an existing registration to 90 days; and

*(c)* frequent service registration requirements.

- *14-day pre notification period to LTAs*

158. We have provisionally decided to recommend that LTAs be given notification of any new local bus service registrations or changes to existing services (including cancellations) 14 days prior to submission of a registration application to the Traffic Commissioner.

159. We explored this option in the response hearings and recognized that this is already the practice in Scotland. We heard a range of views about the extent of the usefulness of this period in Scotland.[89] Some parties outside Scotland told us that more widespread dialogue between operators and LTAs about proposed service changes already existed or that the sharing of such information would seem to be beneficial.[90] However, a concern was expressed that if LTAs had an objection to a service on the

[89] For example, Scottish Government response hearing summary, paragraph 17; Scottish Traffic Commissioner response hearing summary, paragraph 10; SPT; and Lothian Buses response hearing summary, paragraph 15.
[90] For example, National Express response hearing summary, paragraph 29; Stagecoach response to Remedies Notice, p18; and Deputy Senior Traffic Commissioner response hearing summary, paragraph 6.

grounds of potential distortions to competition, Traffic Commissioners would not be able to act on this without additional powers.[91]

160. On balance we concluded that there would be benefits of providing LTAs with information about forthcoming registration applications, as part of our remedy package. In our view LTAs have useful local knowledge and could apply a wider perspective when discussing proposed service changes with operators. We identified in our provisional findings that LTAs pose some constraint on operators given the funding that they control and the established partnership approach that is encouraged.[92] As a result we expected that the extra visibility to LTAs resulting from this measure could discourage anticompetitive reactions by an incumbent operator to a new entrant.

161. We noted that this measure would encourage information sharing and dialogue between LTAs and operators and that this is consistent with the principle of effective partnership working (see paragraphs 342 to 390. We also considered that this measure was supportive of the other changes to the registration process (see paragraphs 165 to 181) and would help LTAs in assessing the need to support services that were to be withdrawn and might need to be tendered in future (see paragraphs 266 to 311).

162. We also took the view that LTAs were well placed to assist in bringing concerns relating to breaches of the proposed changes to registration periods (see paragraphs 165 to 182), the proposed Code of Conduct (see paragraphs 183 to 189 and the 1998 Act (see paragraphs 312 to 341) to the attention of the Traffic Commissioner and/or the OFT, and that in doing this LTAs could perform a useful monitoring role.

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[91] Deputy Senior Traffic Commissioner response hearing summary, paragraph 6.
[92] See paragraphs 11.86 & 11.87 of our provisional findings.

163. We considered whether, in addition to any obligation on operators to notify LTAs of forthcoming service changes, there should be a statutory duty for LTAs to review registration applications. However, we did not think that this was practicable as it would be difficult to generalize about the precise actions that they should undertake or the realistic grounds on which they might object to an application.

164. Finally, we considered the appropriate length of the pre-notification period. As the period is currently 14 days in Scotland and there is an established process in operation we could see no reason to adopt a different approach in England and Wales.

- *Extend period for a change to an existing registration to 90 days*

165. Generally, operators must give 56 days' notice to the Traffic Commissioner of any local bus service registration change in the reference area. In Scotland an operator must also operate any new or changed service for at least 90 days. We have provisionally decided to recommend an increase in the standard notice period to 90 days in England and Wales for changes to local bus service registrations.[93] We do not propose changes in relation to Scotland (see paragraph 175).

166. This 90-day period of notice needs to be considered in combination with the 14-day pre-notification period to LTAs (see paragraphs 158 to 164) and limits general service changes to about three to four occasions per year.[94] The remedy is designed to reduce the scope for competition to be unstable and to lower associated barriers to entry and expansion by increasing the time that it takes for an incumbent to respond to a new entrant or expanding operator. When and if such a response takes place, it will need to be maintained for a longer period. These factors would reduce the ability

[93] The potential for short-notice registration applications will remain although as explained in paragraph 174 the reasons permissible for a short-notice registration should be aligned to those used in Scotland.

and incentive to engage in 'tit for tat' competition (ie short-term actions to react to competitor behaviour).

167. We have placed weight on the desire of many parties to encourage more stability of services for the benefit of passengers.[95] There are many existing local voluntary agreements limiting the number of changes to services.[96] We have also received evidence that operators take time to plan service changes in any case and this period of planning has in some cases been longer than the proposed notice periods.[97]

168. We have considered the views put forward about the possible adverse effects of any restrictions on operators' ability to make service changes.[98] Specifically, we were told that this could adversely affect customers as it would delay or prevent an operator reacting to customer needs, or at worst might force the exit of the incumbent or a reduction in the level of service.[99] However, in light of the considerations in paragraph 167, our view was that the main impact would be on 'tit for tat' responses, especially as we proposed that the remedy would apply to all operators in the same way. We did not consider that as a result it would affect sensible and planned responses to changes in customer demand.

169. We also considered that operators should continue to have the ability to apply for short-notice registrations[100] and that this would substantially reduce the potential distortions we were told about. This is because operators that could demonstrate a

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[94] This depends on the assumptions made but one new registration and up to three planned changes would be feasible in a year in this design.
[95] For example, Passenger Focus response hearing summary, paragraph 16; Lothian Buses response hearing summary, paragraph 16; Arriva; ATCO response hearing summary, paragraph 27.
[96] The DfT told us that it estimated that half of the market was already subject to voluntary agreements on timetable changes of some sort or another.
[97] For example, FirstGroup; National Express response hearing summary, paragraph 29.
[98] For example, FirstGroup response to Remedies Notice, pp7&8 and 19&20; Stagecoach response to Remedies Notice, p25.
[99] For example, SYPTE response to Remedies Notice, p10; Centro response hearing summary, paragraph 24.
[100] There are a number of circumstances in which an operator can make a registration application and ask that the registration be applied in less than the normal 56 days' notice. Accepting such 'short-notice' applications is at the discretion of the Traffic Commissioner. Possible grounds include a response to an urgent and exceptional public passenger transport requirement. Further details can be found in the guides to Local Bus Service registration issued VOSA which for England and Wales are under reference PSV353A and for Scotland is PSV 353A (Scotland).

genuine need to make changes more rapidly than in 90 days would, as now, be able to apply for a short-notice regulation. We considered that such extended notice periods should apply to changes to existing services but should not apply to registrations for new services or for cancellations of existing services. This is because we considered that this might have the undesirable effect of increasing the barriers to entry on to a route. It would increase the time for an entrant to launch a new service and give an incumbent longer to react. In addition, should a service be operating at a loss, the period of time over which the loss could be incurred before the service could be cancelled would be further increased compared with the current 56-day notice period. As a result we decided to continue to allow the cancellation of a service after 56 days, although recognizing that this would require 14 days' prior notice to the LTA.

170. Next, we considered whether any supporting measures would be necessary to address the risk of circumvention of this remedy by operators. We identified two potential circumvention risks with this remedy.

171. First, there is a risk that an incumbent might seek to circumvent the 90-day period by either cancelling and then re-registering a service, and thereby being subject to the current 56-day notice period, or by registering a new service adding incrementally to the existing service. We expected that the LTAs, or other local operators, should be in a position to bring any abuse of the registration requirements to the attention of the Traffic Commissioner, who would be able to take appropriate enforcement action.

172. Second, there is a risk that operators might seek to respond to entry in a 'tit for tat' manner by registering a change to a service that had not yet come into operation, during the original notice period. This possibility is described in the following illustrative example.

Having given 14 days' notice to the LTA an entrant registers a new service and gives 56 days' notice to the Traffic Commissioner. In response the incumbent, having given 14 days' notice to the LTA, registers a change to take place in 90 days. This registration prompts the entrant to make an application to change its original registered service 90 days hence, before it has even started running the originally registered service. The incumbent may then react to this before its change to its own service takes place and so on.

173. In practice the Traffic Commissioners told us that such overlapping changes were relatively rare and tended to relate to errors in the original application. In our view anything other than correcting such errors could represent an undesirable use of the registration requirements as illustrated in the boxed example in paragraph 172. We recognized that even if such behaviour rarely took place, the perception of the potential for such behaviour could itself contribute to the barrier to entry.

174. We therefore concluded that it would be necessary to restrict the registration of changes during the notice period to short-notice applications only (see paragraph 169), which would be dealt with on an exceptional basis by the Traffic Commissioner. We further concluded that the conditions for making a short-notice change to a registration specified in the current Scottish guidance were more appropriate, in the context of this proposed remedy, than the equivalent provisions in the guidance that currently applies to England and Wales. In particular, we noted that the Scottish guidance excludes the condition for a short-notice change when the service timetable was changed by no more than 10 minutes earlier or later than registered.[101] We considered that excluding this condition for making a short-notice change would reduce the scope for circumvention of this remedy option.

175. We noted that our proposed remedy design differs from the current registration requirements in operation in Scotland. For example, in Scotland, if an incumbent had

[101] See forms PSV 350A and PSV 350A (Scotland).

been operating a service for 90 days, then that operator only needed to give 56 days' notice of a change to its service. In our remedy an operator would always have to give 90 days' notice of a change irrespective of how long the service had been operated and on balance we preferred this approach.[102]

176. While we preferred our proposed remedy design (for the reasons set out in paragraph 169), we also recognized that the approach to this matter taken in Scotland has the same aim of ensuring that service registrations reflect sustainable local bus services. We did not consider that there was likely to be sufficient additional benefit in recommending that the Scottish notice requirements be aligned with the remedy proposal for England and Wales. In practice, we concluded that the effects were likely to be sufficiently similar that such a change was not warranted.

- *Frequent service registration requirements*

177. If an operator runs six or more buses per hour in each direction on a route then there is currently no requirement to register a timetable. Such services are described as frequent services.[103] We are proposing that the registration requirements for existing and future frequent services are amended to include the frequency of buses expressed in hourly bands. For example, between 8am and 9am six to eight buses will run and then between 9am and 10am and so forth for each hourly period of operation.

178. The aim of this remedy is to prevent an operator 'flooding' a route with buses in response to a competitor and this brings frequent services within the scope of the other two measures relating to notice periods for changes as described above. Should an operator wish to increase the frequency on a service beyond the

[102] In Scotland a service also cannot be cancelled until it has been run for 90 days. As set out in paragraph 169 we preferred to allow a service to be cancelled with 56 days' notice.
[103] See our provisional findings, Appendix 12.1, paragraph 51.

registered band it would need to make a change to the registration and would be subject to the 14-day pre-notification period to LTAs and a 90-day notice period to the Traffic Commissioners. This remedy therefore works in conjunction with the previous two measures. The monitoring of compliance to the registration would be made against each band.

179. We received mixed views on the proposal. Some operators emphasized the costs of notifying changes to services and that the reduction in flexibility would undermine the ability to respond to market demand.[104] However, other parties thought that operators could use existing frequent services to mask anticompetitive activities and that there would be a benefit of having more detail of frequent services for monitoring purposes.[105]

180. Our analysis suggests that, as of October 2009, there were 651 services that had at least one hourly period with 12 or more buses operating in total (ie in either direction) and which could therefore be registered as frequent services without a detailed timetable.[106] Of these services 119 operate in Scotland and only 14 in Wales. Of the total, 140 have a maximum frequency of more than eight buses per hour.

181. We considered that the frequency registration would be best expressed in bands to allow some flexibility for an operator to make operational changes without requiring an additional registration. Taking into account our analysis of frequent services we are minded to propose that these hourly bands be expressed in the ranges of 6–8 buses per hour; 9–11 buses per hour; 12–14 buses per hour and more than 15 buses per hour. We noted that there are very few services operating in the higher frequency

[104] For example, National Express response to Remedies Notice, p32; Lothian Buses response to Remedies Notice, p18.
[105] For example, Rotala response to Remedies Notice, p5; TfGM response to Remedies Notice, p15; SPT response to Remedies Notice, p13.
[106] We discuss the number of frequent services in the reference area in paragraph 12.44 of our provisional findings. Note that although these services have timetables which are sufficiently frequent that they could be registered as frequent services, it is

bands and most normally operate in the range 6–8 buses per hour. We considered that the default band, unless otherwise amended, should be the range 6–8 buses per hour and that only frequencies in excess of this need to be specifically detailed on the registration. As discussed in Appendix J, this approach is likely to minimize the changes to existing service registrations that would otherwise be needed. We would welcome submissions on this proposed approach to the registration of frequent service, including the proposed hourly bands.

- *Other options*

182. We received feedback and suggestions on the various other remedy options we put forward relating to the frequency of services. We were not minded to pursue any of the other options[107] as we have provisionally decided that these would not be practicable in light of the considerations in paragraphs 144 to 156.

*Code of Conduct*

183. We have provisionally decided to recommend that a Code of Conduct be introduced to:

*(a)* deter operators from engaging in the types of operator behaviour we have described as cheap exclusion; and

*(b)* provide a further incentive for compliance with the 1998 Act (see paragraph 186).

184. Many parties told us that, although they did not disagree that cheap exclusion was harmful, there was little evidence of it taking place.[108] We were told that such

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not necessarily the case that they are in fact all registered as frequent, and some of these services may have published timetables.

[107] For example, we received a suggestion to require operators to split headways when changing a registration. As few routes overlap completely we thought this might present operational difficulties and have unintended consequences for the non-overlapping parts of a route. We considered that this was not practicable. We also received a suggestion to stop publishing information about registrations in Notices and Proceedings as this would allow other operators to react earlier to changes to services made by competitors. We thought that the benefits of transparency of service changes to a number of stakeholders were important and that by extending the notice periods for registration, reactions would already be made slower so we provisionally decided not to pursue this.

[108] For example, Go-Ahead response hearing summary, paragraph 21; Nexus response hearing summary, paragraph 22; Lothian Buses response hearing summary, paragraph 18.

behaviour in any case would come under existing regulations or laws.[109] However, all operators expressing a view told us that they would be prepared to sign up to a Code of Conduct dealing with cheap exclusion and that this should apply to all operators.[110] Many parties thought that the Traffic Commissioners would be best placed to own and enforce the Code of Conduct.[111] A suggestion was made that they should develop this in consultation with industry bodies.[112]

185. We concluded that cheap exclusion is relevant to all operators regardless of size, geography or whether they are an incumbent or an entrant. As a result, in our view the Code of Conduct should apply to all types of operators in all parts of the reference area.

186. The OFT suggested that the Code of Conduct could set out the requirement to comply with the 1998 Act and that as a result the deterrent effect might increase. We considered that inclusion of this requirement in the Code of Conduct was likely to enhance the effectiveness of competition enforcement (see paragraphs 312 to 341) by increasing the potential costs to operators of proven breaches to the Chapter I and Chapter II prohibitions in the 1998 Act (see paragraph 189). This would increase the incentive on operators to comply with the 1998 Act and thereby reduce barriers to entry associated with extreme manifestations of unstable competition. We therefore agreed with the OFT that the requirement to comply with the 1998 Act should be included within the Code of Conduct.

187. We considered whether a Code of Conduct could be subject to self-regulation. In our view, without effective monitoring and enforcement we did not consider that the Code

[109] For example, Arriva response to Remedies Notice Section G; SPT response hearing summary, paragraph 23.
[110] This was subject to the detail of the Code of Conduct and on the understanding that it covered aspects of cheap exclusion as defined by the CC in the provisional findings. Rotala, for example, suggested that there could be core provisions for all operators and increased provisions for larger operators (response to Remedies Notice, p7).
[111] For example, FirstGroup response hearing summary, paragraph 31; Go-Ahead response hearing summary, paragraph 21; Stagecoach response hearing summary, paragraph 24; Metro response hearing summary, paragraph 25.

of Conduct would be effective.[113] We decided that the Code of Conduct is best introduced as a legal requirement and then formally monitored and enforced by the Traffic Commissioner. The Traffic Commissioner should have a duty to consult with operators before introducing the Code of Conduct. In developing the monitoring and enforcement requirements in this way we believe that the risk of duplication or overlap of duties is minimized, that this provides a clear link to the enforcement powers of the Traffic Commissioner and that the specification will be clear to operators. To further encourage compliance, we propose to recommend to the DfT that, as part of its current review of BSOG in England, it considers ways of incentivizing compliance with the Code of Conduct (see Figure 7 in paragraph 391). This recommendation may also be of interest to the Scottish and Welsh Governments, should they decide to undertake a similar review at some future date.

188. We noted that there are a number of stakeholders (including local operators and LTAs) which are in a position to bring complaints about breaches of the Code of Conduct to the attention of the Traffic Commissioner.[114] By setting out clearly in the Code of Conduct what would constitute a breach, we expected that such complaints would be easier for such parties to make.

189. We considered that the mandate of the Traffic Commissioner would need to be enhanced to ensure the effective introduction and enforcement of the Code of Conduct. We noted that current sanctions open to Traffic Commissioners for breach of existing regulations range from a warning to a withdrawal of an operator's licence. Several parties told us that breach of a Code of Conduct would be considered a matter of operator repute, which is a circumstance that could result in the withdrawal

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[112] For example, ALBUM response hearing summary, paragraph 20; NCT response hearing summary, paragraph 22.
[113] The DfT suggested that we consider self-regulation as an option for the Code of Conduct (DfT response hearing summary, paragraph 34.
[114] For example, Metro thought that LTAs would be well placed to advise Traffic Commissioners on local circumstances (response hearing summary, paragraph 25) and the Deputy Senior Traffic Commissioner thought that Traffic Commissioners and LTAs would need to work in partnership to identify behaviour of concern (response hearing summary, paragraph 18).

of an operator's licence under current regulations.[115] However, the Traffic Commissioners told us that using 'operator repute' to take action was a 'blunt instrument' and a better solution might be to ensure that a breach of the Code of Conduct could result in service registration(s) being withdrawn.[116] We agreed with this submission and propose that the mandate of the Traffic Commissioners be suitably amended to allow them the power to withdraw service registrations in the event of a breach.[117]

*Protection for municipals*

190. We have provisionally decided to recommend that any local authority wishing to sell a municipal business may apply for a restriction on any new registrations or changes to existing registrations in the area of the operation of such business for a limited period of time. This could be used to protect the business from the potential for destabilizing competition which might undermine the sales process and the viability of the business for an independent purchaser.

191. We did not receive a great deal of feedback on this remedy proposal but there were concerns expressed about allowing protection for independent businesses.[118] There was more support for protection for municipal businesses. ALBUM told us that once a sale of a municipal business had been announced, protection was required until the sale was agreed and contracts had been exchanged. Lothian Buses thought that this protection should be limited to a reasonable period and NCT suggested to us that 90 days should be more than enough time to sell a bus company if that was the real intent.[119]

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[115] For example, FirstGroup response hearing summary, paragraph 31; Go-Ahead response hearing summary, paragraph 21; NCT response hearing summary, paragraph 22.
[116] For example, Scottish Traffic Commissioner response hearing summary, paragraph 8; Deputy Senior Traffic Commissioner response hearing summary, paragraph 17.
[117] The most effective way of achieving this might be to attach the conditions of the Code of Conduct to new or changed registrations.
[118] For example, Arriva response to Remedies Notice section H; and FirstGroup response to Remedies Notice, p23.
[119] Lothian Buses response to Remedies Notice, paragraphs 115 & 116; and NCT response hearing summary, paragraph 23.

192. We were not convinced that any protection should be given to independent businesses being sold in addition to the other remedies on operator behaviour we have provisionally decided to introduce. However, we considered that there are special factors around the sale of municipal businesses that mean that the case for protection is stronger. This is because:

*(a)* a more open and transparent sales process is likely to be necessary to ensure public accountability. In particular, these businesses are 'arm's length' from the local authority owner and it needs to be shown that best value is achieved;[120] and

*(b)* there is a risk of potential loss to public finances, particularly if, as sometimes occurs, the sales process takes place when these businesses are already weak.

193. As there are a relatively limited number of possible municipal sales processes we considered that this was an area where the Traffic Commissioners would have the capacity to act and to intervene.

194. We considered that the Traffic Commissioners should have a duty to respond to a request to restrict service registrations in the geographic area of operation of the municipal and which overlap in any way with the existing services operated by the municipal.

195. We were aware that it could be difficult to define the precise moment at which a sales process started and that protection may be required from the point at which a firm proposal to sell a municipal business became public knowledge. As a result we considered that it would be appropriate for the owner of the business to decide when it thought that protection was warranted. This should only be in circumstances where it had received a clearly documented mandate to progress the sale of the business.

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[120] We note that following the Local Transport Act 2008 (the 2008 Act) there is no longer a requirement to notify the Secretary of State prior to sale but even so the likelihood is that the sales process will be open.

196. We did not consider that it would be necessary for Traffic Commissioners to apply any discretion in responding to a request provided the request was properly authorized and was for the purpose of achieving an orderly sales process. To the extent that the Traffic Commissioner was so satisfied then any registrations or changes to registrations except to exit a service in the specified area would not be accepted for a defined period of time.

197. We considered that the maximum period of protection that could be requested was for 90 days. In practice we recognized that this was in addition to the new proposed notice period of 14 days' prior notice to LTAs and the existing 56 days' notice for a new service (or proposed 90 days for an amended service). We considered that this time period was sufficient to allow a serious and credible sales process to be completed. We further propose that no more than one period of protection in any two-year period (measured from the start of any agreed period of protection) should be allowed in order to retain the incentive to run and complete a serious sales process.

198. In order to minimize the risk of distortions as a result of the restrictions we considered that a Traffic Commissioner should be allowed to accept a change to a registration during the period of restriction if this was agreed by the LTA (in consultation with the local authority owner of the business where different). Such agreement would be facilitated by the 14 days' pre-notification to LTAs that we have described in paragraphs 158 to 164. This period would enable the LTAs to review any exceptions to the restriction.

*Scope of remedy*

199. We considered the appropriate geographic scope of these remedies. We concluded that this remedy should apply throughout the reference area, subject to the differences set out in Figure 2 in paragraph 135 between England, Wales and Scotland.

200. This is for two reasons. First, because the feature relating to customer conduct—which in part gives rise to the problems associated with unstable competition—and the associated barriers to entry are present to some extent in every relevant market.[121] Second, we did not consider that it would be practicable for the registration process, or the terms of a Code of Conduct to vary significantly within nations.

*Implementation of remedy*

201. In this section we describe the way in which we propose that the remedy should be implemented.

202. We propose to make a number of recommendations to others to implement the remedy options. We consider that this is the most effective way of implementing the remedies. Our preliminary view was that this would require legislative changes and the DfT has indicated to us that, at least some aspects of this remedy, would probably require changes to primary legislation.

203. The proposed changes to the registration process in England and Wales are incremental to the existing registration process and as a result we considered that these are best made and implemented by the existing bodies that oversee and operate that process. We noted that a consultation about some changes to notice periods was undertaken by the previous UK Government in 2010 and that the current UK Government has yet to decide whether those proposals would be implemented. We have had encouraging discussions with the DfT about the possible range of remedies. We are aware that the DfT will consult with the Welsh Government in determining a formal response to our proposals.

[121] Provisional findings, paragraph 14.15.

204. We recognized that matters relating to local bus service registration in Scotland are devolved to the Scottish Government. We have had a similar positive dialogue with the Scottish Government during the investigation and it emphasized that it would want to be satisfied that the proposed remedies were relevant in Scotland.

205. While recognizing the devolved nature of certain decisions in relation to local bus service registration, we would highlight the possible benefits of a common approach between England, Scotland and Wales, for example on frequent service registration and the Code of Conduct.

206. In our judgement, Traffic Commissioners are best placed to introduce, monitor and enforce the Code of Conduct (see paragraph187). Initial work to develop the content of a Code of Conduct could be initiated without legislative change. However, a change to Traffic Commissioners' mandate would be required to introduce, monitor and enforce such a code. Such a change could only be introduced by the respective governments of the nations.

207. The role of LTAs is determined by guidance and regulations established by national governments and local priorities and again a recommendation is the most appropriate way of implementing the remedy.

### *Access to bus stations*

*Summary of proposed remedy*

208. Figure 3 summarizes our proposed remedy in relation to access to bus stations.

FIGURE 3

**Summary of proposed remedies relating to access to bus stations**

We have provisionally decided to introduce the following remedy in relation to access to bus stations:

- An Order on local bus operators which manage relevant bus stations ('Managers') obliging them to provide third party operators ('Users') access on fair, reasonable and non-discriminatory ('FRND') terms. This includes access to stands and layover bays, as well as access to facilities for drivers, and to facilities for publicizing services and timetables.
- Managers will also be required to publish Conditions of Use for the bus station which should include information about: stand and layover capacity; departure charges and discounts; and the policy for allocating capacity and for allowing access to facilities. (See Appendix F, Part 1, for further detail.) The Manager should consult with stakeholders (including Users and the LTA) before publishing these Conditions of Use, and prior to making subsequent amendments to them.
- The Manager will be obliged to enter into a written contract with each User, setting out the relevant conditions of use for the bus station.
- The Manager should also publish procedures for the timely resolution of disputes concerning bus station access and charges.
- In the event of a dispute concerning the level of departure charges, the Manager will be required to show that charges have been calculated on FRND principles (See Appendix F, Part 3, for our proposed guidelines on setting departure charges).
- In most cases we would expect disputes to be resolved between the Manager and User. However, in circumstances where a User is not satisfied with the outcome of a dispute it may escalate the matter as follows:
  - An independent expert may be appointed to resolve disputes over departure charges.
  - The LTA (or in some circumstances, the OFT) may be asked to decide disputes concerning other issues, such as capacity, stand allocation or access to facilities.
- In the event of a dispute, the Manager will be obliged to provide timely and relevant financial and operational information about the bus station, as requested, to the LTA or the OFT, or any independent expert appointed to decide a dispute on departure charges.
- Managers will be obliged to keep a formal record of all disputes and to report them annually to the relevant LTA. In addition, the OFT may require the provision of this information from a Manager at any time.

*Description of the remedy option*

209. In the Remedies Notice, we invited views on the introduction of 'fair access' obligations in relation to privately-owned and managed bus stations to ensure that

access to these bus stations was available on FRND terms. As set out in the Remedies Notice, such obligations could include:

*(a)* a requirement to manage the bus station at arm's length from the operator's local bus operations;

*(b)* a general prohibition on discriminating, directly or indirectly, against any other operator using or seeking to use the bus station;

*(c)* an obligation to publish a 'fair access' policy including details of how capacity within the bus station will be allocated, the costs of operating the bus station and any charges for use of the bus station;

*(d)* an obligation to set charges for bus station use on an FRND basis, eg a requirement that charges for third party use do not exceed the notional internal charge paid by the operator that manages the bus station; and

*(e)* a requirement to establish a mechanism for resolving disputes relating to the 'fair access' policy.

*How this remedy addresses the AEC and/or resulting customer detriment*

210. In paragraphs 9.92 to 9.120 of our provisional findings, we identified that some Managers adopt practices which can restrict entry, including:

*(a)* high and/or discriminatory departure charges;

*(b)* lack of transparency in pricing, with possible refusal to quote a departure charge;[122]

*(c)* discriminatory allocation of stands and/or layover capacity;

*(d)* poor management of stand capacity and more generally restrictions on the capacity available to new entrants; and

*(e)* restriction on the ability of drivers to access certain facilities available at the bus station.

[122] See evidence on Bath bus station, provisional findings, paragraph 9.111.

211. To address the barriers to entry arising from these practices, we sought to develop an access remedy such that third party operators using or wanting to use a bus station ('Users') are able to gain access to bus stations on fair and reasonable terms and are not discriminated against by bus station managers. We term this an 'FRND access remedy'. This should improve the ability of existing Users to offer competing services and, in particular, give confidence to potential entrants that their entry plans would not be put at risk by discriminatory behaviour.

212. Parties were generally supportive of a remedy of this type, which many considered to be both necessary to ensure a consistent and fair access to bus stations in the reference area, and proportionate. Most respondents considered that FRND provisions were an effective remedy for the specific problems relating to bus stations, as identified in our provisional findings.

*Design issues*

213. Below we set out how we considered the design issues of our proposed remedy under the following headings:

*(a)* scope of definition of a Relevant Bus Station;

*(b)* addressing the diversity of local circumstances;

*(c)* access issues: stand and layover capacity—definition and allocation;

*(d)* access issues: access to driver facilities;

*(e)* access issues: access to marketing facilities;

*(f)* departure charges;

*(g)* the Dispute Resolution Procedures; and

*(h)* implementation and monitoring.

*(a) Scope of definition of a Relevant Bus Station*

214. We considered how to define 'bus station' for the purposes of this remedy and which bus stations it should apply to. The 1985 Transport Act defines bus stations in the following terms: 'a parking place which may be used by public service vehicles (including any such parking place which forms part of any interchange facilities for enabling passengers travelling by one means of transport to continue their journey by another)'. It also includes 'associated facilities', defined as: 'in relation to a bus station, any amenities or facilities provided for use in connection with that station'. We adopted this definition for the purposes of our remedy.

215. In specifying which bus stations should be covered by this remedy, we considered the views we received from the parties:

*(a)* A number of parties (Arriva, Stagecoach, The TAS Partnership Limited (TAS), Strathclyde Partnership for Transport (SPT), RTPs Scotland) told us that the remedy should apply to all bus stations, regardless of ownership or management.

*(b)* Others (Rotala, Bath Bus Users Group, Bath and North East Somerset (B&NES) Council) said that it should apply to all privately-owned bus stations.

*(c)* SEStran, SYPTE and Nexus said that it should apply only to bus stations which were privately owned and/or managed by local bus operators.[123]

*(d)* Some third parties (Chartered Institute of Logistics and Transport (CILT)), Bus Users UK) argued that bus station operators should not be required to make the facilities they owned available to other operators:[124] CILT said that local bus operators that saw a commercial opportunity to acquire and develop their own bus stations at their own expense should not then be required to make them available to others.[125]

[123] See response to Remedies Notice, Issues for comment 8 a).
[124] CILT response to Remedies Notice and Bus Users UK response to Remedies Notice.
[125] CILT response to Remedies Notice, paragraph 28.

216. We consider that our provisional finding was limited to those bus stations managed by bus operators. We consider that a remedy that imposed requirements on managers of bus stations other than bus operators would be outside the scope of our provisional findings, and therefore not within our power to remedy.

217. We do not accept the argument that bus station operators should not be required to make the facilities they own available to others. Our understanding is that local bus operators have generally not deliberately built, acquired, and developed bus stations as a commercial opportunity. We understand that the redevelopment of operator-owned bus stations can sometimes be funded by local authorities or other bodies (eg the redevelopment of Wakefield bus station which was part-funded by the European Regional Development Fund (ERDF) and Metro). Further we consider that operators should be entitled to recover a fair and reasonable proportion of the costs they incur in providing bus station facilities through departure charges (see (f)).

218. We also considered comments from operators that this remedy should only apply to bus stations in specific geographic areas:

*(a)* ALBUM told us that this remedy should apply as and when required, and that it was in some places beneficial to pick up customers from the streets (although it also mentioned areas where this was not possible).[126]

*(b)* FirstGroup told us that it should only apply where: there was sufficiently high concentration; the bus station was an essential facility; and the existing access regime gave rise to a detriment to competition.[127]

*(c)* Go-Ahead argued that the remedy should only apply to those markets which displayed all three features which, in the CC's provisional view, gave rise to an AEC and where access to bus stations was identified as a barrier to entry.[128]

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[126] ALBUM response to Remedies Notice Issues for comment 8 a).
[127] FirstGroup response to Remedies Notice, Annex 3, Issues for comment 8.
[128] Go-Ahead response to Remedies Notice, paragraph 4.4.

*(d)* Lothian Buses told us that it believed remedies should only be imposed where customers were suffering a particular detriment, and the proposed remedy would mitigate or resolve an identified customer detriment. It may therefore only be appropriate to impose this remedy in markets in which there is an identified problem with access to bus stations.[129]

*(e)* NCT told us that it had not experienced problems at Nottingham and that the remedy should therefore not apply to Nottingham bus station. We note that Nottingham bus station is managed by the local council, and would therefore fall outside the scope of our remedy in any case.[130]

219. Our provisional findings and therefore the scope of our remedy are not conditional on the bus station being a so-called essential facility (as argued by FirstGroup) because competition may be distorted where a third party operator is put at a disadvantage by the manner in which a Manager grants access to its bus stations, even if it is not totally prevented from operating in the area.

220. Our view is supported by the 1985 Transport Act which recognized the importance of bus stations in the supply of bus services and the potential for the local authority owners of bus stations to distort the competitive process at a time when they also owned major local bus operations. This was addressed by requiring all PTEs and local authorities to provide fair and non-discriminatory access to the local bus stations they owned. We understand that as a result, PTEs and local authorities have put in place processes to meet their statutory duties under the 1985 Transport Act.[131]

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[129] Lothian Buses response to Remedies Notice, paragraphs 3, 118 & 120.
[130] NCT response to Remedies Notice, paragraphs 3.71–3.73.
[131] The 1985 Transport Act sets out the requirements on PTEs and local authorities in relation to the provision or operation by them of bus stations and any associated facilities, including charges for their use. Section 82(1) of the 1985 Transport Act prohibits PTEs and local authorities from discriminating, directly or indirectly, against any holder or class of holder of public service vehicle (PSV) operator's licence when exercising their powers in relation to the above. This prohibition also applies to any person to whom a PTE has contracted out the operation of a bus station provided by it under its contracting-out powers (section 82(3)). Where a bus station is owned by a local authority, but leased to a local bus operator, the prohibitions set out in section 82(1) will not apply to the local bus operator managing the bus station unless the management of the bus station is undertaken by the local bus operator under the local authorities' contracting-out powers.

For this reason our proposed remedy does not need to cover bus stations owned by local authorities or PTEs and managed under contracting-out powers.

221. In our provisional findings, we investigated the ability and incentives of operators to use their control of bus stations to raise barriers to entry. We found that where an incumbent bus operator manages a bus station it has both the incentive and ability to restrict a User's access to that bus station (including through the price it charges for access). This distorts competition and we have seen examples of how this distortion manifests itself in practice where there has been recent entry (see paragraphs 9.92 to 9.120 of our provisional findings).

222. We therefore propose that our remedy should apply to bus stations where the Manager has an ability and incentive to manipulate access to the disadvantage of the User, and therefore where a barrier to entry could arise (see paragraphs 9.92 to 9.120 of our provisional findings). We term these the 'Relevant Bus Stations' and define them as those bus stations that are managed by a local bus operator, other than where the bus station is managed under local authority or PTE contracting-out powers. We estimate that the number of Relevant Bus Stations will be in the region of up to 80 bus stations (see also Appendix J).

*(b) Addressing the diversity of local circumstances*

223. Next, we considered how our remedy could be structured to take into account local conditions. We note that variations between bus stations are likely to include:

*(a)* the nature of the facilities available;

*(b)* the nature of the user base (eg the balance between coach and/or local bus operators); and

*(c)* the amount of capacity.

224. Go-Ahead made a number of points about the level of flexibility required: the remedy must enable the bus station operator to take account of health and safety issues; must not be overly prescriptive; and must leave scope for negotiation. Go-Ahead argued that an overly prescriptive approach might lead to bus operators paying higher departure charges than they currently did.[132]

225. In designing our remedy we have sought to balance the advantages of giving clear and unambiguous rules which will reduce the scope for gaming with the need for sufficient flexibility to take account of local conditions.[133] We considered that a set of guiding principles which Managers should use to provide access and set charges on an FRND basis taking into account the specific circumstances at each Relevant Bus Station takes appropriate account of these two objectives.

226. We therefore propose the following for each Relevant Bus Station:

*(a)* Managers to publish the Conditions of Use for the bus station in a prominent place at the bus station and where applicable on the bus station's website. The Conditions of Use should include information about: stand and layover capacity; departure charges and discounts; and the policy for allocating capacity and for allowing access to facilities. We set out our proposed template for the Conditions of Use in Appendix F, Part 1.

*(b)* The Manager should consult with stakeholders (including Users and the LTA) before publishing these Conditions of Use, and prior to making subsequent amendments to them.

[132] Go-Ahead response to Remedies Notice, paragraph 4.4.
[133] This issue was emphasized by Rotala: 'Clearly the main issues relate to equality of charging, equality of access to both the bus station itself and the most suitable stands for particular destinations. But any claimed universal definition for the definition of station capacity and how stand allocation should be conducted at the macro level will inevitably be arbitrary and will disregard variables unique to each stand and group of users within any location'. Source: Rotala response to Remedies Notice, paragraph 9(c).

*(c)* The Conditions of Use should also set procedures for the timely resolution of disputes concerning bus station access and charges. Further details of these Dispute Resolution Procedures are set out in paragraphs 249 to 252 below.

*(c) Access issues: stand and layover capacity—definition and allocation*

227. In paragraphs 9.98 to 9.108 and Appendix 9.6 of our provisional findings, we set out examples of where a rival operator's ability to compete had been adversely impacted by the restriction of bus station access (eg through allocation of bays or restricting publicity).

228. The evidence we have received shows that the incentives for a Manager to develop and manage a bus station efficiently may be dulled (see paragraph 9.103 of our provisional findings). This can manifest itself through longer dwell times taken by the Manager's buses at the bus station; and/or the inefficient use of layover space. The Manager may also have the incentive and ability to allocate badly located stands to its competitor.

229. We received the following comments from third parties concerning access issues:

*(a)* Wayne Arthur, Worcestershire County Council (WAWCC) told us that the owner of the bus station must have an obligation to provide capacity for a new entrant subject to reasonable constraints. Where a competing service is introduced there should be access to stands in a similar location to that operated by the incumbent operator. The owner of the bus station should also have a statutory obligation to manage adherence to times at stands indicated in registered timetables.
WAWCC told us that the frequent service provisions should be removed, and that all arrivals and departures should be registered with punctuality targets reflecting the frequency of the service. WAWCC added that it did not make sense to have a 6-minute window on a frequent service. WAWCC also told us that there should

be guidelines on effective scheduling of capacity at bus stations, eg in relation to how many arrivals per hour per stand, etc.[134]

*(b)* TAS told us that typically, bus station codes of conduct specified a minimum time interval between departures from a given stand of 5 minutes in order to avoid congestion and the likelihood of double-parking. It should also arrange stands for services by corridor or destination, rather than by operator. This limited any incumbent operator as much as a newcomer.[135]

*(c)* Nexus told us that a series of advertised principles could be established and include the following: the agreed timescale between individual departures from each stand; wherever possible, stands would be allocated based on compatibility of corridors and common areas would be grouped together. Thus stands should be publicly allocated to serve a particular direction; they would be allocated on a first-come, first-served basis; when the preferred stand was at capacity the operator would be given the opportunity to re-time or would be offered the nearest available stand, and would be 'moved' as soon as capacity became available.[136]

230. A number of parties stressed the importance of recognizing that some bus stations might not have enough spare capacity and that the remedy should provide for flexibility in the allocation of spare capacity:

*(a)* FirstGroup told us that there needed to be a mechanism for the Manager to make a good faith judgement in respect to actual bus station capacity.[137]

*(b)* Stagecoach's view was that a new entrant should not have the right to displace an incumbent making genuine use of capacity.[138]

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[134] WAWCC response to Remedies Notice, comment on PF 48.
[135] TAS response to Remedies Notice, comment on Issues for comment 8, part (c).
[136] Nexus response to Remedies Notice, Issues for comment 8, part (c).
[137] FirstGroup response to Remedies Notice, Annex 3, comment on part b).
[138] Stagecoach response to Remedies Notice, paragraph 3.37.

*(c)* ALBUM also said that the application of FRND obligations must ensure that the request for access was also reasonable and might not be granted in full, or even at all, if the bus station really was operating at full capacity.[139]

231. We considered that where a bus station is close to, or at, capacity the Manager should, where possible, provide layover capacity to avoid stand blocking. This is particularly important where there is direct competition, as it is desirable for competing services to depart from the same (or adjacent) stands. However, we note that in some bus stations, stands are grouped by operator, and this may be justifiable given the specific circumstances of the bus station. We recognize that capacity will vary considerably from one bus station to another. We quoted in the Worcester case study (see provisional findings, Appendix 6.4, paragraph 52—Worcester case study) a report by independent consultant Halcrow which included examples of bus stations where per stand capacity of between 8 and 15 departures per hour had been achieved by adopting certain practices. In view of the above, we did not consider it possible to be specific or prescriptive in defining rules relating to stand capacity and its allocation.

232. Based on the submissions we received, we considered that there was a risk that the Manager could circumvent an FRND access remedy by mismanaging capacity. We consider that this risk was reduced by the following provisions:

*(a)* The Relevant Bus Station's Conditions of Use should contain information about the Manager's calculation of capacity and method for allocating stands, with relevant stakeholders (including Users and the LTA) given an opportunity to comment on the proposed approach.

[139] ALBUM response to Remedies Notice, p13.

*(b)* The Conditions of Use should set out an effective process by which Users can raise disputes over matters such as capacity and stand allocation (see paragraphs 249 to 253 below).

*(c)* Our guidance on setting departure charges on an FRND basis (see Appendix F, Part 3) states that Managers should not recover the costs of capacity used by their own buses from other Users. We consider that this may incentivize the Manager to utilize bus station capacity more efficiently, for example by minimizing dwell times.

233. Our proposed remedy requires Managers to use best endeavours to accept access requests from third parties. Managers may refuse access only where it is reasonable for them to do so, for example in cases where the bus station is genuinely operating at capacity.

*(d) Access issues: access to driver facilities*

234. In paragraph 9.100 of our provisional findings, access to driver facilities (eg canteens and toilets) was raised as a concern by some local authorities in relation to the management of bus stations owned by local bus operators.

235. This issue was also raised by Metro in relation to Wakefield bus station (which is owned and managed by Arriva). The problem of access to driver facilities at a bus station was also identified in the Lancaster case study, although in this case the manager of the local bus station was the city council rather than a local bus operator.

236. In response to our Remedies Notice, the Association of Transport Co-ordinating Officers (ATCO) Scotland told us that equal access to the bus stands for the bus

service must be matched by access by drivers to staff facilities (where available) such as a staff room with refreshments and toilets.[140]

237. We therefore propose to require Managers to give Users access to driver facilities where such facilities exist at a Relevant Bus Station, with a description of the available facilities to be set out in the Relevant Bus Station's Conditions of Use. We propose that this requirement should be on a 'best endeavours' basis recognizing that access may be denied where a Manager has good reasons for doing so. An example of where it may not be appropriate to grant access could be where facilities are located inside a Manager's own offices adjoining the bus station.

*(e) Access issues: access to marketing facilities*

238. Problems relating to the display of timetables were indentified in the Worcester case study (see the provisional findings, Appendix 6.4, paragraphs 59 to 64—Worcester case study).

239. In our Remedies Notice, we asked whether there should be a remedy concerning access to sales and marketing facilities at bus stations. We received the following responses:

*(a)* ATCO Scotland said that fair access provisions must also include provision of travel information;[141]

*(b)* Passenger Focus told us that passengers accessing a bus station wanted to be able to find information about fares and journeys, but if there was limited information available then this could prevent the journey from taking place;[142]

[140] ATCO Scotland response to Remedies Notice, paragraph 4.
[141] ATCO Scotland response to Remedies Notice, paragraph 4.
[142] Passenger Focus response hearing summary, paragraph 18.

*(c)* ATCO told us that it understood that operators which managed stations would want to promote their own services over their competitors and foresaw that tension might arise;[143] and

*(d)* a small operator, Regal Busways, commented:

> In a lot of privately owned bus stations the dominant operator will have a travel shop, which sells period tickets and also provides information to customers about their own tickets, in a lot of cases small independents like ourselves cannot afford to have these travel shops and therefore there should be some kind of obligation that they offer impartial advice and also allow us to sell tickets through their shops.[144]

240. An example of good practice in relation to fair access to multi-operator timetable information at a bus station came from National Express, in relation to bus stations which are owned by Centro and therefore not Relevant Bus Stations for the purpose of our proposed remedy. National Express told us that bus information across the West Midlands was coordinated by Centro and that there was a very good range of multi-operator timetables which were available at bus stations. There was no discrimination in the provision of information. Ownership of the sales outlet at bus stations varied, some were owned by Centro and others were rented by National Express, but there was a non-discriminatory policy as a term of the lease to ensure non-discrimination against other operators and it was monitored by Centro.[145]

241. We concluded that information and transparency have important roles to play in delivering competitive outcomes in markets for bus services. It is therefore desirable for passengers to have easy access to information about all services, and not only to

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[143] ATCO response hearing summary, paragraph 33.
[144] Regal Busways response to Remedies Notice.
[145] National Express response hearing summary, paragraph 32.

those which are run by the operator of the bus station. We concluded that our proposed remedy should require Managers to allow access on an FRND basis to timetable displays and other marketing facilities at bus stations to allow Users to publicize their services.

*(f) Departure charges*

242. In paragraphs 9.109 to 9.117 of our provisional findings, we found that the level of departure charges could have the effect of disadvantaging other operators compared with the Manager, which could act as a barrier to entry for new operators and expansion for existing operators.

243. We considered and took account of the following comments received from the parties. We received a variety of responses, with some operators emphasizing the need to leave scope for negotiation, differentiated charging and the ability to recover the cost of investment (even where not intended for the bus operators):

*(a)* FirstGroup argued that an effective scheme should have an adequate mechanism for recovering costs; allow for improvements and investments made to be fully recovered through charges; and allow for higher charges to be levied on local bus operators where they are using a high-specification facility primarily intended for other use and for differential pricing between coach operators and bus operators.[146]

*(b)* Go-Ahead told us that the scheme must not be overly prescriptive and must leave scope for negotiation; and would need to reflect the need for the station operator to be incentivized to invest in the bus station facilities and reflect differences in cost per departure between higher volume users and lower volume users. It added that an overly prescriptive approach could lead to higher charges.[147]

[146] FirstGroup response to Remedies Notice, Annex 3, comment on part (b).
[147] Go-Ahead response to Remedies Notice, paragraph 4.4.

*(c)* By contrast, [Bus Operator A][148] and Regal Busways[149] argued that all operators should be charged the same amount.

*(d)* Stagecoach said that charges should be levied on a reasonable basis reflecting costs and a reasonable return on investment.[150]

*(e)* SEStran told us that it would welcome measures to ensure full access at 'fair costs'.[151]

*(f)* Some parties (Fife Council[152] and Transdev) suggested that benchmarking of charges would ensure fairness. However, Transdev explained that it could be difficult to distinguish between direct and indirect costs and that there would be scope for arguments over cost allocations.

*(g)* ATCO told us that it had heard of cases where some small operators had not been able to operate from bus stations due to high charges. It believed that having a code built around general principles of fairness intended to ensure that non-incumbent operators were not unfairly disadvantaged, rather than specific rules, would send out positive messages and be easier to enforce.[153]

244. Given the diversity of local circumstances, we did not consider that a single price cap on departure charges across all Relevant Bus Stations would be appropriate. Neither did we consider that the publication of charges, by itself, would be sufficient to prevent high or discriminatory departure charges. In particular, given the different individual circumstances of bus stations, it would be difficult for Users to establish whether a charge was appropriate based on comparing the charge with charges at other bus stations.

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[148] [Bus Operator A] response to Remedies Notice, Issues for comment 8.
[149] Regal Busways response to Remedies Notice.
[150] Stagecoach response to Remedies Notice, paragraph 3.37.
[151] SEStran response to Remedies Notice.
[152] Fife Council response to Remedies Notice.
[153] ATCO response hearing summary, paragraph 31.

245. Instead, we consider that our remedy should require Managers to determine FRND charges for each Relevant Bus Station based on our proposed guidelines in Appendix F, Part 3. In addition, Users should have an effective way to dispute departure charges (see heading (g) below).

246. In obliging Managers to set departure charges that are FRND, we are concerned to ensure that bus station operators do not deter third party bus operators from using bus stations under their management by charging excessive prices. When considering what is an FRND charge:

*(a)* our benchmark for a 'fair and reasonable' price is the price that reflects any directly attributable costs together with an allocation of the common costs that are necessarily incurred in running the bus station; and

*(b)* by 'non-discriminatory' we mean that the operator should offer access on no less favourable terms to one operator than those under which it provides access to other operators. This means that charges, and any discounts, should be set on objective criteria that are capable of independent verification in the event of a dispute.

247. In addition to the above requirements, we provisionally decided that the remedy should include the following aspects:

*(a)* a requirement on a Manager to publish all departure charges and discounts as part of the Conditions of Use;

*(b)* a requirement on a Manager to enter into a written contract with each User, which sets out the terms and conditions of use for the bus station including the departure charge; and

*(c)* an effective mechanism by which a User can dispute a departure charge (see heading (g) below).

248. We recognize that there will be a variety of circumstances applying to individual bus stations and that it is not possible to be prescriptive about the precise approach to be applied to the setting of local bus departure charges in all cases. Nevertheless, Managers should take account of our guiding principles when setting local bus departure charges (as set out in Appendix F, Part 3).

*(g) Dispute Resolution Procedures*

249. The OFT told us that

> any dispute resolution mechanism needs to have some teeth insofar as there ought to be a mechanism for disputes to go to arbitration, paid for [by] the operator that owns the bus station. Such solutions are probably better delivered at a local level. Operators could be required to tell us about cases where an arbitration has taken place within a certain time of the arbitration hearing and decision. From our own limited experience, our assumption is that there will be few such cases... Accordingly, imposing a separate annual reporting mechanism on operators might be disproportionate. Greater transparency around access terms may be helpful in identifying both best practice and where there might be problems.[154]

250. In light of these considerations, we provisionally decided that Dispute Resolution Procedures should be published by the Manager as part of the Conditions of Use and should be subject to consultation with stakeholders. These procedures should cover the process for handling and resolving disputes over departure charges and other access issues.

[154] OFT response to Remedies Notice, paragraph 26.

251. We propose that the procedures for resolving disputes over departure charges and other access issues should follow similar but slightly different steps. We would welcome views on these proposals and on our expectations regarding the timescales for the different stages in the dispute resolution process.

252. In relation to disputes over access (ie to stands, layover bays, driver facilities and marketing facilities), we propose that:

*(a)* each step of the procedure should clearly set out the time limits for a dispute resolution, as well as the rights of each party to escalate the dispute in the event that they cannot agree;

*(b)* in the first instance, we would expect disputes to be resolved between the parties, but with the option to escalate the dispute to an appropriate body in the event that this is not possible. In most cases the LTA is likely to be the most appropriate body to resolve such disputes. However, in some cases the LTA may not be appropriate, for example if it has a conflict of interest. The Dispute Resolution Procedures therefore should set out a clear description of the role of the LTA (as agreed with the relevant LTA); and

*(c)* any dispute should be resolved within 50 days from the date a party formally raises the complaint to ensure that the dispute can be resolved before the 56 days' notice period (for Traffic Commissioners) ends for new service registrations.

253. We propose that in relation to disputes over departure charges, the following steps be taken:

*(a)* On request a Manager shall supply a calculation to a User to demonstrate that the departure charge has been set on an FRND basis following the CC's Guidelines for setting departure charges (see Appendix F, Part 3). This explanation shall include calculations and relevant supporting information.

*(b)* In the event that the User is not satisfied with the Manager's explanation it can request that an independent expert be appointed by the disputing parties to audit and verify the calculation, where the independent expert's decision on the appropriate departure charge will be final and binding on both parties. To enable disputes to be resolved promptly, we would expect such requests to be made within a short period (eg no more than five working days) of receipt of the Managers' calculations.

*(c)* The parties then have a further period to appoint an appropriate independent expert. We did not envisage that the selection of an appropriate independent expert will be problematic. There are, for example, a large number of accounting and audit firms who would be likely to have suitably qualified personnel to undertake this role. To enable disputes to be resolved promptly, we would expect such an appointment to be made within a short period (eg no more than five working days) after any request made by a User.

*(d)* The independent expert must assess whether or not the Managers' calculations are FRND. If he/she decides that they are not, then the expert must determine an appropriate charge. The expert may request further information as is necessary from the Manager in order to complete this calculation. The expert's determination is binding on the parties. We would expect the entire process to take no more than 50 days.

*(h) Implementation and monitoring*

254. We considered the issues of implementation and monitoring together since the two issues are closely linked.

255. We considered the views of parties, a number of which thought that fair access principles should be introduced through legislation. We set out these views below.

256. A number of parties (Arriva, Go-Ahead, NCT, SPT and B&NES Council[155]) suggested that the LTA was best placed to monitor compliance with FRND rules. Two parties made specific, contradictory points regarding the powers of LTAs:

*(a)* Arriva noted that LTAs had no rights over privately-owned land. It suggested that the fair access principles should be introduced by primary legislation and that this legislation could empower the LTAs. Arriva suggested that for new bus stations, FRND provisions should be applied as a condition to planning consent.[156] Arriva told us that in terms of resolving disputes, in its experience this was often dealt with by the LTA. However, another option would be for the operators using a bus station to enter into a binding agreement and for there to be a formal arbitration process. Arriva was not sure that problems could necessarily be resolved by using the licensing system to ensure that access to bus stations was on FRND terms, particularly if the problem was with the owner of a bus station that was not an operator.[157]

*(b)* B&NES Council on the other hand told us that an access agreement between operators for use of facilities was properly a Qualifying Agreement in the terms of Schedule 10 of the Transport Act 2000 (as amended), and should be subject to the competition test at Part 2 of Schedule 10. Such an agreement therefore required certification from the LTA that the agreement was in the interests of passengers using local services. An LTA would therefore be in the best position to arbitrate between operators using the bus station facilities and ensure that fair access obligations were being met. If the LTA could not certify the fair access obligations, then it was likely that the operator access proposals would fail the competition test in section 9 of the 1998 Act, which would be actionable by the

[155] Responses to Remedies Notice: Arriva, Issues for comment d); Go-Ahead, paragraph 4.4; NCT, paragraph 3.7.3; SPT, paragraph 1.2; B&NES, paragraph 48d).
[156] Arriva response to Remedies Notice, Issues for comment 8.
[157] Arriva response hearing summary, paragraph 23.

OFT, and further leave the operators subject to action from the Traffic Commissioners.[158]

*(c)* SPT considered that Fair Access Agreement/licences should be submitted and approved by the Traffic Commissioner, and that the LTAs should have an opportunity to comment. SPT envisaged a significant ongoing monitoring role for the LTAs, including:

(i) an obligation on the LTAs to develop model terms and conditions for FRND obligations, based on guidance to be issued by the Scottish Government and their own access agreements;

(ii) the identification by the LTA of bus stations to which FRND obligations should apply within a region (or appropriate LTA area). This should be kept under regular review and be noted in the LTA's strategies and made available on its website; and

(iii) a requirement for the bus station operator to review the terms of the Fair Access Agreement every year and to notify the LTA and Traffic Commissioner about the terms of the 'Fair Access Obligations' every year with no changes to be made within 70 days of the notification.[159]

257. By contrast, Go-Ahead and WAWCC suggested that monitoring should be by exception based on complaints.

258. Others (Fife Council, ALBUM and Nexus[160]) suggested that Traffic Commissioners could have a role in monitoring FRND. The DfT, however, pointed out that there would be practical and resource implications from making fair access to bus stations on a PSV operator licence, which would require a level of monitoring and enforce-

[158] B&NES Council response to Remedies Notice, Issues for comment 8.
[159] SPT response to Remedies Notice, paragraphs 6.8 & 9.3.
[160] Responses to Remedies Notice: Fife Council p2; ALBUM, Issues for comment d); Nexus, Issues for comment d) say that operator should appeal to Traffic Commissioners or an alternative regulatory body.

ment by Traffic Commissioners.[161] VOSA told us that incorporating fair access obligations in operator licences was not considered practical; would involve placing a standard condition on all licences, including (retrospectively) existing licences; would require primary legislation; and if it were to be monitored and enforced, there would be resource cost and funding implications.[162]

259. Only FirstGroup mentioned the OFT as a suitable monitor[163] and SPT noted that breaches of FRND obligations relating to unfair trading could be referred to the OFT.[164]

260. We provisionally decided that the remedial action described above should be implemented by the CC making an Order using the powers available to it under the 2002 Act. We considered whether as an alternative we could recommend legislative change to implement the remedy, but we were not satisfied that this approach would achieve as timely a solution as direct CC action. When considering the effectiveness of a remedy, speed of implementation is a relevant consideration. A solution that requires primary legislation would take several years to implement and therefore would be less preferable than an Order implemented by the CC.

261. The OFT would be responsible for the monitoring of the remedy under section 162 of the 2002 Act. To assist the OFT in its duty to monitor, we propose that Managers should keep a record of all complaints they have received and how they have been resolved for the past two years and submit these to the OFT on request. We also propose that for compliance purposes, the Manager should at the end of each calendar year, provide the LTA with its record of all complaints for the past 12 months. We considered that LTAs will have an important role to play in resolving

[161] DfT response to Remedies Notice, paragraph 62.
[162] VOSA response to Remedies Notice.
[163] FirstGroup response to Remedies Notice, p25, question 48d).

disputes in the event that the parties cannot agree. We received generally positive feedback from LTAs on their involvement in the dispute resolution process between the Manager and third parties.

262. Disputes at bus stations typically occur following the entry into an area or expansion by a local bus operator and we only expect a small number of complaints to be raised. Therefore it seems unlikely that such reporting requirements would be particularly onerous.

263. We consider the monitoring role of the OFT, taken together with the Manager's own Dispute Resolution Procedures, to be an effective compliance process, which we anticipate would act as a deterrent to a breach of the remedy resulting in limited requirement for formal enforcement action under the 2002 Act.

264. The OFT (and any other person affected by the breach) could take action to enforce under section 167 of the 2002 Act. However, as mentioned above, the Manager's Dispute Resolution Procedures will limit the need for persons to take enforcement action under the 2002 Act, ie the Manager's Dispute Resolution Procedures should encourage issues to be resolved locally by the parties in the first instance, if needed, with some mediation from an appropriate independent expert.

265. Any monitoring by the LTA and the OFT should be limited to cases which are escalated to them through the Dispute Resolution Procedures. Further details of the costs of compliance and monitoring are set out in Appendix J.

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[164] SPT response to Remedies Notice, paragraph 6.8.

### *Supported services*

*Summary of proposed remedy*

266. Figure 4 summarizes our proposed remedy in relation to supported services.

FIGURE 4

**Summary of proposed remedies relating to supported services**

We have provisionally decided to recommend that:

- the Secretary of State for Transport publishes updated best practice guidance on tendering for supported services for use by LTAs in England to take account of the findings of this investigation;
- the Scottish Government develops similar, but suitably tailored best practice guidance for use by LTAs in Scotland;
- the Welsh Government develops similar, but suitably tailored best practice guidance for use by LTAs in Wales;
- LTAs in England, Scotland and Wales engage actively in the process of developing and revising this best practice guidance and follow this guidance when awarding new tenders;
- the Secretary of State for Transport, in consultation with the Welsh Government and the Scottish Government, give LTAs powers to obtain information about revenue and patronage of services that they intend to deregister for each of the 12 months preceding deregistration, and to disclose patronage information and annual information about revenue, as they consider appropriate, to potential bidders for subsequent tenders. This information should be provided within the 14-day pre-notification period, recommended in Figure 2 in paragraph 135, and failure by an operator to do so may result in the request to deregister the service being refused; and
- pending the legislative amendments that we propose to recommend, LTAs seek to obtain information about newly deregistered services on a voluntary basis and develop, where necessary, information-sharing agreements with local operators to facilitate the transfer of such information.

*Description of remedy option*

267. In the Remedies Notice, we consulted on two areas for change. These related to:

*(a)* the provision of best practice guidance to LTAs on tendering for supported services in each of England, Scotland and Wales and the adherence to the applicable guidance by LTAs in these nations; and

*(b)* the supply of information by bus operators to LTAs upon request in relation to supported services including when deregistering a commercial service.

268. We noted that the nature of the decisions that LTAs need to make in awarding contracts for supported services is covered in guidance available in England[165] but this guidance may need to be enhanced to take account of the additional analysis that we have undertaken. We also noted that there is no such equivalent guidance in Scotland or Wales. As a result, in the Remedies Notice, we stated that we were considering:

*(a)* making a recommendation to the DfT that all LTAs in England be encouraged to follow the existing guidance on tendering and that the guidance be updated to take account of the findings; and

*(b)* making separate recommendations to the Scottish Government and Welsh Government that suitably tailored guidance be developed in their nations.

269. The Remedies Notice also sought views on an information remedy which would provide LTAs with the ability to collect information about the revenue performance of tendered services, by placing an obligation on operators to provide this information. This obligation could extend to services that have been deregistered where the previous operator of the service will be required to provide this information to the tendering authority at the time of deregistering the service.

*How this remedy addresses the AEC and/or resulting customer detriment*

270. We have provisionally found that competition for the tendering of supported services is restricted by a lack of bidders for some service contracts. In addition, we have provisionally found that it can sometimes be difficult for tendering authorities to collect robust information about the likely revenue performance of a service they intend to put out to tender—particularly where this service has previously been operated commercially without support. This means that an incumbent operator can have an

[165] Available at: webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/pgr/regional/buses/tendering/enderinggoodpracticeguid3582.pdf.

advantage when bidding for the contract and/or means that tender prices can be higher as little value is given by other bidders to an uncertain revenue stream.

271. The development of up-to-date best practice guidance and the application of this guidance by LTAs in England, Scotland and Wales will reduce the extent to which competition is restricted by aspects of tender design that fall within the control of the tendering authority. The provision of information to LTAs about supported services and deregistered services will enable LTAs to specify tenders in ways that encourage more bidders, thereby maximizing the scope for effective competition and reducing the extent of any advantages held by incumbents.

272. We expect that best practice guidance on tender design, coupled with the provision of information that would allow LTAs to provide potential bidders with the information they require in order to assess more accurately whether and how to bid, will encourage more operators to bid and therefore realize lower tender prices and (in so far as quality is not set by the terms of the tender) higher quality.

273. Moreover, winning a tender is seen by some operators as a way to enter the local commercial bus market. An effective tendering process can therefore be an important means by which LTAs encourage bids from operators which are currently not operating in the area affected by the proposed tender, as a means of stimulating head-to-head or potential competition in the market for local bus services.

*Design issues*

274. In this section, we consider design issues relating to the remedy options that we are considering taking forward in relation to supported services:

*(a)* we consider design issues in relation to new and enhanced guidance on tendering in paragraphs 275 to 278(d); and

*(b)* we consider design issues in relation to the provision of information to LTAs in paragraphs 280 to 306.

*New and enhanced guidance on tendering*

275. While some parties queried whether remedies were necessary at all in relation to supported services (for example, Arriva[166]) or whether there was an AEC in their area of operations (for example, National Express[167] and NCT[168]), all parties that commented on this proposal supported enhancing existing guidance to LTAs and introducing guidance in those nations where it did not currently exist. Arriva[169] said that the existing guidance in England provided good advice and FirstGroup[170] stated the current English guidance was appropriate and should be applied more widely. Stagecoach[171] was concerned that small tenders should not be subject to extensive hurdles or bureaucracy.

276. We also received some specific comments in relation to England, Scotland and Wales:

*(a)* In relation to England, the DfT welcomed our provisional finding on supported services and said that if the CC's investigation established that the guidance required updating, it would take steps to do so.[172] The DfT also told us that developing revised guidance would best be achieved in conjunction with those local authorities that had healthy tender markets due to the creative way in which they packaged their contracts.[173] ATCO told us that LTAs would be well placed to provide case studies of good practice in any review of guidance and said that it

[166] Arriva response to provisional findings, B6 paragraph 19.
[167] National Express response to Remedies Notice, p27, 2.
[168] NCT response to Remedies Notice, 3.10.1
[169] Arriva Reference response hearing summary, paragraph 35.
[170] FirstGroup Reference 72b response to Remedies Notice.
[171] Stagecoach response to Remedies Notice, p49 (b).
[172] DfT response to Remedies Notice, section 3.4, p16.
[173] DfT response hearing summary, paragraph 48.

would be happy to support and facilitate such a process. All LTAs in England that expressed a view were supportive of this proposal.[174]

*(b)* The Scottish Government told us that there was currently guidance on procurement but some of the stakeholders had concerns about it, and the Scottish Government was considering holding discussions with them and other interested parties, such as ATCO, about possible improvements, which would include looking at the English guidance and what was seen as best practice.[175] We also received submissions from several LTAs and representative bodies in support of the development of specific guidance in Scotland.[176] SEStran noted in the response hearing that a good outcome from any development of guidance could be the development of template tender documentation that could be used throughout Scotland.

*(c)* The Welsh Government said that procurement rules were the same for England and Wales. Many local authorities in Wales shared best practice regarding how they tendered for local services and the Welsh Government also told us that its Bus Working Group[177] played an important role in disseminating good practice in Wales and that, as a result, there was already quite a high degree of similarity between tender documents issued by LTAs in Wales.[178]

277. We concluded from these views that there was broad-based support for updating and enhancing the guidance already in place in England, and for developing new guidance for Scotland and Wales. We also concluded that it was important for LTAs and

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[174] Metro response hearing summary, paragraph 26, Cornwall Council response hearing summary, paragraph 41, PTEG response to Remedies Notice, paragraph 10.1, Centro response to Remedies Notice, pp3&11.
[175] Scottish Government response hearing summary, paragraph 29.
[176] ATCO Scotland Response to Remedies Notice, paragraph 5 p2; SPT response to Remedies Notice, p25 (response to Q72(b)); SEStran response to Remedies Notice, p5; Aberdeenshire Council response to Remedies Notice, p2; Collective response from the seven statutory Regional Transport Partnerships in Scotland (letter 3 June 2011, p1).
[177] The Bus Working Group was established in 2007 to help the Welsh Government to consider and develop policy proposals that appeared in the 2008 Act. Since then, the Bus Working Group has assisted the Welsh Government in delivering the new three-year deal for concessionary fares in Wales as well as a review of BSOG and the Local Transport Services Grant (LTSG)—which is ongoing and will help the Welsh Government consider any legislative changes that are needed in response to the CC's findings and recommendations. The Bus Working Group has members from the bus industry (including SME operators); local authorities; community transport association and passenger representation.
[178] Welsh Government response hearing summary, paragraphs 25–27.

other stakeholders to be actively involved in developing this guidance[179] to maximize the impact of this exercise, by raising the profile of the guidance and ensuring that the guidance reflected lessons learned from experience in particular parts of the country.

- *Priority areas for new or revised guidance*

278. We considered what should be the main priorities, from the perspective of enhancing competition, for any new or revised guidance. In doing so, we drew on our analysis of supported services in section 13 of our provisional findings, the responses we received to our Remedies Notice and the evidence gathered in response hearings. We concluded that the following issues are being particularly worthy of attention in any new or revised guidance:

*(a)* the actions that LTAs can take in developing and retaining a competitive market for supported services and, as a consequence, for local bus services;

*(b)* the specification of contracts to maximize the opportunity for effective competition, drawing in particular on the findings of this investigation;

*(c)* the interaction between tendering practice and EU procurement rules, to provide LTAs with clarity over which processes are likely to apply; how these processes may be applied to simplify, or add flexibility to bidding; and the assessment of bids to pursue best value; and

*(d)* deregistered services and the options available to LTAs when a commercial service is registered (or re-registered) over the same route as a supported service.

279. We set out our views on each of these issues in Appendix G.

[179] Coordination of LTA input might be achieved through a forum such as ATCO, or the Bus Working Group in Wales.

*Information remedy*

280. All LTAs that expressed a view were supportive of this remedy option. Operators were content, in principle, to provide information to LTAs about supported and deregistered services, subject to the detail of this proposal. Among the Large Operators, for example:

*(a)* Arriva told us that it would not have any significant concerns with providing details of passenger and revenue figures to the LTA for a route being deregistered and then put out to tender and that in some areas it already provided revenue data when it operated a tender which came up for re-tender;[180]

*(b)* FirstGroup thought a requirement for the deregistering operator to provide the LTA with data could present problems, but that it might be possible to provide information about passenger flows;[181]

*(c)* Go-Ahead told us that it had no objections with patronage information from a route which had been deregistered being provided to the local authority and to potential bidders, but it did not support the provision of other information such as costs and revenues, as this might reveal sensitive information about its other commercial services in that area. There would only be a negligible administrative cost in providing patronage information;[182]

*(d)* National Express told us that its only concern with a remedy to share commercial information with the LTA was how far this would then become available to other operators;[183] and

*(e)* Stagecoach told us that it had no objections to a requirement for tendering authorities to collect information from operators following tenders, but it

[180] Response hearing summary, paragraph 36.
[181] Response hearing summary, paragraph 44.
[182] Response hearing summary, paragraph 30.
[183] Response hearing summary, paragraph 35.

recognized that local authorities did not always receive accurate information from some operators.[184]

281. Several small and medium-sized operators expressed support for this remedy.[185] For example, Bluebird Bus and Coach said that the tendering process could be improved if all bidders were given information about both revenue and passenger numbers.

282. We received consistent evidence from both LTAs and operators that LTAs had the necessary powers to require the provision of sufficient information about the performance of supported services as part of their contract specification. We therefore concluded that there was not a need for a specific remedy to require the provision of information in relation to an existing supported service. However, the issue of what information to request as part of contract specification should be incorporated in the best practice guidance that we propose in paragraphs 275 to 278(d).

283. In relation to the provision of information on newly deregistered services, it was much less clear that LTAs currently have sufficient powers to require the submission of adequate information (see paragraphs 299 to 306).

284. We considered the following issues about the design of any obligation to provide information to LTAs about deregistered services:

*(a)* What information should be provided to LTAs and when?

*(b)* What restrictions, if any, should be placed on LTAs' subsequent use of the information provided to them?

*(c)* The extent of current LTA powers to secure information about deregistered services and whether these powers are sufficient.

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[184] Response hearing summary, paragraph 36.
[185] Rotala response hearing summary, paragraph 22), ALBUM response to Remedies Notice, paragraph 72d).

- *What information should be provided to LTAs and when*

285. We asked LTAs what information they would find useful when specifying tenders. There was support for the provision of both revenue and patronage information.[186] Cornwall Council[187] also referred to information on where passengers boarded services, and it and SYPTE[188] referred to patronage by ticket type. TFGM[189] referred to service performance information. However, Centro[190] said that it only supplied passenger numbers to bidders when tendering as it considered that fare policies, use of off-bus ticketing and concessionary passengers could all vary between operators when a service is tendered.

286. We asked operators what information was most likely to be useful when bidding for services. We received the following views:

*(a)* Arriva told us that the principle of providing anonymized revenue information to an LTA if a commercial service was deregistered was welcome in principle.[191]

*(b)* FirstGroup stated that, when bidding for a route, it would want to receive information about passenger numbers, but it would also physically observe the route to gain information about passenger flows and how many passengers were buying full fare tickets or using concessionary ones.[192]

*(c)* Stagecoach responded that when bidding for a tender it did not already operate, the most important information for Stagecoach to have was the service's revenue level.[193]

*(d)* Lothian Buses[194] was sympathetic in principle to requiring operators deregistering a commercial service to provide revenue and passenger information to LTAs, as

[186] SPT response to Remedies Notice, Q72d), Aberdeenshire Council response to Remedies Notice, pp1&2).
[187] Cornwall Council response hearing summary, paragraph 39).
[188] SYPTE response to Remedies Notice, p15).
[189] TFGM response to Remedies Notice, p6).
[190] Centro response to Remedies Notice, p10).
[191] Response to Remedies Notice, p46, L3.
[192] Response hearing summary, paragraph 44.
[193] Response hearing summary, paragraph 36.
[194] Lothian Buses response hearing summary, paragraph 26.

was NCT.[195] Bluebird Bus and Coach stated that passenger numbers alone were not helpful as operators would not know whether they were concessionary fares or full-paying passengers.

287. B&NES Council[196] said that, where possible, at least one year's data should be provided, broken down by week. FirstGroup[197] said that operators should only be obliged to provide information on passenger journey numbers for the period of time required under the tender. Where the routes were part-tendered, the obligation should only extend to the part of the route that was tendered. Other LTAs and operators did not express a view on the time period that should be covered.

288. Some operators raised issues around the practicability of providing different classes of information and the quality of information that was sometimes provided:

*(a)* Arriva[198] noted that it was inevitable that certain data may not be available in all circumstances, as not all operators recorded it, and that, even when provided, data would not be completely accurate as route revenue calculation was dependent upon apportionment of centrally received funds such as concessionary fare income or off-bus revenue. It said that the cost of implementing accounting systems that recorded route revenue data might deter some smaller operators.[199]

*(b)* Stagecoach recognized that local authorities did not always receive accurate information from some operators.[200]

*(c)* Metro noted that some operators did not appear able to provide this information in a timely manner.[201]

[195] NCT response hearing summary, paragraph 36.
[196] B&NES response to Remedies Notice, paragraph 72d.
[197] FirstGroup response to Remedies Notice, paragraph 72d, annex 5.
[198] Arriva response to Remedies Notice, p46, paragraph L3.
[199] Arriva response to Remedies Notice, p47.
[200] Stagecoach response hearing summary, paragraph 36.
[201] Metro response hearing summary, paragraph 28.

289. Merseytravel[202] said that the introduction of smartcard ticketing with real time information would allow it to access this information more easily. Metro[203] said that operators should be mandated to provide the information within a given time frame.

290. Some operators told us that, while information about, for example, patronage or revenue on a route was useful, it would not necessarily give a complete account of how the service operated and needed to be considered in context. For example, Lothian Buses[204] noted that information based on existing passenger and revenue information may be misleading if, for example, some journeys on a deregistered service could be transferred to other routes. NCT[205] also expressed concern that deregistration of a service may be accompanied by other service changes, such as enhancement of frequency on an alternative route or key corridor, which would render past information less relevant. We noted these points and the importance to LTAs of taking into account the context of any information provided to it. However, we did not consider that this was a strong reason for such information not to be provided to LTAs; rather it suggested that, when providing such information, it would be helpful for operators also to provide any relevant contextual information to which the LTA should have regard.

291. Based on the evidence set out in paragraphs 285 to 290, we concluded that the following information about deregistered services should be disclosed to LTAs:

*(a)* Information about the number of passengers who have used the deregistered service. Insofar as is practicable, patronage information should include information about the composition of the passenger base on the route (ie proportion of full fare single/return tickets; children; concessionary fares, season ticket holders).

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[202] Merseytravel response hearing summary, paragraph 24.
[203] Metro response hearing summary, paragraph 28.
[204] Lothian Buses response hearing summary, paragraph 26.

*(b)* Information about the revenue earned on the deregistered service. We consider that the provision of revenue figures will have benefits for LTAs and operators alike. It will enable LTAs to consider the likely cost and appropriate specification of any tender. It would also be relevant to potential bidders for supported services, particularly in enabling them to price a minimum-subsidy contract.

*(c)* In relation to patronage and revenue information, data should be provided for each of the 12 months prior to deregistration in order to reflect seasonal variation in patronage over the course of the year.

292. As to when the information should be provided to the LTA, we took the view that LTAs should have access to the data as soon as was practicable, to enable them to factor this into their considerations as to how, if at all, to respond to the deregistration and to feed into any subsequent invitation to tender. We concluded that the information set out in paragraph 291 should be provided to the LTA within the 14 days prior to deregistration that we are recommending be introduced as part of the operator behaviour remedy (see Figure 2 in paragraph 135). To ensure that operators comply with this obligation, we further concluded that non-provision of satisfactory information to the LTA should be a ground for refusing to accept the proposed deregistration.

- *Subsequent use of information provided to LTAs*

293. Some operators expressed concern about the commercial confidentiality of this information and the implications of providing it to competitors.[206]

*(a)* FirstGroup[207] said that dissemination of information to third parties could have a number of unintended consequences: the provision of recent, disaggregated confidential information would self-evidently fail the usual test applied for the

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[205] NCT response hearing summary, paragraph 36.
[206] See, for example, National Express response hearing summary, paragraph 35.
[207] FirstGroup response to Remedies Notice, paragraph 72d.

exchange of confidential information between competitors and an LTA would unwittingly find itself therefore the instigator of anticompetitive effects.

*(b)* Go-Ahead[208] said that the protection of the commercially sensitive information of the incumbent would need to be a paramount consideration in order to prevent distortions of competition. Granting a competitor access to potentially sensitive cost and revenue information could increase transparency in the market generally, and potentially disadvantage the incumbent in any bidding process. Particular sensitivity would arise around the provision of information by an incumbent on a commercial route, as this could give an indication to the incumbent's competitors of sensitive date relating to its operations of commercial services (for example, including route profitability thresholds). It said[209] that while it had no objection to patronage information on deregistered services being provided, other information such as costs and revenues could reveal sensitive information about its other commercial services in the area.

*(c)* Stagecoach[210] said that it did not have any particular concerns regarding dissemination of revenue figures to potential bidders upon a re-tender. If an LTA had required any operator-specific information other than revenue received, any onward disclosure should be carefully assessed.

*(d)* Lothian Buses[211] said that where only part of the route or only some periods of operation were being deregistered, there was concern that release of this data might reveal sensitive information relevant to operation of the commercial service.

[208] Go-Ahead response to Remedies Notice, paragraph 6.4.
[209] Go-Ahead response hearing summary, paragraph 30.
[210] Stagecoach response to Remedies Notice, p49.
[211] Lothian Buses response hearing summary, paragraph 26.

*(e)* Arriva[212] said that the information could be disseminated across bidders on a confidential basis and if this induced a rival to operate the service commercially then this was a benefit to the public purse.

294. Some LTAs argued that when a commercial operator chose to deregister a service it had given up its commercial interest in that service (eg SEStran[213]), and therefore there was not a case for commercial confidentiality of patronage and revenue data. Likewise, B&NES Council[214] said that it did not regard this information as having a particularly high degree of commercial sensitivity. Its experience was that this information had often been provided voluntarily by operators without restriction on its use, and the operator had, in any case, effectively relinquished a commercial interest in this route. It said that it was wholly unlikely to suppose that patronage and revenue data from a single route or service could shed much light on the operator's remaining commercial interests. It[215] also argued that provision of such information could be in the direct interests of the operator as there would be benefits to it in securing a managed transition to a tendered operation, not least in the public relations benefits that accrued from this process. Passenger Focus[216] said that a publicly accountable body spending public money should have access to the information it needed in order to be able to provide the best possible service. The Scottish Government did, however, express concern about sharing commercially sensitive information.

295. We considered these submissions carefully. We did not consider that monthly information relating to patronage would be particularly sensitive especially as all operators have told us that the market is transparent. We saw therefore saw no reason why such patronage information should not be provided to LTAs and, if the LTA so chose,

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[212] Arriva response to Remedies Notice, p48.
[213] SEStran response hearing summary, paragraph 28.
[214] B&NES response to Remedies Notice, p8.
[215] B&NES response to Remedies Notice 72d, p8.
[216] Passenger Focus response to Remedies Notice, p9.

incorporated into information disclosed to potential bidders for subsequent supported service contracts.

296. We acknowledged that revenue information has the potential to be more commercially sensitive, particularly if disclosure of this information would provide competitors with insight into the performance of an operator's remaining commercial services or could be used to facilitate coordination. However, we also noted that the information provided to LTAs about deregistered services would no longer relate to ongoing or future commercial services and the provision of revenue information was required to make this remedy effective in addressing this element of the AEC. Absent the provision of this information, the operator that had deregistered the service would have an incumbency advantage over other potential bidders, which could distort competition for the tender. We took the view that disclosure of annual, rather than monthly, revenue information to potential bidders would strike an appropriate balance between enabling LTAs to run a competitive tender process on the one hand and safeguarding confidential information and preventing coordination on the other.

297. We concluded that LTAs should be entitled to incorporate monthly information about patronage and annual information about the revenue performance of newly deregistered services into information disclosed to potential bidders for subsequent tenders on the deregistered route.

298. We further concluded that operators should have the opportunity to submit evidence to LTAs that disclosure of revenue information on a deregistered service would damage their commercial interests. LTAs should be under an obligation to consider such evidence before making any further disclosure. We would welcome submissions as to the specific circumstances, if any, in which restrictions on an LTA's ability to disclose revenue information would be justified.

- *Extent of current powers of LTAs to secure information about newly deregistered services*

299. We considered whether LTAs already had sufficient power to secure the information about deregistered services specified in paragraph 291 and, as appropriate, disclose this information to potential bidders for subsequent tenders.

300. Several LTAs told us that they did not currently have sufficient powers to seek information about deregistered services. PTEG[217] and Cornwall Council[218] only referred to information-gathering powers as relating to concessionary reimbursement, and SYPTE[219] told us that its powers to obtain information were limited. Cornwall Council told us that it did not receive any information from operators on deregistered services.[220]

301. Some operators and LTAs told us that information about deregistered services was shared with LTAs on an informal basis in parts of the country.[221] National Express told us that it had a data-sharing arrangement with Centro (as part of one of the BSOG incentives) which set out the information to be exchanged with Centro, including revenue information on services, but that Centro was not allowed to share that information with other operators.[222]

302. ALBUM told us that LTAs in England and Wales already had powers to request information about commercial and supported services under section 143 of the Transport Act 2000.[223] We noted that LTAs in Scotland had similar powers to request information under section 43 of the of the Transport (Scotland) Act 2001, and we

[217] PTEG Response to Remedies Notice, paragraph 11.9.
[218] Cornwall Council response hearing summary, paragraph 38.
[219] SYPTE response to Remedies Notice, p18.
[220] Cornwall Council response hearing summary, paragraph 38.
[221] SEStran response hearing summary, paragraph 28; Metro response hearing summary, paragraph 28; City of York Council response to Remedies Notice, p11, comment 11d).
[222] Response hearing summary, paragraph 35.
[223] Response to Remedies Notice, p21 re: 72d.

noted that section 43(5)(f)(i) of the Transport (Scotland) Act 2001 explicitly permits disclosure of information in relation to deregistered services.[224]

303. We considered whether these powers would be sufficient to enable LTAs to request information about deregistered services.

304. In relation to England and Wales, section 143 of the Transport Act 2000 provides LTAs with the ability to request information about services currently operated, relating to total number of passenger journeys operated, fare structures for those journeys and total distance covered in operating those journeys. It appeared to us that LTAs did not necessarily have the power to obtain revenue information, or to use the information thus collected as part of information provided to potential bidders for future tenders. We also noted that it was somewhat unclear on the face of the legislation as to whether these powers could be used to collect information about newly deregistered, as opposed to current, services. We therefore concluded that, while these provisions enable LTAs to request certain information about services currently operated, it would not necessarily enable them to request revenue information. Nor would LTAs be able to use the information thus collected, as part of information provided to potential bidders for future tenders.

305. In relation to Scotland, we took the view that section 43 of the of the Transport (Scotland) Act 2001 largely mirrors the applicable legislation in England and Wales. LTAs can request certain information about services currently operated. However, they would not necessarily be able to request revenue information or to use the information thus collected as part of information provided to potential bidders for future tenders. While we noted that some LTAs had information-sharing agreements

[224] Section 43(5)(f)(i) of the Transport (Scotland) Act 2001.

with operators that enabled them to obtain information about deregistered services, others did not, and there was no general provision empowering LTAs to secure and, as necessary disclose such information in future tenders.

306. We concluded that existing information-gathering powers may not be sufficient for LTAs in England, Scotland or Wales to secure the information about deregistered services specified in paragraph 291 and, as appropriate, disclose this information to potential bidders for subsequent tenders.

*Implementation of remedy*

307. We considered how this remedy should be implemented.

308. In relation to the development and enhancement of guidance, we provisionally decided that the remedy should take the form of recommendations that:

*(a)* the DfT updates its best practice guidance on tendering for supported services for use by LTAs in England to take account of developments since the guidance was last issued and the findings of this investigation;

*(b)* the Scottish Government develops suitably tailored guidance for use by LTAs in Scotland;

*(c)* the Welsh Government develops suitably tailored guidance for use by LTAs in Wales; and

*(d)* LTAs in England, Scotland and Wales engage actively in the process of developing and revising guidance and follow this guidance when awarding new tenders.

309. In relation to the informational remedy, we noted that LTAs already have some information-gathering powers under existing transport legislation (see paragraph 302). Given this, we concluded that it would be more practicable to make recommendations to the Secretary of State for Transport (in consultation with the

Welsh Government) and the Scottish Government to extend these powers, rather than to introduce new powers ourselves by means of an Order.

310. We therefore provisionally decided to recommend to the Secretary of State for Transport (in consultation with the Welsh Government) and to the Scottish Government to extend existing information-gathering powers to enable LTAs to obtain information about revenue and patronage of deregistered services (as specified in paragraph 291) and to disclose this information, as they consider appropriate, to potential bidders for subsequent tenders. This information should be provided to the LTA within the 14-day pre-notification period, recommended in Figure 2 in paragraph 135, and failure by an operator to do so, may result in the request to deregister the service being refused.

311. As the extension of LTA powers is likely to require additional legislation, we propose further to recommend to LTAs that, pending any legislative change, they seek to obtain information about deregistered services on a voluntary basis and develop, where necessary, information-sharing agreements with local operators to facilitate the transfer of such information.

### *Effective competition enforcement*

*Summary of proposed remedy*

312. Figure 5 summarizes our proposed remedy in relation to competition enforcement.

FIGURE 5

**Summary of proposed recommendations relating to competition enforcement**

We have provisionally decided to recommend that:

- the OFT continues to apply a high priority to identifying bus mergers between competing operators, making full use of bus market-specific sources such as the specialist trade press;
- the OFT routinely follows up bus mergers where it expects to have jurisdiction and takes a cautious approach in exercising its discretion not to refer mergers to the CC on de minimis grounds. We propose to recommend that the OFT reviews the application to bus mergers of its guidance on exceptions to the duty to refer. In any such review, we would recommend that the OFT considers the case for indicating a lower market size threshold than £3 million, below which it is likely to exercise its discretion not to refer bus mergers; and
- the OFT revises its Frequently Asked Questions about the application of competition law to the bus industry, taking into account relevant developments since that document was last published.

313. The effective enforcement of competition law will have an important role to play in supporting the measures set out in paragraphs 42 to 311. Effective competition enforcement will maximize the impact of our remedy package in addressing the AEC and will prevent our remedies from being undermined by operator behaviour in the form of illegal coordination or exclusionary conduct such as predation. Effective merger control will prevent further increases in market concentration that could lead to a substantial lessening of competition. While we are not proposing fundamental changes to the application of competition law, we set out below the role that we see for competition enforcement alongside our other remedies and make some recommendations for the future.

314. As set out in paragraphs 2.67 and 2.68 of our provisional findings, the main elements of UK competition law applicable to the bus industry are the Chapter I and Chapter II Prohibitions of the 1998 Act, which prohibit anticompetitive agreements and abuse of a dominant position, and the 2002 Act which allows for scrutiny of mergers. In addition, the 2002 Act allows for the OFT to carry out market studies and to make a

reference to the CC to conduct an in-depth market investigation, such as this one.[225] The framework for competition policy is currently under review by the Department for Business, Innovation and Skills (BIS).[226]

315. Some characteristics of bus markets pose practical and policy challenges for the effective enforcement of competition law. As we have found in this investigation, competition takes place at a local level, and as a result the specific actions or transactions of interest will tend also to be localized and the value of the routes directly affected may be small. This can mean that individual cases might sometimes appear not to be worth pursuing through competition law enforcement. However, in the context of this particular industry, operators that might be perceived as small, when considered on a national scale, may nevertheless have a significant competitive impact in the local markets in which they operate. Moreover, the cumulative effect of anticompetitive conduct and/or a number of individually small mergers can be substantial, both within individual bus markets and sometimes more widely.

316. In the light of these considerations, we consider that it is important for competition authorities to take full account of the wider sectoral context when taking decisions relating to specific local bus markets and of any broader impacts, including deterrent effects, of their actions. In addition, competition authorities should take all necessary steps to ensure that competition law is accessible to and relevant for all operators in the industry, at both local and national level. This approach is likely to maximize the deterrent effect of competition policy interventions.

[225] There are also special competition provisions under transport legislation. See our provisional findings, Appendix 12.1, paragraph 66 and Annex 1.
[226] 'A Competition Regime for Growth: A Consultation on Options for Reform' March 2011, available at www.bis.gov.uk/Consultations/competition-regime-for-growth.

317. In this context, Stagecoach put forward a suggestion that the OFT might update its FAQs about the application of competition law to the bus industry, with particular regard to dominance issues and pricing benchmarks. This document was last updated in 2006.

318. We discussed this with the OFT, which told us that it had received a complaint from the Campaign for Better Transport, backed up by a legal opinion, that this document was too prescriptive and was restricting beneficial arrangements between bus operators. The OFT subsequently put some initial resources into updating the FAQs but this work was superseded by developing joint bus guidance with the DfT, following the 2008 Act.[227]

319. We considered that the joint bus guidance with the DfT was a useful document, particularly as it relates to the treatment of competition matters under transport legislation. However, we considered that the focus of the joint bus guidance was rather different from the FAQs and that an updated version of the FAQs, aimed specifically at bus operators and with a greater emphasis on generally applicable competition law, would be likely to add value. We noted that there have been several significant relevant developments since the FAQs document was last updated. These include the revised Ticketing Block Exemption, the OFT's changes to its procedures under the 1998 Act (see paragraph 340)[228] and its new guidance for businesses on competition law compliance[229] in addition to this investigation and relevant changes to transport legislation.

[227] Available on the OFT website at www.oft.gov.uk/shared_oft/business_leaflets/general/oft452.pdf.
[228] Available on the OFT website at www.oft.gov.uk/shared_oft/policy/oft1263.pdf.
[229] Available on the OFT website at www.oft.gov.uk/OFTwork/competition-act-and-cartels/competition-law-compliance/. This includes guidance to directors on their responsibilities under competition law.

320. We therefore propose to recommend to the OFT that it revise its FAQs document about the application of competition law to the bus industry to take account of these important recent developments. We would welcome views of parties on the issues that should be covered in a revised set of FAQs.

321. In addition to these general considerations we also considered the role of each of the main elements of competition law (ie merger control, the Chapter I and Chapter II prohibitions and the market investigation regime).

*Merger control*

322. The merger provisions of the 2002 Act enable the OFT and the CC to identify and, where necessary, remedy those mergers between bus operators that lead to a substantial lessening of competition. As demonstrated by the Stagecoach/Preston merger investigation,[230] the CC has effective powers to remedy anticompetitive mergers, even when they have been completed prior to reference, and will put in place robust interim measures to preserve its ability to require divesture where this is necessary.

323. We were told that, as a result of the challenging financial environment currently facing smaller bus operators in particular, some smaller operators were likely to look for opportunities to sell their businesses. Some Large Operators told us that they had already been contacted in relation to such opportunities.[231]

324. Against this commercial background, and in light of the already concentrated nature of many local bus markets and the factors set out in paragraph 315, it will continue to be important for the OFT, as the first stage merger authority, actively to monitor

[230] *Stagecoach Group Plc/Preston Bus Limited merger inquiry: a report on the completed acquisition by Stagecoach Group plc of Preston Bus Limited,* 11 November 2009. Available on the CC website at www.competition-commission.org.uk/rep_pub/reports/2009/fulltext/551.pdf.

mergers in the bus industry and for the OFT and CC to scrutinize those mergers which could potentially result in a substantial lessening of competition.

325. In relation to market monitoring, the OFT told us that its Mergers Intelligence team obtains a wide range of corporate information from a variety of sources which are sifted on a daily basis. Those transactions which may involve a relevant merger situation are noted and investigated by the team at a preliminary level. There is an informal Mergers Intelligence Committee which meets weekly under the chair of the Director, Mergers to consider each transaction and determine which should be followed up by way of an enquiry letter. The OFT told us that bus mergers were relatively easy for it to identify and investigate since the market was well known, information sources were many and well informed and the major players were all well known to the OFT.

326. We provisionally decided to recommend that the OFT applies a high priority to identifying bus mergers, making full use of bus market-specific sources such as the specialist trade press.

327. Having identified a merger, the OFT decides whether or not to follow it up with an enquiry letter. The OFT told us that it would not generally send such a letter, having identified a merger if it did not qualify for investigation under the 2002 Act or if it qualified but there were no overlaps between the parties which raised potential competition concerns. The OFT also told us that it was generally unlikely to issue an enquiry letter in relation to a case where it was clear that turnover in the market involved was less than £3 million.

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[231] FirstGroup response hearing summary, paragraph 47; Arriva response hearing summary, paragraph 39; Stagecoach.

328. We noted that the OFT has exercised its discretion not to refer to the CC four bus mergers on de minimis grounds in the last three years.[232] The OFT has recently updated its guidance on exceptions to the duty to refer and undertakings in lieu of reference.[233] This guidance indicates that the OFT is likely to apply this exception in cases where the total value of the turnover in the market where a substantial lessening of competition has been identified is less than £3 million, unless there are exceptional circumstances such as significant direct consumer harm or where the merger was highly replicable in the relevant sector. In relation to the latter point, the OFT's guidance states that, '[t]he OFT will be less likely to apply the "de minimis" discretion where it believes that the merger in question is one of a potentially large number of similar mergers that could be replicated across the sector in question'.[234] Where the total value of the turnover in the affected market is between £3 million and £10 million, the OFT will consider issues relating to de minimis on a case-by-case basis.

329. In light of the already concentrated nature of many local bus markets and the factors set out in paragraph 315, we provisionally decided to recommend that the OFT routinely follows up bus mergers where it expects to have jurisdiction and takes a cautious approach in exercising its discretion not to refer mergers to the CC on de minimis grounds. We further provisionally decided to recommend that the OFT reviews the application to bus mergers of its guidance on exceptions to the duty to refer. In any such review, we would recommend that the OFT considers the case for indicating a lower market size threshold than £3 million, below which it is likely to exercise its discretion not to refer bus mergers. This is for the following reasons:

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[232] Go North East Limited/the bus operations of Arriva Northumbria Limited at Hexham (11 February 2010), Arriva Northumbria Limited of the bus operations of Go North East Limited at Ashington (11 February 2010), Stagecoach Bus Holdings Limited/Islwyn Borough Transport Limited (23 December 2009), Stagecoach Bus Holdings Limited/Cavalier Contracts Limited (18 September 2008).
[233] *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*, December 2010.
[234] Ibid, paragraph 2.40.

*(a)* First, there is a risk that even 'small' transactions may be removing a significant competitor (or potential competitor) within a local market. It can be difficult to evaluate the competitive impact of losing a particular operator without a detailed assessment of evidence, including the testimony of market participants and the detailed assessment of the motivation behind a transaction.

*(b)* Second, we have provisionally found that the conditions exist for tacit coordination to be sustained in the bus industry (see paragraphs 21 to 23). There is a risk that some 'small' transactions (eg a depot or asset swap or transfer between neighbouring operators) could increase the likelihood for coordinated effects and/or be a manifestation of such coordination. There is a related risk that transactions that form part of an attempt by operators to achieve a coordinated outcome are 'packaged' as a merger in order to obtain merger clearance.

*(c)* Third, there is a risk that a series of 'small' transactions may collectively result in a situation whereby a single operator has a very large share of a local market. This is recognized in the OFT's guidance (see paragraph 328), but it is of particular significance in bus markets.[235]

*(d)* Fourth, application of the de minimis discretion in one case may have wider adverse implications if it created an expectation that anticompetitive, but small, mergers would generally not be subject to detailed scrutiny at phase 2 or to remedial action, should a substantial lessening of competition be found. Again this factor is recognized in the OFT's guidance (see paragraph 328) but it is of particular significance in bus markets.[236]

*The Chapter I prohibition*

330. The Chapter I prohibition of the 1998 Act provides that agreements between undertakings, decisions by associations of undertakings or concerted practices which may

[235] ibid, paragraph 2.40.
[236] ibid, paragraph 2.40.

affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK are prohibited unless they are excluded (section 3 of the 1998 Act) or exempt (section 2(1) of the 1998 Act).

331. From our investigation, we have noted that relative to other commercial sectors the number of contacts between competitors in the bus industry, in particular between large bus operators, is high. Whilst some of these contacts may take place in the context of legitimate purposes, for example LTA-facilitated discussions on partnership arrangements, we have also seen examples of other direct contacts between Large Operators.

332. As will be set out in the addendum to provisional findings that we will shortly publish on geographic market segregation (see paragraph 22), such direct contacts between competitors have taken place at all levels up to and including chief executives. Such discussions appear to have taken place on a one-to-one basis and appear to have been wide-ranging in their scope, including discussions about their respective businesses and areas of operations, and the provision of commercially sensitive information. The frequency of such contacts enhances the risk that anticompetitive arrangements may occur. Moreover, some of these contacts have involved the disclosure from one competitor to another of commercially sensitive information relating to its future commercial strategy. It is therefore important for the OFT to remain vigilant to this risk and to encourage operators and individuals to bring concerns about illegal coordination to its attention.

*The Chapter II prohibition*

333. Chapter II of the 1998 Act prohibits the abuse of a dominant position, including exclusionary behaviour by dominant firms, such as predation.

334. The types of behaviour that are illegal under Chapter II are among the more extreme forms of conduct that contribute to the barriers to entry associated with the expected intensity of post-entry competition.

335. Effective enforcement of the Chapter II prohibition therefore has an important role to play in addressing these elements of our provisional AEC findings. It will also help ensure that the increased opportunities for competition and market entry are not accompanied by the types of exclusionary behaviour that were observed immediately following deregulation of the industry and prior to the introduction of the 1998 Act.

336. We expect that some of the measures that we are proposing will support the enforcement of this prohibition, in particular:

*(a)* our recommendation that operators be required to provide more information in the registration of 'frequent' services (see Figure 2 in paragraph 135) will make it more difficult for a dominant operator to substantially increase frequency on a route following entry without publicizing this fact and giving notice of this intention to the Traffic Commissioner;

*(b)* our recommendation to give 14 days' additional notice to LTAs of any new local bus service registrations or changes to existing registrations (see Figure 2 in paragraph 135) will provide LTAs with an earlier opportunity to raise any concerns about potentially abusive behaviour with the OFT; and

*(c)* inclusion of a commitment to comply with the 1998 Act in the Code of Conduct (see Figure 2 in paragraph 135) will establish a clear link between illegal conduct and the repute of an operator, which we expect will enhance the deterrent effect of the 1998 Act.

337. We do not consider that there is a need for a different legal test for evaluating accusations of abuse of dominance in the bus industry. There is a considerable body

of case law and of economic thinking behind the concepts of abuse of dominance and exclusionary behaviour such as predation and it is appropriate that allegations of abusive conduct are considered within this framework. Some operators have told us that the process of pursuing a complaint with the OFT could be time-consuming and would not necessarily be taken forward.[237] This may act as a disincentive to bringing complaints to the OFT's attention, particularly in light of the characteristics of bus markets (ie transparency, mobility of assets and speed with which incumbents can react to new entry) that mean that harm may be inflicted on a competitor relatively quickly. In our provisional findings,[238] we noted that the majority of complaints made to the OFT were dismissed on the grounds of administrative priority.

338. We fully accept that formal investigation of complaints under the 1998 Act will need to follow a thorough and fair process and that this will take time to deliver. As with any decision on competition enforcement, there will be the possibility of appeal which can add to the time taken to reach a final outcome. We also accept that the OFT will need to prioritize those cases that it judges are most worthy of pursuing and cannot investigate in full every allegation that is made to it.

339. However, we consider that it is important that any operators which consider that they may have been subject to abusive and illegal conduct feel empowered to raise these concerns with the OFT. Likewise, it is essential that dominant operators in local bus markets consider that there is a realistic prospect of abusive behaviour being detected and of action against such behaviour being taken.[239]

[237] Stagecoach response hearing summary, paragraph 23; ALBUM response hearing summary, paragraph 17; National Express response hearing summary, paragraph 30.
[238] Appendix 6.6, paragraph 2.
[239] As occurred in relation to Cardiff Bus, see www.oft.gov.uk/shared_oft/ca98_public_register/decisions/cardiffbus.pdf.

340. In this context, we noted the OFT's revised procedural guidance in relation to investigations under the 1998 Act and in particular the emphasis on the opportunity for informal discussions with OFT officials prior to making a formal complaint. We consider that this mechanism may provide an opportunity for smaller operators to bring concerns to the attention of the OFT promptly and without incurring the costs of producing a formal submission. Likewise, we welcomed the OFT's commitment to aim to keep complainants informed of the progress of their complaint and to aim to communicate to the complainant within four months from the date of receipt of their complaint whether it has decided to open a formal investigation.[240]

*Market studies and market investigations*

341. In this market investigation, we have considered competition in all bus markets in the UK outside London and Northern Ireland. Based on our assessment, we have provisionally identified remedies, which we consider will be effective in addressing the problems that we have found. These are potentially broad in geographic scope but also capable of local implementation. Should, at some future date, further action be required to address competition problems in particular local markets, there may remain a role for more locally-based market studies and/or market investigations.

## ***Partnerships***

*Summary of proposed remedy*

342. Figure 6 summarizes our proposed remedy in relation to partnerships.

[240] *A guide to the OFT's investigation procedures in competition cases*, March 2011. Available at www.oft.gov.uk/shared_oft/policy/oft1263.pdf.

FIGURE 6

**Summary of proposed remedies relating to partnerships**

| Summary of proposed remedy |
| --- |
| We have provisionally decided to recommend that:<br>• LTAs consider the potential for introducing partnerships as a means of facilitating increased competition within their local areas. Partnerships with the following characteristics are likely to have the greatest potential for beneficial consequences on competition:<br>*(a)* partnerships which have the effect of improving the quality of information provided to passengers, thereby increasing passenger demand for bus services and making passengers more responsive to changes in operators' offerings;<br>*(b)* partnerships which are accessible to all operators and have the effect of growing bus patronage and thereby improving the attractiveness of a local bus market for new and/or expanding operators; and<br>*(c)* partnerships which provide an environment which promotes sustained competition, for example by encouraging service stability throughout the year.<br>• The DfT and the Scottish and Welsh Governments monitor progress of LTAs in delivering partnerships which have these beneficial characteristics.<br>• In introducing partnerships, and applying the relevant competition test, LTAs should be careful to take account of the potential risks associated with raising barriers to entry, unnecessarily constraining the scope for operators to improve their service offering and facilitating coordination between competitors that goes beyond what is acceptable under competition law and what is necessary to deliver passenger benefits.<br>• LTAs and the OFT establish a regular forum at which the practical application of the competition test can be discussed.<br>• As part of its current review of BSOG in England, the DfT considers ways of incentivizing effective provision of passenger information (see Figure 7 in paragraph 391). This recommendation may also be of interest to the Scottish and Welsh Governments, should they decide to undertake a similar review at some future date. |

*Description of remedy option*

343. A variety of partnership arrangements involving LTAs and operators are provided for under transport legislation in England, Scotland and Wales. We describe the operation and types of current partnership arrangements (both voluntary and statutory) in Section 12 of the provisional findings. In addition, certain forms of partnership are subject to a competition test before implementation. These are set out in Appendix

12.1, Annex A of our provisional findings. Following publication of our provisional findings, we carried out some further analysis of three partnerships that have been recently introduced in Nottingham, Merseyside and Chester. This further analysis is set out in Appendix H.

344. In the Remedies Notice, we said that we were considering whether to recommend wider use of partnerships between LTAs and operators as a means of facilitating competition in bus markets and/or addressing the resulting detrimental effects of the AEC. We also invited views as to whether any changes to current legislation, regulations or guidance would be required to facilitate the use of this remedy.

*How this remedy addresses the AEC and/or resulting customer detriment*

345. We noted in the Remedies Notice that the use of partnership schemes was not currently aimed at improving competition in local markets and that the mandating of higher standards may, in some circumstances, make it more difficult for smaller operators to enter a market. [241] However, we also invited views as to whether such partnerships could play a role in remedying certain aspects of the AEC.

346. Against this background, we consider below:

*(a)* the potential benefits for competition of partnerships and hence potential role that partnerships can play in addressing the AEC (paragraphs 347 to 362);and

*(b)* the potential detrimental effects of partnerships on competition (paragraphs 363 to 370).

*Potential beneficial impacts of partnerships on competition*

347. Several parties put forward arguments as to how partnerships between operators and LTAs could be used to improve competition. In particular, it was put to us that:

*(a)* partnerships can improve the provision of information to bus passengers;

*(b)* partnerships can provide a framework in which actions can be taken that would have the effect of growing passenger demand for bus services; and

*(c)* partnerships can be used to create a environment that promotes competition between operators that is sustained over the long term.

- *Provision of information to passengers*

348. The DfT emphasized the role that LTAs working together with operators to provide effective information to passengers could play in increasing competition. For example, if real time information were provided, passengers might be more inclined to wait for a specific bus instead of just getting on the first one that came along.[242]

349. We discussed the provision of information—of all types (including, for example, printed information about fares and timetables and real time information systems)—to passengers during response hearings. The comments that we received made clear that there is significant variation in the extent and quality of information provision across the reference area (see, for example, paragraphs 352 to 355 in relation to real time information systems and paragraph 240 in relation to information provided at bus stations). This diversity of experience suggested that there may be room for improvement in the quality of the information passengers are given, and the way it is provided to them. Passenger Focus told us that its research had shown that it was important for passengers to have details on fares, bus arrival times and routes at bus stops.

350. Operators, which determine the timetables and fares of their services, will tend to provide information to their passengers about their own services in the normal course

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[241] This is one of the factors to be taken into account in the use of the existing Competition Test (see Appendix 12.1, Annex 1 of the provisional findings).

of their operations. However, because much of the infrastructure involved in information provision (eg bus stops and most bus stations, LTA websites) is the responsibility of the LTA, it too will have duties to ensure that information provision in an area is satisfactory.[243] The role of the LTA and the benefits of cooperation in the provision of passenger information are likely to be particularly significant where an area is served by more than one operator. In light of these considerations, we considered that partnerships could provide a useful mechanism to coordinate the efforts of operators and LTAs to deliver effective provision of passenger information provision.

351. We discussed real time information systems[244] with a number of parties. These systems can be of benefit to both passengers and operators.

352. For example, Merseytravel shared with us a number of pieces of research suggesting that passengers valued real time information. These included an academic study which showed that passengers overestimated the amount of time they spent waiting for their bus, and so would benefit from a real time information system if it reduced their perceived waiting time.[245]

353. Operators too can benefit if real time information systems help to increase bus patronage. In addition, access to real time information systems may aid efficient network operation and planning. For example, Lothian Buses told us that its automatic vehicle location system allowed it to respond effectively to external factors leading to delay or diversions to its services, and this had allowed it to provide a significantly higher quality of service.

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[242] DfT response hearing summary, paragraph 52.
[243] For example, under sections 139 and 140 of the Transport Act 2000.
[244] These are systems whereby the location of a bus is electronically monitored and customers are provided with electronic updates of the arrival time of their bus.
[245] Mishalani et al, 'Passenger wait time perceptions at bus stops: empirical results and impact on evaluating real-time bus arrival information', *Journal of Public Transportation*, Vol 9, No 2, 2006.

354. Operators' experiences with those real time information systems currently in place were not all positive, however. Stagecoach told us that many of the real time information systems that it was involved in suffered from technical problems because insufficient investment was made in the technology. FirstGroup told us that real time information was limited as to how much information could be displayed, eg often it would not say where a bus was going and who operated it, and for customers to find it useful it could require them to have some prior knowledge of the local bus network.[246] FirstGroup also told us about the latest developments in terms of information provision that made use of mobile phone technology to develop applications that could provide detailed real time information to passengers.[247]

355. The comments of a number of operators suggested that setting up and operating a real time information system could be expensive.[248] As such, the benefits of putting such a system in place may not always outweigh the costs. Nevertheless, in areas where such costs are justified, a partnership can be a useful mechanism for coordinating the efforts of authorities and operators, in order to maximize the benefits of the necessary investment.

356. We concluded that partnerships have an important role to play in coordinating the actions and investments of operators and LTAs to improve the provision of information to bus passengers, whether through real time information systems, through printed timetables or through other media. Better provision of information could increase patronage by increasing the attractiveness of bus travel (eg by decreasing the perceived cost of waiting for the next bus) and hence indirectly address barriers to entry by increasing the attractiveness of an area to new or

[246] FirstGroup response hearing summary, paragraph 45.
[247] FirstGroup response hearing summary, paragraph 45.
[248] For example, Stagecoach and Lothian Buses suggested that effective real time information systems were expensive to implement.

expanding operators. Better provision of information is also likely to increase the likelihood that passengers will make an informed choice between rival operators on the basis of their offering, rather than simply get on the first bus that arrives, thereby mitigating the contribution of certain aspects of consumer behaviour to the AEC. In these ways, we concluded that better provision of information to passengers could indirectly help to address the AEC, as well as delivering better outcomes.

- *Growing passenger demand*

357. Second, several parties noted that partnership working could provide a framework in which actions could be taken (eg coordinated investments by LTAs and operators) that would have the effect of growing passenger demand for bus services. This, in turn, would make the local bus market in question more attractive to new entrants and in this way stimulate competition.

358. For example, in Nottingham, the LTA told us that the statutory quality partnership (SQP) had reduced congestion and in this way improved reliability and decreased journey times. Comments from operators suggest that this should make Nottingham a more attractive place to operate (see Appendix H for more information about the Nottingham scheme). Arriva gave a number of further examples of how, given the importance of punctuality and reliability to customer satisfaction and bus usage, LTAs could play an important role in stimulating demand for bus journeys. These included (among others) measures to reduce illegal and inconsiderate parking, reduce misuse of bus lanes, improve highway management and improve bus access to town centres. ALBUM gave the examples of improved traffic management or assistance with marketing and information as measures which might be taken by an LTA within

a partnership scheme in order to improve the operating environment for buses, and so in this way attract new entrants.[249]

359. We concluded that partnerships that had the effect of growing bus patronage could indirectly address the barriers to entry and expansion that we have identified as causing the AEC by increasing the attractiveness of the local bus market to new and/or expanding operators. For this type of beneficial effect to arise in practice, such partnerships would need to be accessible to any new or existing operator that was willing to participate.

- *Promoting sustained competition*

360. Third, several parties highlighted the ways in which partnerships could be used to create an environment that would promote competition between operators that was likely to be sustained over the long term, for example by:

*(a)* putting in place transparent and fair methods of managing scarce road capacity in busy city centres while facilitating competition to operate bus services within these cities. We were told about such arrangements in Nottingham and Merseyside—more detail on the obligations included in the partnerships in these areas and parties' views on those arrangements is set out in Appendix H;

*(b)* identifying a limited number of specific dates on which service changes take place each year. For example, a condition of the partnership arrangement in Nottingham city centre stipulates that service changes are limited to six pre-specified dates in the year (see Appendix H), and we were told about voluntary arrangements in SYPTE and Metro to keep service changes to a maximum of four and six in the course of a year respectively;[250]

[249] ALBUM response to Remedies Notice, p18.
[250] SYPTE response hearing summary, paragraph 41; Metro response hearing summary, paragraph 21.

*(c)* conducting targeted network reviews of commercial and supported services. Rotala told us that this provided a valuable function of maintaining service level and managing network changes if managed well.[251] In addition, Centro told us that these reviews could stimulate competition, giving the example of a partnership scheme in the West Midlands in which participating operators were all encouraged to propose improvements to their services at the same time as part of a network review. The knowledge that rival operators might be looking to expand their services as part of the review could place competing operators under pressure to maintain good levels of service themselves;

*(d)* precluding behaviour that would constitute 'cheap exclusion'. The DfT told us that many of the practices that constituted 'cheap exclusion' could be addressed by a quality partnership scheme.[252] For example, in Paisley an SQP was recently introduced that, among other conditions, required operators to adhere to published timetables and ensure the punctuality and reliability of their services, and to meet certain minimum vehicle and driver standards. SPT told us that, prior to the partnership agreement, the number of traffic regulation violations in the area had been in the hundreds but following the introduction of the SQP and the constant monitoring, the number had fallen to a handful;[253]

*(e)* developing agreements between operators to accept each other's multi-journey tickets on particular corridors (see also our discussion of ticketing in paragraphs 42 to 134). We were told about such arrangements in Oxford and Merseyside; and

*(f)* developing qualifying agreements between operators to run even headways on particular corridors, while continuing to compete on other dimensions (eg fares and quality of service).

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[251] Rotala response to Remedies Notice, paragraph 11(f).
[252] DfT response to Remedies Notice, paragraph 72.
[253] SPT response hearing summary, paragraph 38.

361. We concluded that, subject to the detail of their implementation, the measures set out in paragraphs 360(a) to 360(e) all have the potential to promote sustained competition between bus operators. In particular, they can help to reduce the barriers to entry associated with unstable competition, as set out in paragraph 9.167 of our provisional findings, and have the potential to reinforce, at a local level, our proposed remedies in relation to ticketing (see Figure 1 in paragraph 42) and operator behaviour (see Figure 2 in paragraph 135). In introducing these types of measure, however, LTAs will need to be mindful of the potential risks as well as potential benefits to competition. For example, in Nottingham, incumbents are given priority in the slot allocation process and smaller operators have raised concerns that they are not able to access those bus stops which are already fully booked. This example is discussed in more detail in Appendix H.

362. We further concluded, however, that caution should be applied in relation to the suggestion in paragraph 360(f) to expand the use of qualifying agreements to constrain the frequency of services run by operators by, for example, agreeing to split headways (see paragraph 366).

*Potential detrimental impacts of partnerships on competition*

363. Although there are a number of ways in which partnerships could serve to promote competition (as we have set out in paragraphs 347 to 362), partnerships also bring with them a number of risks. In particular, these include:

*(a)* the risk of increasing barriers to entry or expansion in the markets covered by the partnership;

*(b)* the risk of constraining the scope that operators have to compete for passengers by improving their offering; and

*(c)* the risk of increasing the likelihood of a coordinated outcome being reached between operators that goes beyond what is necessary to deliver benefits to passengers.

364. We discuss each of these potential detrimental impacts on competition below.

- *Increasing barriers to entry and expansion*

365. Some parties highlighted the risk that smaller operators could be excluded by over-specification of the quality requirements for participation in a partnership agreement. For example, ALBUM emphasized the need to ensure an appropriate balance between, for example, new buses meeting the latest emission standards and permitting the use of older vehicles, so long as they were well maintained and presented.[254]

366. We concluded that there is a risk that partnerships have the potential to increase barriers to entry and thereby restrict competition if they specify unnecessarily high quality standards, or specify quality standards in an inflexible way (for example, being excessively specific about the fleet that needs to be used to satisfy the terms of a partnership). This is a particular risk in relation to statutory arrangements where these have the capacity to exclude operators from a route or from particular facilities. Such specifications may cause operators running a 'no-frills' services with lower fares to be shut out of the market (although we recognized that high standards may result in benefits for passengers who value higher quality services). Very prescriptive partnership specifications may prevent operators from choosing their service specification in the most efficient way, if they are constrained to meet certain pre-determined criteria. This is likely to be a particular issue for smaller operators, as they are likely to be more constrained financially and are less likely to have the option of reallocating fleet from their other operations. Restrictions on corridor frequencies

and bus stop use may also make it more difficult for new operators to enter a route (see paragraph 360(f)).

- *Constraining the scope for operators to improve their offering*

367. As we discussed in our provisional findings, rivalry between operators in the local bus market will often take the form of competition on frequency, with operators increasing their service frequency in order to win more passengers.

368. Where partnership agreements have been introduced, they can have the effect of limiting frequency in very high demand areas (see, for example, the schemes in Nottingham, Merseyside and Chester set out in Appendix H). Agreeing to a common timetable on a route can reduce the incentive and/or ability for operators to compete on frequency. While such restrictions might sometimes be desirable—for example, in order to reduce traffic congestion in busy city centres, or to deliver more even service frequencies—there is a risk that such restrictions reduce the options available to operators to improve their services in order to win passengers from their rivals, and so dampen competitive pressures.

- *Facilitating coordination*

369. An additional risk is that partnerships may increase the likelihood of an anti-competitive coordinated outcome being reached between operators (see paragraphs 21 to 23 for a summary of our concerns about this risk). In particular, partnerships may provide an opportunity for operators to meet and exchange information about competitive issues (thereby increasing transparency between operators) and also reduce the number of variables on which operators are competing (thereby making it easier to identify and reach a coordinated outcome).

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[254] ALBUM response to Remedies Notice, p19.

370. We considered that this risk was likely to be particularly acute in the context of qualifying agreements, given the reduced role that the LTA plays in these agreements relative to voluntary and statutory partnerships. For this reason, we would encourage LTAs to play an active role in the establishment of qualifying agreements, and to monitor the terms of such agreements carefully to ensure they do not have an adverse effect on passenger interests and that any negative impact on competition is strictly necessary to deliver passenger benefits.

*Conclusions on the scope for partnerships to address the AEC*

371. Having considered the evidence, we concluded that carefully designed and implemented partnerships between LTAs and operators can play a role, in support of the other elements of the remedy package, in remedying the AEC that we have provisionally found. In particular, we concluded that partnerships with the following characteristics are likely to have the greatest potential for beneficial consequences on competition:

*(a)* partnerships which have the effect of improving the quality of information provided to passengers, thereby increasing passenger demand for bus services and making passengers more responsive to changes in operators' offerings;

*(b)* partnerships which are accessible to all operators and have the effect of growing bus patronage and thereby improving the attractiveness of a local bus market for new and/or expanding operators; and

*(c)* partnerships which provide an environment which promotes sustained competition, for example by encouraging service stability throughout the year.

372. If carefully implemented, such partnerships have the potential to reduce the barriers to entry that we have identified as contributing to an AEC in the market for local bus services.

373. Although we have emphasized their potential benefits for competition, we are also acutely aware of the risks of misuse of partnerships. In particular, it is important for LTAs to ensure that partnerships are not used to exclude operators or deter entry, to unnecessarily constrain the scope for operators to improve their service offering or to facilitate coordination that goes beyond what is acceptable under competition law and what is required to deliver benefits to passengers. LTAs should give each of these potential detrimental effects full consideration when they are considering introducing a partnership scheme and applying the competition test. Partnerships should be specified to ensure that competitive pressures between operators are retained and that new entrants are not excluded from the market.

*Review of legislation, regulation and guidance relating to partnerships*

374. In the Remedies Notice, we asked whether any changes were required to current legislation, regulation or guidance to facilitate the use of partnerships as a remedy option.

375. The majority of bus operators, and some LTAs, commented that existing mechanisms (both voluntary and statutory) were sufficient to deliver effective partnerships.[255] For example, Go-Ahead told us that the Local Transport Act 2008 (the 2008 Act) legislation was still 'bedding in'.

376. Some parties suggested possible changes to the policy framework governing partnerships. In particular:

*(a)* Arriva stated that partnerships with local authorities were particularly likely to be effective in stimulating demand in the bus market if the Highway Authorities were involved as well. This is because some of the infrastructure decisions that

[255] For example, City of York Council (p10), Arriva (p45), Stagecoach (p47) and Rotala (p12) all submitted comments to this effect in their responses to our Remedies Notice.

affected the operation of local bus services (eg junction layout, bus lanes, roadworks) were taken by the local Highway Authorities rather than the LTA, and so may fall outside the scope of a partnership agreement between the LTA and operators. Arriva gave Leicester as an example of an area where the decisions of the Highway Authority had affected its operations—here the Highway Authority had, on some occasions, failed to take the impact of roadworks on public transport into account, or to engage in proper discussion with bus operators about planned road works prior to the event.

*(b)* TfGM told us that a review of the current competition tests applying to partnerships would be beneficial to assess whether they could play a greater part in addressing the detrimental effects on customers resulting from the AEC.[256]

*(c)* TAS told us that, in its experience, both operators and local authorities were perhaps over-cautious in their approaches to partnerships and were particularly averse to doing anything which may be seen as 'anti-competitive'. TAS made two suggestions for change:

(i) that pursuance of partnerships would be greatly aided by the issue of updated and simpler guidance from the OFT on the application of the competition tests.

(ii) that it saw no fundamental reason why a simple partnership could not be arranged between operators without reference to the LTA or LTAs involved. 'Non-inclusive' partnerships would be notified to, for example, the Traffic Commissioner and any LTA involved in much the same way a Local Bus Service was registered. Any LTA would be free to refer to the OFT any partnership it found to be anticompetitive or which it felt amounted to a cartel. However supportive, LTAs could delay progress in partnerships significantly

[256] TfGM response to Remedies Notice, p27.

as the wheels of local government turned slowly and the LTA might have other priorities.[257]

*(d)* SPT told us that by strengthening current legislation in Scotland in relation to quality contracts and partnerships, greater benefits for the passenger could be achieved. The legislation as it currently stood was cumbersome and problematic to implement in practice, and should this be addressed, it was likely that more effective partnerships would be implemented across the west of Scotland.[258] Similarly RTPs Scotland told us that the strengthening of existing legislation on quality partnerships should be considered as this could deliver some of the benefits of franchising within the context of the current bus market and legislation.[259]

*(e)* PTEG[260] and SYPTE[261] made two suggestions for change to legislation in England regarding partnerships:

(i) First, remove the ability to make admissible objections. The ability of operators to make admissible objections to standards in an SQP relating to maximum fares and frequencies were unnecessary. The ability to exert an element of control on maximum fares in near monopoly situations was important as was the ability to coordinate frequencies and timings. The requirement for an SQP to meet the competition test was sufficient safeguard. In reality the provisions on maximum fares did not go far enough to effectively control fares in monopoly situations.

(ii) Second, to remove the requirement for an LTA to provide 'facilities' in order to implement an SQP. This requirement was one reason why only a few SQPs had been brought forward and should not be seen as a necessary requirement to raising operating standards on a corridor.

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[257] TAS response to Remedies Notice, p39.
[258] SPT response to Remedies Notice, paragraph 7.23.
[259] RTPs Scotland response to Remedies Notice, p2.
[260] PTEG response to Remedies Notice, paragraph 11.4.
[261] SYPTE response to Remedies Notice, p18.

*(f)* Centro told us that it would welcome legislative improvements that would make it easier to bring non-participating operators into the agreement for such things as monitoring and performance and that it would welcome reform to make it simpler and easier to introduce SQPs where these were deemed relevant to both operators and LTAs for development of quality in the network.[262]

*(g)* Nexus told us that legislation would need to be strengthened to support the mandating of partnerships by an LTA, as opposed to the current emphasis of a negotiated voluntary arrangement.[263]

377. We considered these suggestions carefully. We noted first that the legislative framework governing quality partnerships is relatively new, particularly in England and Wales, and that bus operators and LTAs were therefore likely still to be exploring the options available to them under existing legislation.

378. We set out in Section 12 of our provisional findings and in Appendix 12(1) that there are differences in the legislation governing how partnerships can operate between the nations in the reference area. For example, not all of the changes made in the 2008 Act relating to quality partnership schemes have been made in Scotland.[264] In its response hearing, the Scottish Government said that the legislation in its current form was flexible, and that when it had offered transport authorities policy assistance in order to encourage partnerships, they had not identified any features of the quality partnership legislation that were causing them problems. We note that partnerships have been introduced in Scotland, and that the Scottish Government had recently provided guidance on competition issues relating to the implementation of partnerships. We concluded that it was not necessary to change Scottish legislation in order to realize the potential benefits of partnerships for competition.

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[262] Centro response to Remedies Notice, p4.
[263] Nexus response to Remedies Notice, p18.
[264] See Appendix 12(1), paragraph 77.

379. With respect to the suggestion from Arriva in 376(a) about the involvement of Highway Agencies in partnerships, we agreed that close working between LTAs and Highway Agencies (where these were different bodies) was likely to help ensure that the benefits of partnerships for competition and bus passengers were maximized.

380. We considered the comments about the competition test and accompanying guidance raised in 376(b) and 376(c)(i). In our view, the proper application of the relevant competition test is an essential component of partnership working, given the potential risks of partnerships for competition that are set out in paragraphs 363 to 370.

381. With these comments in mind, we reviewed the DfT/OFT guidance and considered how the competition test had been applied in partnership agreements in Chester and Nottingham (see Appendix H).[265] We concluded that the guidance covered the key issues, though we agreed with TfGM that it could usefully be kept under review in the light of experience of developing partnerships and applying the test. We noted that the potential benefits of partnerships for competition do not appear in the guidance, and that no advice exists as to how authorities might tailor the specifications of partnership agreements to promote competition.

382. We further observed that the supervision of the competition test generally relies on operators or other interested parties outside the partnership agreement complaining to the OFT, in order for it to investigate whether its provisions are met. In some cases, however, other operators may not have any reason to complain about potentially anticompetitive partnerships and individual passengers or passenger groups may not have the resources or the information to raise concerns. This places

[265] Guidance in relation to England and Wales is available on the OFT website at: www.oft.gov.uk/shared_oft/business_leaflets/general/oft452.pdf. Guidance in relation to Scotland is available on the Scottish Government's website at www.scotland.gov.uk/Publications/2010/07/16112649/3.

an extra responsibility on the LTA to assess effectively the competitive impact of a partnership scheme.

383. We also noted that SQPs have only recently started to be introduced in substantial numbers, and so there may be some value in revisiting the guidance with reference to 'live' cases.

384. Based on the considerations in paragraphs 380 to 383, we provisionally decided that there was likely to be value in establishing a forum in which the OFT and LTAs were able to discuss issues arising in relation to the application of the competition test to partnerships and qualifying agreements. Building on the existing published guidance, such a forum would enable LTAs to benefit from OFT advice on competition matters and from each other's experience and would enable the OFT to keep in touch with the specific competition issues that are arising in relation to current and proposed partnerships and agreements.

385. We were not attracted by the suggestion in 376(c)(ii) that LTAs could be excluded from partnership arrangements. In our view, the partnership between the LTA and operators, rather than the coordination between operators, is the key benefit of any partnership arrangement. Excluding LTAs from partnership arrangements is likely to reduce the likelihood that partnerships act to the benefit of passengers and increase the risk that partnerships are used to exclude competitors or as a forum for collusion.

386. Similarly, we were not attracted by the various suggestions in 376(d), (e), (f) and (g) from PTEG and PTEs to remove the obligation on LTAs to contribute to the partnership in terms of investment, to remove the ability of operators to make admissible objections, or to choose not to participate. The principle of joint working by LTAs and operators to achieve a common goal of growing bus patronage is a

fundamental characteristic of partnership working, and we provisionally concluded that replacing this with a mandatory or regulatory solution was likely to be a retrograde step.

387. We provisionally decided that there was no need for changes to the existing legislative framework governing partnerships. In our judgement, the existing legislation, as it applies in England, Scotland and Wales, is sufficient for LTAs in each of those nations to work with operators to develop partnerships to grow bus patronage and promote competition.

*Implementation of remedy*

388. Decisions in relation to specific partnerships are inherently local in nature and are ultimately for the LTA to take, subject to careful competition scrutiny of proposals by reference to the relevant competition provisions.

389. We therefore provisionally decided that our remedy in this area should take the form of a recommendation to LTAs as set out in Figure 6 in paragraph 342 setting out the characteristics of partnerships which are most likely to have beneficial effects on competition and the risks to which LTAs should pay particular attention when introducing partnerships. Consistent with the approach that we have proposed in ticketing (see paragraph 129), we provisionally decided to recommend that the DfT and the governments of the devolved administrations monitor progress of LTAs in delivering partnerships which have these beneficial characteristics.

390. To further encourage improvements in relation to information provision, we provisionally decided to recommend to the DfT that, as part of its current review of BSOG in England, it considers ways of incentivizing effective provision of passenger information (see Figure 7 in paragraph 391). This recommendation may also be of

interest to the Scottish and Welsh Governments, should they decide to undertake a similar review at some future date. With respect to the application of the competition test, we propose to recommend that the OFT and LTAs establish a regular forum in which the practical application of the competition test can be discussed, both in the context of schemes that have recently been introduced and schemes that are under consideration. We would welcome further views from stakeholders about the format that such a forum might take (including whether this could build on any existing arrangements) and the frequency with which such discussions should take place.

### *Bus Service Operators Grant*

*Summary of proposed remedy*

391. Figure 7 summarizes our proposed remedy in relation to BSOG.

FIGURE 7

**Summary of proposed recommendations relating to BSOG**

We have provisionally decided to recommend that, as part of its current review of BSOG in England, the DfT considers ways of incentivizing the following activities:

*(a)* development of, and participation in, effective multi-operator ticketing schemes;

*(b)* compliance with competition law and our proposed Code of Conduct; and

*(c)* investments through partnership arrangements aimed at growing passenger demand including, in particular, investments to improve the quality of information provided to passengers.

The Scottish and Welsh Governments may wish to have regard to this recommendation in any future review of BSOG in Scotland and Wales.

392. In its response to the Remedies Notice, the DfT noted that it paid around £318 million in 2009/10 in BSOG outside London in England and the Government had announced that it 'will work with bus operators and local government to examine smarter ways of administering this subsidy to get better results for passengers and taxpayers'. As part

of this process the DfT said that it would welcome thoughts from the CC on whether this support could be used to improve competition and passenger outcomes.[266]

393. Our assessment of the impact on competition of current policy relating to BSOG is set out in paragraphs 12.20 to 12.24 of our provisional findings, where we concluded that in that BSOG applies equally to all local bus operators we did not consider that it would distort competition between them.

394. We considered that decisions about the amount of public subsidy to devote to this sector were properly a matter for Government. We also noted that BSOG was a devolved matter. However, in light of the DfT's invitation, we considered whether BSOG or similar subsidies could be used to promote competition and remedy the AEC that we have provisionally found.

395. This provisional decision sets out the measures that we consider are necessary to address the AEC that we have found. We considered that the DfT's review of BSOG provided an opportunity to enhance the effectiveness of a number of these measures. In particular, to maximize the impact of the remedies that we propose to take forward, we propose to recommended that, as part of any review of BSOG in England, the DfT considers ways of incentivizing the following actions and activities:

*(a)* development of, and participation in, effective multi-operator ticketing schemes;

*(b)* compliance with competition law and our proposed Code of Conduct; and

*(c)* investments through partnership arrangements aimed at growing passenger demand including, in particular, investments to improve the quality of information provided to passengers.

[266] Response to Remedies Notice, paragraph 27.

396. We note that BSOG is a devolved matter and that the application of BSOG in Scotland and Wales is different from in England.[267] For these reasons we have not made a specific recommendation to the Scottish and Welsh Governments, though they may wish to have regard to this recommendation in any future review of BSOG in Scotland and Wales.

## Other options that we have considered

397. We considered a number of other remedy options that we have provisionally decided not to include in our remedy package. These are:

*(a)* franchising/quality contracts;

*(b)* regulatory accounting;

*(c)* prohibitions on owning and/or managing bus stations;

*(d)* restrictions on pricing behaviour; and

*(e)* divestiture and price controls.

### *Franchising/quality contracts*

398. We considered whether to recommend the introduction of franchising by means of a quality contract scheme as a remedy, either on a widespread basis or within specific local markets. LTAs in England, Wales and Scotland already have powers to introduce franchising by means of a Quality Contract Scheme.[268] Our detailed consideration of the evidence relating to this remedy option is contained in Appendix I.

399. In paragraphs 51 and 52 of our Remedies Notice, we identified two ways in which franchising could be introduced as a remedy:

*(a)* First, area-wide franchising could be used to introduce competition 'for the market' in relation to the services included within the scope of the franchise in

[267] See paragraphs 12.20–12.24 of our provisional findings.
[268] See paragraphs 12.95–12.98 of our provisional findings.

place of competition 'in the market'. In this scenario, franchising would apply to all routes within a geographic area, and there would be no scope for head-to-head competition within this area for the duration of the franchise.

*(b)* Alternatively, selective or temporary franchising might be used as a market-opening measures, aimed at increasing 'in the market competition' in nearby non-franchised markets. This could be the case where a proportion rather than all of the routes in an area are franchised. If the consequent franchise package were of sufficient scale, this could be attractive to operators that wish to expand within the local area.

400. We consider each of these approaches separately below.

*Area-wide franchising to introduce 'competition for the market'*

401. A number of LTAs told us that they were actively considering the introduction of some form of area-wide franchising and some (SYPTE, Nexus and Metro) were in the process of developing proposals for its implementation.[269] By contrast most operators were strongly opposed to the introduction of any form of franchising (see Appendix I, paragraphs 10 to 18).

402. We consider first how area-wide franchising could be introduced as a remedy, whether it could address the AEC and/or customer detriment, whether it was a practicable solution and the possible impacts on market outcomes, in particular efficiency, costs and innovation. We then compare area-based franchising with our proposed package of remedies.

[269] See Appendix I, Annex 1 for further details.

*Impact of area-wide franchising on AEC and/or detriment*

403. We looked first at whether area-wide franchising had the potential to address the AEC and/or resulting customer detriment (see Appendix I, paragraphs 21 to 50).

404. We did not consider that area-wide franchising could address the AEC directly. Generally, area-wide franchising restricts and sometimes removes competition from within the relevant franchised area for a period of time. Franchising is a mechanism that can be used to seek to improve certain characteristics of the bus services in an area (eg low prices, high frequencies). In a franchised bus market this could be achieved through the introduction of a competition between operators to supply bus services in an area for a period of time. In principle therefore, area-wide franchising could be introduced to address the detrimental effects we have identified.

405. The extent to which area-wide franchising would, in practice, address the customer detriment we have identified will largely depend on the design and implementation of the franchising mechanism. This in turn will determine the incentives and opportunities open to operators to run that franchise, including the extent of barriers to participating in the franchise process:

*(a)* The incentives and opportunities for running a franchise will be typically set out in the specification of a franchise. For example, the specification will set out the franchise area, the franchise length, the number of operators permitted to operate in the area (typically one), and other requirements for operating that franchise (eg maximum prices and minimum frequencies). Certain of these specifications will be fixed, whilst others will be open for the operators to bid on.

*(b)* Barriers to entry and expansion under a franchise model change from those associated with entering against an incumbent operator to those associated with the auction process. We consider that at the point of the auction, barriers may be lower than under a deregulated model as an efficient operator does not have to

contend with post-entry competition, network strength, cheap exclusion and unstable competition. However, some sunk costs will be incurred associated with the auction process and there may be incumbency advantages, particularly in relation to the first auction. Some barriers to entry associated with depot access may also remain under franchising.

406. We concluded that area-wide franchising could potentially reduce the customer detriment that we have identified. It would do this by controlling outcomes (eg price, frequency) in the franchised area through the introduction of a competition for that franchise. However, area-wide franchising would remove the scope for competition within the market and so would not address the AEC directly.

*Practicability of area-wide franchising*

407. Next we considered whether competition for a franchise would be an effective mechanism, in practice, to achieve the outcomes that are needed to address the customer detriment that we have found. In particular, we considered the practicability of introducing area-wide franchising in place of the current, mainly deregulated, market model.

408. We noted that an area-wide franchising model was in place in London and in many other European cities. The evidence that we reviewed of the London market (see Appendix I, Annex 3) indicated that London Bus Services Limited (LBSL)[270] was generally able to secure effective competition between several operators for the contracts that it put out to tender. This indicated to us that franchising was, in principle, a practicable alternative to competition 'in the market', and could be made to operate successfully.

[270] LBSL—a subsidiary of Transport for London—is the authority in charge of procuring bus services in London. It plans the network, specifies service levels and ensures service quality, as well as taking responsibility for local transport infrastructure such as bus stops.

409. However, we also noted that there were a number of substantial practical challenges and risks associated with introducing effective area-wide franchising within the reference area (see Appendix I, paragraphs 51 to 66). In particular:

*(a)* Moving to area-based franchising would require LTAs to acquire and develop new skills and capabilities, in areas such as network design and monitoring. Such skills may be in short supply and/or may take time to develop in-house. This would increase the risks associated with introducing area-based franchising and the timescale for area-based franchising to deliver results.

*(b)* LTAs are likely to face an information asymmetry relative to incumbent operators in relation to the likely commercial performance of routes to be included in an area-based franchise. This increases the risk that the network and contracts are mis-specified.

*(c)* There are transitional risks associated with the potential for network disruption during the transitional period between a franchise being awarded and it commencing. In addition, incumbent operators may be subject to potentially large financial risks associated with employee transfers, if they do not win the contract.

410. In this context, we noted that LBSL had a number of specific advantages in operating its franchise model—for example, it had retained the network planning function following privatization, and has detailed information about network performance—which LTAs would not be as well placed to replicate within a short period of time.

411. We concluded that the practical difficulties of being able to successfully introduce and appropriately specify a franchise were substantial. These are likely to detract from the effectiveness of area-based franchising as a remedy option and would add to the timescale over which franchising might be expected to address the customer detriment we have found.

*Impact of area-wide franchising on market outcomes*

412. Next we considered the potential impact of area-based franchising on market outcomes (see Appendix I, paragraphs 73 to 104). The impact of area-based franchising on market outcomes is potentially relevant both to our assessment of the likely effectiveness of franchising in addressing customer detriment and our assessment of its likely costs, and hence its proportionality. We received starkly contrasting submissions on this issue from LTAs and operators. To help provide some perspective on these submissions, we also reviewed the evidence of the operation of franchising in London (see Appendix I, Annex 3). We looked at the available evidence, both positive and negative, on the following market outcomes:

*(a)* network efficiency;

*(b)* costs; and

*(c)* innovation.

413. In relation to network efficiency, area-wide franchising has the potential to deliver benefits arising from the ability of an LTA to deliver services such as integrated ticketing across a whole network. It can lead to stability within a bus network, and facilitate effective interconnection with other modes of transport (see Appendix I, paragraphs 74 to 76).

414. However, area-wide franchising also has a number of potential disadvantages in terms of efficiency. The lack of direct contact between the LTA and the passenger may reduce the responsiveness to changes in passenger demand. Area-wide franchising may also result in market distortions, through preventing competition between inter- and intra-urban services, or by favouring political over economic considerations in relation to resource allocation (see Appendix I, paragraphs 77 to 81).

415. There are several classes of additional costs that may be incurred through introducing area-based franchising (see Appendix I, Annex 4):

*(a)* LTAs are likely to incur additional costs when with carrying out the new functions, associated with operating the franchise regimes (such as network planning and design). Research by TAS in 2003 suggests that annual costs for a PTE could lie within a range of £1 and £5 million, though this does not take into account any synergies. PTE estimates are currently towards the low end of this range.

*(b)* Operators may incur some extra costs associated with participating in the bidding process. The extent of these costs will be partly determined by the complexity of the costs.

*(c)* Depending on the specification of the contract, some risks may be transferred from bus operators to the LTA and hence to the public sector. This is not necessarily a cost for the economy as a whole, but may be a relevant consideration for LTAs when considering whether to introduce area-based franchising.

416. Against this, LTAs may be able to achieve some savings in overall costs, both through network design and through reductions in operator returns, where these are currently above the cost of capital. Whether these savings are achievable, in practice, will depend on the extent to which the LTA is able to achieve competitive bids and optimize the specification of the network.

417. We considered whether franchising would have an adverse effect on innovation (see Appendix I, paragraphs 93 to 104). Based on the evidence we reviewed, we considered that, although it is plausible that franchising deters innovation, innovation can also be recognized in the contract selection process. In addition, by coordinating systems and specifying requirements of, for example smart ticketing, authorities may be able to foster innovation that may not take place under a deregulated system.

418. The evidence we have seen on outcomes in the franchised London market is not conclusive due to the unique set of circumstances that has underpinned passenger growth in London in the last ten years. We noted that the franchising model has enabled TfL to introduce innovations such as the Oyster card and to implement various social and economic policies which are beyond our remit. We also noted that the level of subsidy in London was substantially higher than that observed elsewhere in Great Britain.

419. We concluded that, compared with the current deregulated market, area-wide franchising has the potential to address customer detriment and improve market outcomes in some circumstances, but that it is also likely to involve substantial additional costs. The main determinants of the balance between costs and benefits are likely to be:

*(a)* the extent to which the current deregulated market is underperforming, including the severity of any competition problems; and

*(b)* the extent to which the LTA is able to overcome the practical challenges associated with moving to a franchising model and thereby achieve an effective contract specification and vigorous competition for the franchise.

*Comparison of area-wide franchising with our proposed remedy package*

420. We provisionally concluded that area-wide franchising has the potential, in principle, to reduce the detrimental effect on customers that we have identified.

421. However, in order to achieve this, we note that area-based franchising would not directly address the AEC and would reduce or remove competition from the franchised area. Our preference, in relation to local bus services, is for remedies that provide the basis for effective and sustained competition 'in the market' compared with those that promote competition 'for the market'. Remedies that promote

competition ‘in the market’, if effective, would provide a strong basis for ongoing rivalry and commercial innovation in relation to all aspects of bus operators’ offer, including the dynamic benefits associated with new entry. In our judgement, these benefits would not be achievable with area-based franchising.

422. In addition, in light of the practical challenges associated with introducing area-based franchising and hence this risks to its effectiveness as a remedy, we took the view that area-based franchising was unlikely to be more effective than our proposed package of remedies in addressing customer detriment, or to deliver results more rapidly.

423. We considered that area-based franchising was significantly more onerous than our proposed package of remedies, both in terms of the implementation costs and, in particular, the restriction on commercial freedom and the economic interests of existing operators, both large and small.

424. We also noted that some of the potential benefits of area-wide franchising—for example, network integration and addressing unstable competition—are capable of being delivered within a deregulated market and would be enhanced by elements of our remedy package, particularly those relating to ticketing, operator behaviour and partnerships.

425. We concluded that the package of remedies set out in paragraphs 39 to 396 directly address the AEC, are at least as effective in addressing the customer detriment and are less costly than area-wide franchising. It therefore provides a more proportionate solution to the AEC. As a result, we have provisionally decided not to recommend area-wide franchising as a remedy to the AEC that we have provisionally found.

*Selective or temporary franchising as a market-opening measure*

426. Next we considered whether selective or temporary franchising could be used as a market-opening measure (see Appendix I, paragraphs 105 to 114).

427. Selective franchising would involve an LTA issuing a competitive tender for the exclusive right to run local bus services on a subset of routes in an area, while allowing competition to take place on other routes within the area. Temporary franchising would involve an LTA issuing a competitive tender for the exclusive right to run bus services on some or all routes within an area for a limited period, after which competition would be permitted on the previously franchised routes.

428. We are not aware of any LTAs that are currently considering selective or temporary franchising. We discuss in Appendix G the actions that that LTAs can take in developing and retaining a competitive market for supported services and, as a consequence, for local bus services. A number of respondents also noted that, in some rural areas, LTAs could and did tender almost all of the services that were operated and that this effectively amounted to a form of franchising. Selective or temporary franchising could go further than this in two ways:

*(a)* by including commercially viable routes within the scope of the contract; and/or

*(b)* by restricting the ability of other operators to run services on the franchised routes.

*Impact of selective or temporary franchising on AEC and/or detriment*

429. Selective or temporary franchising could contribute to addressing the AEC in local bus markets by providing the operator to whom a franchise was awarded with an opportunity to achieve critical mass and thereby provide a basis to compete with operators near to the franchised routes. This could increase the scope for potential competition on the non-franchised routes, which in time could develop into actual

competition. With temporary franchising, at the end of the franchise period, there may also be scope for potential and/or actual competition on the franchised routes. As such, this option might be regarded as a type of market-opening measure; albeit one that involves a reduction of competition, on a transitional basis, in relation to the franchised routes.

430. Selective or temporary franchising is unlikely to be sufficient in itself to address the AEC, as the scope for potential competition would not necessarily translate into an increased competitive constraint, unless the other barriers to competition that we have provisionally were also effectively addressed. We therefore considered that, if we were to propose selective or temporary franchising, this would be alongside other measures, rather than instead of them.

*Practicability of selective or temporary franchising*

431. Selective or temporary franchising faces similar issues in terms of practicability to area-wide franchising (see paragraphs 407 to 411). In addition, LTAs would need to consider which routes out of a network to put into the franchise and the likely commercial impact on the network of those operators which are currently operating the routes in question.

*Impact of selective or temporary franchising on market outcomes*

432. In terms of market outcomes, selective or temporary franchising would have the potential benefit, relative to area-wide franchising, of allowing competition to take place outside the franchised routes. It would not, by itself deliver benefits in terms of network integration or integrated ticketing, and would have to be accompanied by other measures to deliver such benefits. There are also additional risks, relative to area-wide franchising, of creating distortions as a result of asymmetries in the

competitive position between the franchise operator and nearby commercial operators.

*Provisional conclusion on selective or temporary franchising*

433. Based on the above assessment, we provisionally concluded that selective or temporary franchising was a relatively high risk remedy, both in terms of the uncertainty associated with its effectiveness and the potential distortions that could arise. As a result, we provisionally decided not to include selective or temporary franchising within our package of remedies.

### *Provisional decision on franchising*

434. For the reasons set out in paragraphs 398 to 433 above, we have provisionally decided not to pursue franchising as a remedy option to the AEC and/or customer detriment that we have found.

435. However, we recognize that there is a clear legal basis for LTAs to introduce franchising in England, Scotland and Wales and we would not wish to rule out its future application in particular local markets to address significant market failure. We also note that LTAs have wider social and policy objectives that are not relevant to this investigation, but which may legitimately lead them to take a different view on the desirability of introducing franchising in relation to the local bus markets for which they are accountable.

## ***Regulatory accounting***

436. In its response to the Remedies Notice, the DfT told us that it would be interested in the CC's views on whether bus operators should be required to provide information

akin to regulatory accounts,[271] ie standardized accounts similar to those used for the regulated industry. These would provide a clear definition of the assets and capital base so it would be easier to estimate the weighted average cost of capital and profitability on a consistent basis.

437. The DfT told us that it had some concerns that differences in profitability estimates based on publicly available information (eg the report it commissioned from LEK) and those based on more detailed information by the CC may reflect a lack of transparency within the bus industry's accounts.

438. The DfT noted that there was an argument that bus industry accounts should be transparent because of the large amounts of public expenditure invested in the sector. There could ultimately be customer benefits if better knowledge of industry long-term profitability informed policy [✂] and led to a clearer pass-through of bus public expenditure to passengers in the form of cheaper fares and/or higher quality services. The DfT also considered that greater transparency might also help detect certain anticompetitive behaviour, such as unfair cross-subsidization, and might help potential entrants assess likely profitability of the market more accurately.

439. We noted the DfT's views about the potential benefits to public policy that might arise if bus operators provided transport authorities with transparent and standardized accounting information. However, we were not persuaded that the publication of such information would remove or reduce barriers to entry or address any other aspect of the AEC that we have provisionally found. We therefore provisionally decided not to pursue this.

[271] DfT response to Remedies Notice, paragraph 16.

### *Divestiture and price controls*

440. In paragraphs 75 to 78 of the Remedies Notice, we set out the reasons why we were not minded to pursue divestitures of local operations or direct controls on outcomes as remedy options. We did not receive any submissions advocating either of these options and we therefore did not pursue them further.

### *Prohibitions on ownership or management of bus stations*

441. As a potential alternative to measures to enhance access to bus stations on FRND terms, we stated in the Remedies Notice that we may also consider more structural approaches, including:

*(a)* a prohibition on the management of privately-owned bus stations by bus operators that use the bus station in question; and/or

*(b)* a prohibition on the ownership of bus stations by bus operators that use the bus station in question.[272]

442. The Large Operators all told us that this was a disproportionate remedy. Some parties expressed concerns that it would be difficult to find buyers and the current budgetary constraints affecting LTAs were also raised as an issue. Go-Ahead commented that the bus owner might not have the same type of interest in the management of the station.[273]

443. Some parties considered, by contrast, that local bus operators should be prohibited from owning/managing local bus stations because, in their view, FRND rules would be ineffective.[274,275,276] Another party (JMP Consultants) stated that the management and control of bus stations was usually best placed with local authorities, as they had

[272] Remedies Notice, paragraph 47.
[273] Go-Ahead response hearing summary, paragraph 23.
[274] Rotala response to Remedies Notice, paragraph 9 b).
[275] WAWCC response to Remedies Notice, paragraph 48 a), p8.
[276] NEXUS response to Remedies Notice, Issues for comment 8, p14.

an interest in the fair and effective access to bus related infrastructure.[277] We also received representations from Rotala, [Bus Operator A] and WAWCC that local bus operators should not be allowed to manage bus stations.[278]

444. Based on our assessment in paragraphs 208 to 265, we consider that it is possible to specify a sufficiently robust and effective set of FRND bus station access obligations. As such we have provisionally decided not to consider further these alternative remedies, which in our judgement would be significantly more onerous.

### *Restrictions on pricing behaviour*

445. We identified a number of possible measures in the Remedies Notice (paragraphs 37 to 39) to facilitate the OFT's ability to monitor bus pricing behaviour and thereby identify possible breaches of the 1998 Act for investigation. These included the mandatory reporting of 'substantial' price reductions by operators to the OFT, a wider role for the Traffic Commissioner in bringing pricing behaviour to OFT's attention, and the preclusion of certain types of pricing behaviour in the wider Code of Conduct.

446. We received a range of views on this remedy option. Several larger operators told us that there was no evidence that the OFT was not both identifying and, where it thought appropriate, investigating breaches of the 1998 Act and that it had sufficient powers.[279]

447. There were few suggestions from parties as to what a 'substantial' reduction in price was.[280] This was said to vary depending on local circumstances.[281] There were also

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[277] JMP Consultants response to Remedies Notice, Issues for comment 8, p4.
[278] Rotala hearing summary, paragraph 16, [Bus Operator A] and WAWCC responses to Remedies Notice.
[279] For example, Arriva response to Remedies Notice, p30; Stagecoach response to Remedies Notice, p26.
[280] SPT told us that the threshold could be in the range of 10 to 30 per cent (response to Remedies Notice, p14) and the OFT told us that it might be very difficult to create a 'bright line' test to identify the trigger for bringing cases to its attention (OFT Provisional views on remedies June 2011, p5).
[281] For example, National Express response to Remedies Notice, p5; Nexus response to Remedies Notice, p12; and Rotala response to Remedies Notice, p12.

concerns expressed about the ability of the OFT to review a large volume of price changes.[282] No issues were envisaged with the Traffic Commissioners bringing appropriate matters to the attention of the OFT, as is current practice, but for reasons of resourcing and skills (consistent with the analysis in paragraphs 144 to 154) there was little support for any wider investigatory duties for Traffic Commissioners in this area.[283] General pricing principles including, for example, the requirement to offer price changes over an operating area, rather than a route, were said to be distortionary.[284]

448. We have provisionally decided not to take forward these remedy options because:

*(a)* we agreed with the concerns raised in paragraph 447 about the imposition of a mandatory price reporting requirement, taking into account the difficulties of setting an appropriate threshold for reporting;

*(b)* as a result, we considered that the obligation to disclose information about price changes to the OFT would add additional regulation and related costs to business and the potential for the distortion of business decisions with little identifiable benefit;

*(c)* we considered that it would not be appropriate for Traffic Commissioners to expand their role in this area for reasons of resourcing and skills but that, if they were to receive pertinent information or complaints about pricing then they would be able to alert the OFT as they would be expected to do in the current regulatory framework; and

*(d)* we found that it would not be realistic to include any tailored rules in the Code of Conduct as these would be complex and would be difficult to specify (see paragraphs 150 to 154).

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[282] For example, Lothian Buses response to Remedies Notice, p22; National Express response to Remedies Notice, pp19&20.
[283] For example, Deputy Traffic Commissioner; Go-Ahead response to Remedies Notice, p10; Lothian Buses response to Remedies Notice, p22.
[284] For example, Go-Ahead response to Remedies Notice, p10.

## Relevant customer benefits

449. In deciding the question of remedies, the CC may also in particular 'have regard to the effect of any action on any relevant customer benefits of the feature or features of the market concerned'.[285]

450. RCBs are limited to benefits to relevant customers in the form of:[286]

(a) lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not the market to which the feature or features concerned relate); or

(b) greater innovation in relation to such goods or services.

451. The Act provides that a benefit is only an RCB if the CC believes that:

(a) the benefit has accrued as a result (whether wholly or partly) of the feature or features concerned or may be expected to accrue within a reasonable period of time as a result (whether wholly or partly) of that feature or those features; and

(b) the benefit was, or is, unlikely to accrue without the feature or features concerned.[287]

452. We considered whether there were any RCBs which we should take account of in formulating our remedies.

453. We received only one submission from a party identifying a potential RCB. Lothian Buses put forward a potential RCB for bus operations in Edinburgh. Lothian Buses claimed, in this context, that a certain critical mass was necessary to be able to offer customers a comprehensive choice of destinations within a market and that, in its

[285] 2002 Act, section 134(7).
[286] 2002 Act, section 134(8)(a).
[287] 2002 Act, section 134(8)(b).

case, that critical mass was necessary to the delivery of its 'social dividend' as a municipal operator.[288] Lothian Buses argued that its presence throughout Edinburgh acted as a competitive constraint on the prices of its competitors within its area of operation, and that [✂].[289] We interpreted this submission as indicating that there were potential RCBs arising from the features of high concentration and barriers to entry (particularly those relating to network effects), notwithstanding that Lothian Buses did not agree that those features will necessarily give rise to an AEC.

454. We acknowledge that Lothian Buses' ability to offer customers a comprehensive choice of destinations provides it with a potential source of competitive advantage in Edinburgh and that, as a municipal operator, its strategy in relation to matters such as pricing or service quality may differ from privately-owned operators.[290] However, we do not consider that high concentration and barriers to entry relating to network effects [✂] are necessary to achieving either low prices or comprehensive network coverage in the Edinburgh area. Rather, we consider that, by increasing competition, a more effective multi-operator ticketing scheme in Edinburgh[291] would be likely to deliver increased, rather than reduced, benefits to customers.

455. More generally, we acknowledge that customers can benefit from network effects and integrated ticketing, but do not consider that this constitutes an RCB in the context of this market investigation. This is because customers can benefit from integrated ticketing in the absence of either high concentration or other features that we have identified. In particular, the development of effective multi-operator ticketing schemes (as we have recommended in Figure 1 in paragraph 42) would enable customers to benefit from integrated ticketing without any need for high levels of

[288] Lothian Buses response to Remedies Notice, paragraph 170.
[289] Lothian Buses response to Remedies Notice, paragraphs 172 & 173.
[290] See the provisional findings, paragraphs 3.4 and 6.20–6.23.
[291] For example, a scheme that develops the existing One Ticket scheme in line with the principles set out in Figure 1.

market concentration or barriers to entry associated with network strength or other incumbency advantages.

456. We therefore concluded that there were no RCBs to which we should have regard in evaluating our proposed remedy package.

## The proposed package of remedies: effectiveness and proportionality

457. Our analysis of the options and the provisional decisions set out in paragraphs 39 to 448 has led us to propose the following package of remedies:

*(a)* recommendations to national governments, the OFT and LTAs in relation to ticketing summarized in Figure 1 in paragraph 42;

*(b)* recommendations to national governments and to Traffic Commissioners in relation to operator behaviour, summarized in Figure 2 in paragraph 135;

*(c)* the establishment by means of a CC Order of a framework to enable fair access to bus stations, summarized in Figure 3 in paragraph 208;

*(d)* recommendations to national governments and to LTAs in relation to supported services, summarized in Figure 4 in paragraph 266;

*(e)* recommendations to the OFT in relation to the application of competition law, summarized in Figure 5 in paragraph 312;

*(f)* recommendations to national governments, to LTAs and to the OFT in relation to partnerships, summarized in Figure 6 in paragraph 342; and

*(g)* a recommendation to the DfT to consider how its review of BSOG might be developed in a way that supported some of the remedies set out in this document, summarized in Figure 7 in paragraph 391.

458. In the remainder of this provisional decision we consider the following:

*(a)* First, we describe how the proposed package of remedies addresses the AEC and the resulting customer detriment which has provisionally been found, (paragraphs 459 to 473).

*(b)* Second, we consider the effectiveness of the package which covers the extent to which the remedies are capable of effective implementation, monitoring and enforcement, the timescale over which remedies will take effect, the consistency with other regulations applicable to the bus industry and the coherence of the package of remedies (paragraphs 475 to 495).

*(c)* Third, we consider its proportionality (paragraphs 496 to 523).

### *How the proposed package of remedies addresses the AEC*

459. We discussed the rationale for each element of the remedy package in paragraphs 39 to 396 above. In this section, we set out how the remedy package works together to remedy the AEC and the resulting customer detriment that we have provisionally found. We look first at the contribution of each element of the remedy package to addressing the AEC. We then discuss the synergies between the elements of the remedy package and some important common themes.

#### *Contribution of each element of the remedy package*

460. The main focus of our remedy package are three market-opening measures aimed at reducing barriers to entry and expansion in markets for commercial bus services and providing an environment in which competition is likely to be sustained:

*(a)* We have provisionally decided that the development of effective multi-operator ticketing schemes, following the recommendations summarized in Figure 1 in paragraph 42 would be both necessary and effective in addressing incumbency advantages arising from network strength and from incumbents' ability to offer more attractive multi-journey tickets than smaller operators.

*(b)* We considered what restrictions on operator behaviour were necessary and appropriate to address the barriers to entry and expansion associated with sunk costs of entry, cheap exclusion and the expected intensity of post-entry competition and the competition distortions arising from unstable competition. Having considered a range of options, and as summarized in Figure 2 in paragraph 135, we took the view that the most practicable and proportionate way to effectively address these distortions was by means of changes to the registration process, the development of a Code of Conduct on cheap exclusion and limited protection of municipal operators undergoing a sales process.

*(c)* To address the barriers to entry associated with bus station access we concluded that it was necessary to develop a framework to control access so that third party operators using or wanting to use a bus station are not disadvantaged in obtaining access to a bus station managed by a local bus operator. A fair access framework as summarized in Figure 3 in paragraph 208 would enable third party operators to compete on a level playing field and give confidence to potential entrants that their entry plans would not be put at risk by difficulties in securing access to bus stations.

461. In relation to supported services, we provisionally decided that the development and enhancement of best practice guidance as set out in Figure 4 in paragraph 266, was required to reduce the risk that tenders were specified in ways that restricted competition. Provision of information about deregistered services to tendering authorities would further enhance LTAs' ability to specify and manage the tenders to promote competitive outcomes and reduce the risk of competition being restricted by incumbency advantage.

462. We also considered what changes were necessary to the wider regulatory and policy environment as part of our remedy package.

463. We concluded that it was essential that the opportunity for increased competition presented by our remedy package should not be lost as a result of mergers, anticompetitive agreements or the type of exclusionary behaviour frequently seen in bus markets during the period immediately following deregulation. We therefore see an important role for the effective enforcement of competition law in addressing the AEC and in limiting the scope for further increases in market concentration. We have made recommendations to this end in Figure 5 in paragraph 312. We similarly expect our proposed Code of Conduct (see Figure 2 in paragraph 135) to help strengthen the role of Traffic Commissioners in ensuring that increased rivalry is not accompanied by the types of 'cheap exclusion' that distorts competition and bring no benefits to passengers. To maximize the beneficial effects of our remedies, it will be important that the monitoring and enforcement of both competition law and the regulatory functions of the Traffic Commissioners in the bus industry are accorded a suitably high priority both by the agencies involved and by the bodies that fund them.

464. We concluded that carefully designed and implemented partnerships between LTAs and operators could enhance the effectiveness of our remedy package. Partnerships between LTAs and bus operators can provide an opportunity to grow bus markets by means of mutually supportive investment by public and private sector operators. An important example of such beneficial investment is the provision of accurate information to passengers. In our view, such investments can provide a supportive environment for both new entry and ongoing rivalry. Well-designed partnerships may also be used as a basis for sustained competition.

465. However, we were also mindful of the risks of misuse of partnerships. There is a risk that operators may see a partnership, whether statutory or voluntary in nature, as an opportunity for coordination that goes beyond the delivery of beneficial service improvements to passengers. It is equally important to ensure that partnerships are

not used to exclude operators or deter entry, either directly or indirectly, for example by over-specifying the investments deemed necessary to participate in the market.

466. Our recommendations in relation to partnerships are set out in Figure 6. Decisions in relation to partnerships are inherently local in nature and are ultimately for the LTA to take, subject to careful competition scrutiny of proposals by reference to the relevant competition test.

467. Finally, we made some recommendations for the DfT, summarized in Figure 7 in paragraph 391 to consider how it might use its current review of BSOG to incentivize behaviour and investments that support competition. These recommendations may also be of interest to the Scottish and Welsh Governments, should they decide to undertake a similar review at some future date.

*Synergies and common themes*

468. There are some important synergies between our proposed remedial measures and some important common themes to this package.

469. First, the measures in the remedies package aimed at reducing barriers to entry and expansion are complementary to the remedies aimed at increasing the likelihood that competition is sustained. The expectation of unstable competition can of itself constitute a barrier to entry. In addition the impact of measures to reduce barriers to entry are likely to be more effective in driving better outcomes for passengers if that entry is likely to be sustained and provide a long-term competitive constraint.

470. Second, the measures in the remedies package aimed at the wider regulatory and policy environment are complementary with the other elements of the package. In particular, information and transparency has a major role to play in delivering

competitive outcomes in markets for bus services. Passengers need to be aware of their ticketing options and, in particular, multi-operator tickets must be adequately promoted if they are to be effective. When catching a bus at a privately-owned and operated bus station, passengers should have prominent information about all services, not solely those run by the owner of the station. Partnerships between operators and LTAs can provide a framework for the investments needed to deliver real time information to passengers, reducing perceived waiting times and enabling passengers to make an informed choice about whether to catch the first bus or wait for an alternative. Transparency about the revenues and passenger flows on supported and deregistered services will enable LTAs to make good decisions about how to specify tenders in ways that secure the best value for money for the taxpayer.

471. Third, while we have identified distinct remedies in relation to the supply of local bus services and competition for the tendering of supported local bus services, we recognize the connection between these two aspects of bus markets. A competitive market for local bus services provides a pool of operators to bid for supported services and may reduce the need for services to be supported, if entrants are prepared to run services that are unattractive to incumbents. Likewise, imaginative approaches to tendering supported services is an important way in which LTAs can influence the competitive environment within their local area.

472. Fourth, while we have identified remedy options that are potentially broad in scope, most of these options are capable of being tailored at a local level according to local conditions. We have sought to reflect differences between nations (ie England, Scotland and Wales) in our specification of remedies that relate to devolved matters. LTAs will also have important roles to play in the specification and delivery of improvements to ticketing schemes, developing partnerships with operators, acting

as a first port of call for disputes in relation to bus station access and in securing competitive outcomes for supported services.

473. Fifth, in considering the selection of remedies and the design of individual remedial measures, we have been mindful of the need to ensure that we would not be introducing or recommending measures that would increase the likelihood of geographic market segregation, or other forms of coordination between operators that would adversely affect competition and/or harm the interests of bus passengers.

*Conclusion on how the proposed remedy package addresses the AEC*

474. By addressing the main causes of the AEC, we expect our proposed remedy package to result in a substantially improved environment for competition in local bus markets. We expect the package of remedies to result in increased head-to-head competition and an increased constraint from potential competition across the reference area. As a result of these increased competitive constraints, we expect a substantial improvement in outcomes for consumers, such that we expect the detrimental effects on customers to be substantially reduced. We see important synergies between those elements of the package that create further opportunities for entry and expansion and the development of a policy and regulatory framework in which such increased opportunities for competition are more likely to be sustained. We also see important synergies between measures to remedy the AEC in relation to local bus services and the measures to remedy the AEC in relation to supported services.

***The effectiveness of the remedy package***

475. In evaluating the effectiveness of our proposed remedies, we have considered the following factors:

*(a)* the extent to which the remedies are capable of effective implementation, monitoring and enforcement;

*(b)* the timescale over which remedies will take effect;

*(c)* consistency with other regulations applicable to the bus industry; and

*(d)* coherence as a package of remedies.

476. We consider each of these factors below.

*Implementation, monitoring and enforcement*

477. In developing each of the remedy options, we have considered how each measure could best be implemented, monitored and enforced. Our provisional decisions setting out how each measure should be implemented and the reasons for this are summarized in paragraphs 39 to 396.

478. Wherever possible, we have sought to make use of existing regulatory mechanisms and agencies, including the OFT and Traffic Commissioners. We have also had regard to the role that LTAs can play in delivering the outcomes we seek through our remedies. We have been sensitive to the resource environment currently facing public sector bodies and have sought to ensure that any additional responsibilities are likely to be manageable.

479. Based on the above considerations, and in light of our detailed assessment of each remedy option in paragraphs 39 to 396, we concluded that each of our remedies is capable of effective implementation, monitoring and enforcement.

*Timescale over which remedies will take effect*

480. In considering the timescale over which these remedies are likely take effect, we considered both the time that it is likely to take to implement the remedies and the

time that it is likely to take for the remedies, once implemented, to remedy the AEC and the resulting customer detriment.

481. The CC would normally expect to be able to make an Order in relation to those matters that we are implementing ourselves within a period of around six to nine months following publication of our final report.

482. Where we are proposing to make recommendations to others, the timing of implementation will be for those bodies to determine in line with their own priorities. The proposed recommendations as to regulation are largely a change or addition to existing legislation, rather than creating new areas of regulation. We would therefore expect such recommendations to take less time to develop and implement than measures requiring the development and introduction of a new regulatory framework. At this stage, we anticipate that primary legislation is likely to be required to implement some of our measures (eg in relation to ticketing and operator behaviour). If this is the case, and assuming our recommendations are accepted and given sufficient priority, our current understanding is that such legislation could take two to three years to introduce. Where we have recommended the development of new guidance, either as a main remedy or as an interim measure, we would expect these processes to be achievable within a period of no more than one to two years.

483. We concluded that, subject to the necessary commitment on behalf of the bodies to which we are minded to make recommendations, all elements of our remedy package are capable of being implemented within a period of no more than two to three years following publication of our final report. We would expect a number of elements of the remedy package to be in place sooner than this.

484. A number of factors will affect the timescale over which our remedies will have an impact on market outcomes.

485. In relation to some of the measures that we are proposing, we might expect operator behaviour and market outcomes to change in anticipation of the introduction of the formal legislative changes we have recommended. In particular, there is little in the current regulatory framework to inhibit operators from working together with LTAs to develop and reform ticketing schemes in line with the principles set out in Figure 1 in paragraph 42 and we have recommended to LTAs that they pursue such action pending the legislative changes that we propose to recommend. We might expect forward-looking operators in at least some parts of the reference area to start to take the necessary actions in advance of the extension of LTA powers that we have recommended.

486. Once our remedies have been implemented, we expect them to have an immediate impact on the incentives of existing operators and potential entrants. In particular we would expect that an increased threat of competition from potential competitors and new entrants would have an immediate effect on incentives and behaviour. The effects of increased head-to-head competition will follow where there is actual entry. We note that where operators have responded to a heightened threat of competition in the past (see the provisional findings, paragraph 6.66) and to new entry (provisional findings, paragraphs 6.125 to 6.139) they have done so relatively quickly. We also note that some operators keep important aspects of their service offering, such as service frequency under constant review and changes to such aspects of service offering can be made within a period of four to six months.[292] We therefore see no reason to believe that improvements in the service offered by operators would be delayed following the implementation of our remedies. As noted in paragraph 485

some operators might take action in anticipation of implementation of our remedies to position themselves for a more competitive environment.

487. We would expect this change in incentives and behaviour to translate into substantial improvements in market outcomes within one to two years of implementation as operators including new entrants seek to take advantage of competitive opportunities as they arise, and as incumbents look to improve their offering in light of the increased competitive constraints.

488. Based on the considerations set out in paragraphs 480 to 486, we concluded that we would expect our remedies to have been fully implemented and to result in a substantial impact on the AEC and resultant customer detriment within three to five years of publication of our final report. We would expect significant beneficial effects to arise more rapidly than this. We are not aware of any other effective and proportionate remedies that would deliver results in a shorter timescale than this.

*Consistency with other regulations*

489. Wherever possible, we have sought to build on the existing regulatory framework that applies in the bus industry. We have only proposed to introduce additional measures by means of an Order where there is a clear gap in the existing regulatory framework, in relation to fair access to privately-owned and operated bus stations. In relation to the other measures, we have proposed recommendations about how the existing statutory framework may be operated or incrementally amended to address the specific problems that we have identified in this investigation.

490. We therefore concluded that our proposed package of remedies would be entirely consistent with other regulations that apply to the bus industry.

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[292] Provisional findings, paragraph 6.43.

*Coherence as a package of remedies*

491. We considered that the measures that we have proposed were likely to be mutually reinforcing.

492. In particular, the package both includes measures aimed at opening bus markets up to greater competition and provides for a policy and regulatory framework in which such competition is more likely to be sustained. There are also important synergies between increasing competition to supply local bus services and increasing competition in tendering for supported services (see paragraph 473).

493. There are also synergies between individual measures. For example, the proposed obligation to provide LTAs with advanced warning of service changes (see Figure 2 in paragraph 135), is likely to support the remedies that we are introducing in relation to supported services, as this additional period may be used by LTAs to collect information about deregistered services and to consider how best to specify any tender process that may result from the service change. Likewise, our ticketing remedies are likely to improve competition for supported services as well as in markets for local bus services.

494. We therefore concluded that our proposed package of measures represented a coherent response to the competition problems that we have provisionally found.

*Conclusion on effectiveness of remedy package*

495. Based on the assessment in paragraphs 459 to 494 we concluded that this package of measures would be effective in addressing the main impediments to competition that we have provisionally identified. Consequently, we further concluded that this package of measures would be effective in remedying the AEC and, as a result, would also substantially reduce the customer detriment that flows from the AEC. We

expect the remedy package to have a substantial impact on both the AEC and the resultant customer detriment within three to five years of publication of our final report.

### *Evaluation of proportionality*

496. We evaluated whether this package would be a proportionate response to the problems that we have identified by considering the following four key questions:

*(a)* is the remedy package effective in achieving its aim?;

*(b)* is the remedy package no more onerous than necessary to achieve its aim?;

*(c)* is the remedy package the least onerous if there is a choice?; and

*(d)* does the remedy package produce adverse effects which are disproportionate to the aim?

#### *(a) Effective in achieving its legitimate aim*

497. We concluded in paragraph 495 that this package of remedies would be effective in achieving the aim of remedying the AEC that we have provisionally found.

#### *(b) No more onerous than necessary*

498. Each element of the remedy package is necessary in order to achieve as comprehensive solution as is reasonable and practicable to the AEC. As set out in paragraphs 459 to 473, the remedy package comprises a set of complementary measures, each of which makes a significant contribution to remedying the AEC by tackling one or more of the features giving rise to the AEC. We have not pursued options, such as restrictions on pricing behaviour or regulatory accounting (see paragraphs 397 to 448), where we did not consider that they would contribute materially to the effectiveness of the remedy package.

499. We have also taken care to ensure that the design of each individual element of the remedy package is no more onerous than necessary to remedy the AEC (see paragraphs 39 to 396). For example, in relation to ticketing, we have chosen not to impose restrictions on single-operator multi-journey tickets, as we judged this to be more intrusive than necessary to address the barriers to entry arising from network effects. Similarly, to address the barriers to entry associated with bus station access, we chose the less intrusive approach of developing a framework for fair access to bus stations, rather than requiring operators to divest existing facilities.

500. We are therefore satisfied that the remedy package is no more intrusive than was necessary to remedy the AEC.

*(c) Least onerous if there is a choice*

501. In developing our proposed package of remedies we have considered a wide range of options. We have consulted many parties for their views about alternative specifications of different remedy options and about different approaches to tackling the AEC. Having gone through this process, we have not been able to identify any less onerous remedy options that would be as effective as the measures that we propose to take forward. For example, we preferred our remedy package over franchising, as we considered our remedy package to be effective in remedying the AEC and less onerous than franchising.

502. We were therefore satisfied that we had chosen the least onerous remedy package from the effective options available to us.

*(d) Does not produce adverse effects that are disproportionate to the aim*

503. In reaching our judgement about whether to proceed with the remedy package, we have considered its potential effects—both positive and negative—on those persons

most likely to be affected by it. In reaching this judgement, we have paid particular regard to the potential impact of these remedies on bus passengers and have also had regard to the impact on those operators subject to them and on other affected parties, including government and regulatory bodies, the OFT and other monitoring agencies.

504. Our detailed assessment of the potential costs of each of the individual remedy options that we are proposing to take forward is set out at Appendix J. In paragraphs 505 to 519 we summarize what we judged to be the most important considerations that were relevant to this aspect of our proportionality assessment.

*Benefits of the remedy package*

505. We looked first at the potential benefits of the remedy package. In considering how markets may develop with remedies in place, the CC will consider both benefits that are relatively easy to quantify (such as lower prices or higher frequency) and benefits that are more difficult to quantify (for example, the dynamic benefits of increased rivalry on productivity and innovation). Both types of benefit are important.

506. We considered that, by increasing competitive pressures in bus markets and creating an environment in which competition was more likely to be sustained, our package of remedies would substantially reduce the customer detriment that we had identified.

507. It is not possible to quantify with precision the customer benefit associated with increased competition. We have not been able to quantify every aspect of the detriment resulting from the AEC, nor are we able to quantify with precision how much of this detriment would be removed by our package of remedies. Nonetheless, in light of the comprehensive nature of the remedy package and its effectiveness in achieving its aim, we expect the detriment we have identified to provide a reasonable

indication of the potential customer benefits that could result from increased competition following introduction of the remedy package.

508. In our provisional findings[293] we found that the detriment to taxpayers as a result of the AEC in the tendering of supported services was between £5 million and £10 million a year and that the detriment to consumers as a result of the AEC that we have found in the operation of local bus services was in excess of £60 million a year.

509. In Appendix A we provide a further estimate of the detriment to customers as a result of the AECs that we have found in the operation of local bus services. Our analysis shows that the detriment is likely to be between £58 million and £148 million per year. We consider that the value of the detriment to customers is more likely to fall within the upper half of this range (ie between £103 million and £148 million a year), than in the lower half.[294]

510. The overall detriment as a result of both the AEC in the tendering of supported services and the AECs in the operation of local bus services is therefore likely to lie within a range of £63 million to £158 million a year.

511. We also expect our remedy package to deliver benefits to passengers that go beyond the removal of the quantified customer detriment resulting from the AEC. A more detailed discussion of these benefits is contained in Appendix J.

512. For example, we would expect the introduction of a multi-operator ticketing scheme to an area to result in greater convenience for passengers from having the option of

[293] See paragraphs 14.20–14.41.
[294] Using the methodology in Appendix A we have also identified some scenarios in which our estimate of detriment falls below the bottom of this range. Our lower bound estimate of customer detriment is £42 million per year; however, because this lower bound figure is based on some deliberately extreme assumptions, we consider it unlikely that this figure gives an accurate reflection of the full extent of customer detriment.

purchasing a multi-operator ticket, enabling them to use any bus covered by the scheme. We would also expect the provision of fair access to bus stations to result in increased convenience for customers, as competing operators will not be deterred or prevented from using the station by price or other conditions of access. Action to prevent cheap exclusion will reduce the inconvenience to customers associated with practices such as stand blocking. In addition, well-targeted actions and investments taken through quality partnerships, for example providing better information to passengers about bus services, have the capacity to deliver passenger benefits.

513. While these wider benefits to passengers do not form part of our consideration of the benefits associated with remedying the AEC, we would expect them to carry some weight with the bodies to which we are directing our recommendations.

*Costs of remedies*

514. We also considered potential negative effects of our remedies including the costs to business. Such negative effects may arise in various forms, for example:

*(a)* a remedy may result in implementation costs and ongoing monitoring and compliance costs, and monitoring costs;

*(b)* a remedy may result in unintended distortions to market outcomes. Such distortions may adversely affect the economic interests of customers and reduce economic efficiency; and

*(c)* if remedies extinguish RCBs, the amount of RCBs foregone may be considered to be a relevant cost of the remedy.

515. Excluding partnerships, for which we recommend local cost-benefit analysis be conducted on a case-by-case basis, the remedies we propose are likely to have combined implementation costs of no more than £5 million to £10million in the first year, and that the costs would be somewhat lower in subsequent years.

516. We have sought to avoid creating distortions through remedy design. In particular we gave careful consideration to the scope for distortions to arise from the following elements of the remedy package:

*(a)* With regard to ticketing, we considered the possibility that a reduction in the proportion of passengers using single-operator tickets might reduce the incentive on operators to compete on single-operator prices. We also considered the risk that this remedy might increase the scope for coordination between operators on single-operator ticket prices. As set out in Appendix J, paragraph 15, we designed our remedy to avoid this distortion.

*(b)* With regard to operator behaviour we considered the possibility that restrictions on operator behaviour might inhibit operators' ability to respond to customer needs and that restrictions on operator behaviour might result in costs for operators required to keep running an unprofitable service. We also considered the possibility that restrictions on operator behaviour might distort competition between operators by creating an uneven playing field. Finally, we considered the possibility that protection for municipal operators might create distortions by protecting municipal operators from legitimate competition. As set out in Appendix J, paragraphs 56 and 57, we considered that, given the design of this element of the remedy package, no significant distortions would be created as a result of this remedy.

*(c)* With regard to partnerships, we considered the risks of distortions to competition associated with raising barriers to entry, unnecessarily constraining the scope for operators to improve their service offering and facilitating coordination that goes beyond what is necessary to deliver passenger benefits. Our assessment is set out in Appendix J, paragraphs 46 and 47. We do not expect our proposed recommendations with regard to partnerships to introduce any distortions.

*(d)* We did not identify any material distortion risks associated with the remaining remedies within our proposed package.

517. We therefore concluded that, in light of the design of our remedies, the potential for distortions as a result of our remedies package was low.

518. As set out in paragraph 456, we do not consider that our remedy package will result in the loss of any RCBs, as we had not identified any such RCBs.

*Comparison of beneficial effects and costs of remedy package*

519. As set out in paragraph 506, we expect that on implementation of the remedies package there will be a substantial improvement in outcomes for customers across the reference area and that the package of remedies will substantially reduce the customer detriment resulting from the AEC that we have provisionally found. We estimate the customer detriment which the remedies seek to address to be between £58 million and £148 million per year.

520. We set out the costs of our proposed remedies in Appendix J. We estimate that the overall costs of our package of remedies will be no more than £5 million to £10 million in the first year, and somewhat lower in subsequent years.

521. In light of the difference in scale between our estimates of the customer detriment and the costs of our proposed remedies, and our expectation that the remedy package will remove or substantially reduce the customer detriment, it is therefore clear that the benefits of our remedies package are likely to exceed the costs of the remedies package by some margin. In light of our consideration of the timescale over which the remedies will take effect (see paragraphs 480 to 488) we would expect our remedy package to deliver substantial net benefits within three to five years of publication of our final report. We expect the net benefit to customers to be greater in subsequent years as implementation costs are only incurred in the initial period.

522. Based on the above assessment, we provisionally concluded that the beneficial effects of this package were likely to outweigh its costs.

*Conclusion on proportionality of remedy package*

523. We concluded that our remedy package was a reasonable and proportionate response to the AEC that we had provisionally found.

## Provisional decision on remedies

524. We have provisionally decided on the package of remedies as summarized in paragraph 457 and Figures 1 to 7.

525. In our judgement, this represents as comprehensive a solution as is reasonable and practicable to the AEC and resulting customer detriment that we have provisionally found.