

**CAMPAIGN FOR BETTER TRANSPORT
LOCAL TRANSPORT ACT 2008
ST ALBANS QUALITY NETWORK PARTNERSHIP**

ADVICE

INTRODUCTION

1. We are asked to advise the Campaign for Better Transport (“CBT”) in relation to the St Albans Quality Network Partnership (“SAQNP”), a “voluntary partnership agreement” within the meaning of section 153 of the Transport Act 2000 (“TA2000”) as amended by the Local Transport Act 2008 (“LTA2008”).
2. SAQNP is a partnership involving Hertfordshire County Council, St Albans City and District Council, four local bus operators, two local train operators and the University of Hertfordshire. CBT is not a member, but chairs partnership meetings.
3. As part of SAQNP, the local authorities and bus operators have developed a proposal for a ticketing scheme, aiming to attract more passengers to bus services in and around St Albans. The details of the scheme are still to be finalised and no legal advice has yet been sought on the outline proposal.
4. The transport operators and local authorities also hope to put in place other arrangements, including agreement on regular interval services on some main corridors and “through ticketing” arrangements with rail operators, with the aim of providing a more integrated public transport network, reducing traffic and attracting more passengers.
5. All those involved are anxious to ensure that there is no risk of any of the participants infringing competition law. Although we are not asked to advise on the details of any particular proposal or its compatibility with competition law, we are asked to advise generally on the competition law tests applicable

under the TA2000, as amended, and the Competition Act 1998 (“CA1998”), to the proposed ticketing scheme and to any other proposals that may be considered as part of the SAQNP.

6. In determining the tests that apply and the approach the OFT is likely to take to the application of competition law in this area, it is necessary to have regard both to the legislation and to the guidance issued by the OFT and the Department for Transport in relation to the LTA2008 and bus services. This includes the following documents, referred to in this Advice.
 - (a) **“OFT452”** (*Guidance on the application of competition law to certain aspects of the bus market following the Local Transport Act 2008*, DfT / OFT, March 2009);
 - (b) **“the VPA Guidance”** (*Local Transport Act 2008 – Improving local bus services: Guidance on voluntary partnership agreements*, DfT, February 2009);
 - (c) **“OFT439”** (*Public transport ticketing schemes block exemption* (OFT439), OFT, November 2006); and
 - (d) **“the DfT ticketing consultation”** (*Developing a strategy for smart and integrated ticketing - Consultation Paper*, DfT, August 2009).

SUMMARY OF ADVICE

7. Our advice, in summary, is as follows:
 - (a) The SAQNP is a voluntary multilateral agreement, meaning that any agreement made as part of it *which has the object or effect of preventing, restricting or distorting competition in the area covered by the SAQNP* is prohibited, unless it meets the test for exemption under para. 22 of Schedule 10 TA2000;
 - (b) That test applies in place of the Chapter I prohibition in section 2(1) CA 1998, except in respect of any provision of the SAQNP that

constitutes a “price-fixing agreement” (which does not include any provision relating to *maximum* fares). The burden of proving that an agreement meets the requirements of the exemption under para. 22 of Schedule 10 TA2000 rests on the undertaking or association of undertakings claiming the benefit of it;

- (c) OFT 452 contains helpful indicators as to how the OFT sees the Schedule 10, Part 2 test being applied to VPAs. For example, the OFT recognises that it is unlikely that a local transport authority would wish to enter into VPA that did not contribute to the attainment of at least one of the bus improvement objectives. As these are relatively new provisions, it would be reasonable for the OFT to be sympathetic towards operators and authorities who, in good faith, seek to participate in agreements intended to fall within the exemption, and who can put forward a reasonable case on indispensability. Where an agreement falls within the test, the OFT’s power to impose financial penalties does not apply;
- (d) There are two possible routes for implementation of a multi-operator ticketing scheme: (a) including arrangements about ticketing within the scope of a VPA; or (b) making a ticketing scheme under ss. 135 to 138 TA 2000, alongside the VPA. There are significant differences as to what is permitted under the two options. In particular, a statutory ticketing scheme cannot include any provision setting the price to be charged for tickets but would permit operators to agree the price of a multi-operator travel card and charge posted prices for through-tickets and add-ons, subject to certain conditions. A VPA cannot include agreement to charge a *specific price* for any ticket, but can include agreement on the *maximum* fare for tickets covered by the scheme. Different competition law tests also apply;
- (e) The Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2000 (SI 2001/319) does not preclude

agreement on the price of multi-operator travel cards. This would include the proposed daily and weekly cards travel cards in the SAQNP ticketing scheme;

- (f) Assuming there is no statutory ticketing scheme, operators could agree standards relating to ticketing as part of the VPA, subject to the Schedule 10, Part 2 test (including agreement on *maximum*, but not *fixed* prices). Any agreement on fixed prices for a multi-operator travel card would need to comply with the ticketing block exemption, which would remove the agreement from the Chapter I prohibition altogether;
- (g) The conditions that agreements between operators must meet to come within the block exemption are listed in OFT439. At present, the outline details of the proposed zonal ticketing scheme in St Albans are broadly consistent with what might be acceptable under the block exemption, although it would not be acceptable for operators to agree a “fixed fare structure” for all tickets within the zone, or to agree to offer no conflicting fares in a way that restricted competition between operators on basic single and return tickets;
- (h) The OFT’s market study report and proposed decision to make a market investigation reference (OFT1112con) should not discourage operators from entering into schemes permitted under the TA2000, or discussing such cooperation. If anything, the OFT is concerned that operators, particularly incumbent, larger operators, are unwilling to enter into multi-ticketing arrangements with smaller rivals. The OFT has expressed the view that its proposed reference does not affect its approach to VPAs or its guidance on ticketing schemes and has emphasised the point that the LTA2008 removes the risk of financial penalties where VPAs are entered into in good faith.

PROPOSALS UNDER THE SAQNP

8. The SAQNP is a voluntary partnership agreement (“VPA”) within the meaning of section 153 of the TA 2000, i.e. a voluntary agreement under which:

“(a) a local transport authority, or two or more local transport authorities, undertake to provide particular facilities, or to do anything else for the purpose of bringing benefits to persons using local services, within the whole or part of their area, or combined area, and

(b) one or more operators of local services undertake to provide services of a particular standard.”

9. “Standard” in this context includes any requirement relating to the vehicles being used to provide the services, any requirement as to frequency or timing of the services, or any requirement as to the maximum fares that may be charged for particular journeys, or for journeys of particular descriptions, on services to which the agreement applies (s. 153(3) TA 2000). However, as the VPA guidance makes clear (¶29), that is a non-exhaustive list: *“other standards, such as the provision of a particular level of driver training in relation to customer care, can also meet the definition”*.

10. The terms of the Memorandum of Understanding establishing the SAQNP provides as follows:

“4.1 The over-arching principle of the QNP is that the Local Authorities and others will provide infrastructure, traffic management, parking restrictions, bus priority schemes and an enforcement regime which allows the transport operators to improve operating speeds and hence generate resources to improve frequencies at no additional cost and deliver higher punctuality and efficiency.

4.2 In exchange, the bus and train operators will invest in modern vehicles, staff training, information services and improved standards of service. In addition they will consult the other partners on fares and service frequencies where appropriate.”

11. Although it may seem obvious, it is worth emphasising at the outset that agreements that do not have the object or effect of preventing, restricting or distorting competition do not fall within the scope of the Chapter I prohibition in the CA 1998 or the competition test in the TA 2000. However, as is pointed out in OFT452 at ¶¶4.13 and 4.18, a cautious approach should be taken to determining whether an agreement has an appreciable effect on competition:

“...any agreement between bus operators and one or more LTA(s) might be said to have the effect of restricting the freedom of action of the parties. However, not every restriction of freedom amounts to a restriction of competition. What matters, for the purposes of the Part 2 competition test, is whether the agreement has, or is likely to have, a negative effect on prices, output, innovation or the variety or quality of services on the market. Furthermore, the effect must be appreciable...

...in most cases it is likely that the market would be fairly narrowly defined... Where there is a narrow market definition, it is more likely that the thresholds ... will be exceeded and there will be some form of market power in that market. This suggests that, in most cases, the Part 2 competition test will have to be satisfied. In cases of uncertainty, parties to an agreement should ensure that the agreement meets the second, third and fourth stages of the Part 2 competition test...”

12. The competition test in Part 2 of Schedule 10 to the TA 2000 is tailored to the bus market and applies in relation to VPAs. It applies, in particular, to:
- (a) a VPA to which two or more operators of local services are parties (a voluntary multilateral agreement (“VMA”)), which has as its object or effect the prevention, restriction or distortion of competition in the area of the authority, or the combined area of the authorities;
 - (b) a VPA to which only one operator of local services is a party (a voluntary bilateral agreement (“VBA”)), which has as its object or effect the prevention, restriction or distortion of competition in the area of the authority, or the combined area of the authorities; and

- (c) a qualifying agreement, i.e. an agreement between bus operators that has as its object or effect the prevention, restriction or distortion of competition, but has been certified by the authority, or any of the authorities, as fulfilling the following requirements:
 - i. being in the interests of persons using local services within the area of the authority, or the combined area of the authorities, and
 - ii. not imposing on the undertakings concerned restrictions that are not indispensable to the attainment of the “bus improvement objectives” (as to which see below).

- 13. The SAQNP is a voluntary multilateral agreement “VMA”; thus any agreement made as part of the SAQNP which has the object or effect of preventing, restricting or distorting competition in the area covered by the SAQNP is prohibited, unless it meets the following test for exemption under para. 22 of Schedule 10 TA2000:
 - (a) it contributes to the attainment of one or more of the bus improvement objectives, i.e.:
 - i. securing improvements in the quality of vehicles or facilities used for or in connection with the provision of local services,
 - ii. securing other improvements in local services of benefit to users of local services, or
 - iii. reducing or limiting traffic congestion, noise or air pollution.

 - (b) it does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives, and

- (c) it does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the services in question.
14. The test applies in place of the Chapter I prohibition in section 2(1) of the CA 1998 and if any part of the VPA that has the object or effect of restricting competition does not meet that test, it is both prohibited and rendered void.
15. Paragraph 19 of Schedule 10 makes it clear that the test does not apply to a VPA if it (or any of its provisions) constitutes a “price-fixing agreement” within the meaning of section 39(9) CA 1998, i.e.:
- “an agreement which has as its object or effect, or one of its objects or effects, restricting the freedom of a party to the agreement to determine the price to be charged (otherwise than as between that party and another party to the agreement) for the product, service or other matter to which the agreement relates.”
16. However, where the standard of services specified in a VPA includes a requirement as to *maximum fares*, any provision of that agreement relating to the setting, review or revision of the maximum fare is *not* to be regarded as constituting a price-fixing agreement for these purposes.
17. In any proceedings in which it is alleged that the prohibition is being or has been infringed by a VPA, the burden of proving that an agreement meets the requirements of the exemption rests on the undertaking or association of undertakings claiming the benefit of it. However, where an agreement falls under the competition test in Part 2 of Schedule 10 TA 2000, the OFT’s power to impose financial penalties does not apply, and the likelihood is that the OFT would direct that a non-compliant agreement be varied or terminated.
18. In summary, then, under the SAQNP the partners can lawfully reach any *prima facie* “anti-competitive” agreement relating to standards on local bus services so long as they can demonstrate that:

- (a) it contributes to the attainment of one or more of the bus improvement objectives;
- (b) it does not impose restrictions which are “not indispensable” to the attainment of those objectives;
- (c) it does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the services in question; and
- (d) the VPA does not include a “price-fixing agreement”, though agreement on *maximum fares* may be permissible.

19. We have not been asked to advise in relation to “qualifying agreements”, i.e. agreements between bus operators directly with each other not involving either local authority. We are not aware that any of the operators who are members of the SAQNP propose any such agreements, although it seems possible there may be a need for such bilateral agreements (e.g. about frequencies etc.) in future, in connection with the SAQNP. The tests in relation to such agreements are slightly different, as they need to be certified by a local authority to fall within the Part 2, Schedule 10 TA2000 competition test.

20. OFT 452, issued by the OFT and DfT in March 2009, contains some helpful indicators as to how the OFT sees the Schedule 10, Part 2 test being applied to VPAs in practice. For example, in relation to whether a VPA contributes to one of the bus attainment objectives, the OFT recognises (at ¶4.21) that in practice it is unlikely that a local transport authority would wish to enter into VPA that did not contribute to the attainment of at least one of those objectives. There is also some additional guidance – and reference to European Commission guidelines – in relation to the indispensability test. At ¶4.36 the guidance observes:

“Normally, the need for a VPA or qualifying agreement may have arisen precisely because competition in the market, by

itself, has failed to deliver particular benefits to passengers; and the purpose of the agreement will be to deliver those benefits. In this situation, the agreement as a whole is likely to be indispensable to the achievement of the benefits because in the absence of the agreement, the desired benefits to passengers are unlikely to be achieved”

21. Since We are not being asked to advise on any specific proposal under the VPA (other than the proposed ticketing scheme, which is dealt with below), it is difficult to give any more detailed advice beyond the general guidance in OFT452 (and the DfT guidance on VPAs).
22. One observation we would make is that, as these are relatively new provisions, we would expect the OFT to be generally sympathetic to operators and authorities who, in good faith, seek to participate in agreements intended to fall within the TA2000 exemption, and who can put forward a reasonable case on indispensability. It was not the intention of the LTA2008 that it should be unreasonably difficult for authorities and bus operators to justify voluntary agreements that properly serve the interests of passengers.

THE TICKETING SCHEME

23. The proposed zonal ticketing scheme is only at the stage of an outline proposal. Broadly, however, it is proposed that all the bus operators within the SAQNP should adopt a simplified, standard fare structure on bus services in and around St Albans city centre, and that daily and weekly tickets should become interchangeable between operators, with revenue retained by the issuing operator. The ticketing scheme would be open to any operator who wished to join it. It is also proposed that the participating operators would not offer conflicting individual operator fares within the area covered by the scheme.
24. The County Council believes that such a scheme would be a positive development for passengers and would make bus services in the area easier and more attractive to use.

25. As the VPA Guidance makes clear (at ¶32-35), there are two possible routes for implementation of a multi-operator ticketing scheme:

- (a) including arrangements about ticketing within the scope of a VPA;
or
- (b) making a ticketing scheme under ss. 135 to 138 TA 2000, alongside the VPA covering other improvements.

26. There are significant differences between the two options. In particular:

- (a) A scheme made under ss. 135-138 TA 2000 is a statutory scheme and all operators covered by the scheme must comply with it.

By contrast, involvement in a VPA ticketing agreement is – like the rest of the VPA – voluntary. The VPA guidance notes that “*the more appropriate approach will depend on the particular local circumstances and is a matter for the local authority itself to consider – preferably in consultation with local bus operators*”.

- (b) A statutory ticketing scheme cannot include any provision setting the price to be charged for tickets, although it does permit operators to agree the price of a multi-operator travel card, subject to certain conditions, and allows operators to charge each other non-discriminatory posted prices for through tickets and add-ons.

By contrast, a VPA prohibits any “price-fixing agreement”, which means that it cannot include agreement to charge a *specific price* for any ticket. It can, however (assuming compliance with the rest of the Part 2 competition test) include agreement on the *maximum fare* for tickets covered by the scheme (including through tickets, multi-operator travel cards, multi-operator individual tickets, and short and long distance add-ons).

- (c) Different competition law tests apply. Any ticketing arrangements agreed as part of the VPA are generally subject to the test in Part 2 of Schedule 10 TA2000.

By contrast, the exercise of local authorities' functions in relation to ticketing schemes under ss. 135-138 TA 2000 fall to be assessed under the test in Part 1 of Schedule 10 TA2000 (see Schedule 10, para. 1(1)), and agreements between operators in relation to ticketing, that are not part of a VPA or a "qualifying agreement" are subject to the Chapter I prohibition CA 1998 and generally would need to meet the requirements of the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2000 (SI 2001/319).

27. To satisfy the test in Part 1 Schedule 10 TA 2000, the exercise of functions by the local transport authority in relation to a statutory ticketing scheme must not have, or be likely to have, a significantly adverse effect on competition, unless that can be justified (see below). A ticketing scheme that is not likely to have a significantly adverse effect on competition satisfies the test. OFT 452, §9 contains guidance on when a ticketing scheme should be considered to have such an effect, including where it:

- (a) prevents any operator (existing or potential) from taking part in the scheme, without any 'objective, transparent and non-discriminatory' reasons;
- (b) limits the variety or number of routes, or the price or availability of any single operator tickets offered by individual operators;
- (c) limits the frequency or timing of any public transport services operated by individual operators, except where doing so is indispensable to providing effective onward travel connections for passengers;
- (d) facilitates an exchange of commercially sensitive information between operators, except where the exchange of information is

directly related, and indispensable, to the effective operation of the scheme, and the provision requiring the exchange of information is 'objective, transparent and non-discriminatory'; or

- (e) eliminates individual operator single tickets as these can provide a competitive discipline on ticketing scheme prices.

28. Where a ticketing scheme does, or is likely to, have, a significantly adverse effect on competition, the authority making the scheme must be able to justify the exercise of its functions by virtue of:

- (a) it being with a view to achieving one or more of:
 - i. securing improvements in the quality of vehicles or facilities used for or in connection with the provision of local services,
 - ii. securing other improvements in local services of benefit to users of local services, and
 - iii. reducing or limiting traffic congestion, noise or air pollution;
and
- (b) its effect on competition being or likely to be proportionate to the achievement of that purpose or any of those purposes.

29. The test in Schedule 10, Part 1 applies only to the exercise by local transport authorities of their relevant functions in relation to a ticketing scheme. It does not apply in relation to any agreement between bus operators in connection with the ticketing scheme. However, because integrated public transport ticketing schemes can be beneficial for consumers, the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2000 (SI 2001/319) exempts certain categories of agreement from the Chapter I prohibition, subject to certain conditions being satisfied. This includes:

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

(b) a written agreement between operators to the extent that it provides for members of the public to purchase, in a single transaction, a through ticket;

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

(d) a written agreement between operators to the extent that it provides for members of the public to purchase, in a single transaction, a short distance add-on;

(e) a written agreement between one or more operators and one or more long distance operators to the extent that it provides for members of the public to purchase, in a single transaction, a long distance add-on.”

30. The different types of ticket covered are explained further in the OFT’s guidance on the block exemption, OFT439.

31. The block exemption does not preclude agreement on the price of multi-operator travel cards (i.e. tickets entitling the passenger to take three or more journeys on one or more operator). This would include the proposed daily and weekly cards travel cards in the SAQNP ticketing scheme. There appear to be several examples of such scheme already in operation in England, one example referred to in the DfT ticketing consultation is the Solent Travelcard.

32. As far as bus operators are concerned, the options for taking part in an integrated ticketing scheme are therefore:

(a) to comply with a statutory ticketing scheme put in place by the local authority (the local authority will need to justify its conduct under the Schedule 10, part 1 test) and to ensure that any separate agreements between operators in connection with the scheme, (e.g. relating to the price of a multi-operator travel card) are exempt from the Chapter I prohibition in CA 1998 by virtue of either section 9 CA 1998 or the ticketing block exemption (NB OFT452 advises (at §9) that “where the Part 1 test is satisfied the block exemption is also likely to be met”); or

- (b) to agree standards relating to ticketing as part of a VPA (or related qualifying agreement), which cannot include any “price-fixing” agreement, but can include agreement on *maximum* prices, which will be subject to the Schedule 10, Part 2 test rather than the Chapter I prohibition in CA 1998. Any agreements between operators relating to the price of a multi-operator travel card or any other would need to comply with the ticketing block exemption.

- 33. The effect of an agreement between operators being within the block exemption is that it is exempt from the Chapter I prohibition altogether (by virtue of section 6 CA 1998). Thus, any ticketing agreements between operators that comply with the block exemption do not separately need to meet the Part 2, Schedule 10, TA 2000 competition test, even if made under the auspices of a VPA.

- 34. There are various conditions that agreements between operators must meet to come within the safe haven of the block exemption. They are listed and explained in OFT439 at ¶¶4.11ff. At present, the details of the proposed zonal ticketing scheme in St Albans are broadly consistent with what would be acceptable under the block exemption. However:
 - (a) it would not be acceptable for operators to agree a “fixed fare structure” for tickets within the zone. The most that it may be possible to agree is a fixed price for a multi-operator travel card, (under the VPA) a *maximum* price for other kinds of tickets, and (if necessary) individually set “posted prices” for through tickets and add-ons;
 - (b) similarly, it is unlikely to be acceptable for participating operators to agree that they will “offer no conflicting fares within the area”. OFT 439 makes it clear (at ¶4.13) that “*a public transport ticketing scheme must not limit the variety or number of routes each operator operates, nor must it limit the ability of the operators to make commercial*

decisions about their own single or return fares or the price of single-operator season tickets. A public transport ticketing scheme must not interfere with, for example, the price, fare structure, geographic validity or availability of single operator tickets. This is to preserve the competition existing between operators on the basic building blocks of single and return tickets and to preserve the freedom of operators to provide services that meet passengers' needs"; and

- (c) the scheme would need to be open to any operator who wished to joint it (it is currently proposed that it would be).

35. Obviously, any agreement between operators would also be exempt from the Chapter I prohibition if it meets the competition test in section 9 of the CA1998, i.e. it:

- (a) contributes to
 - i. improving production or distribution, or
 - ii. or promoting technical or economic progress,while allowing consumers a fair share of the resulting benefit; and
- (b) does not
 - i. impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives, or
 - ii. afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

36. In general, however, it is likely to be more straightforward for bus operators to justify any agreement on ticket prices that falls outside a VPA by reference to the ticketing block exemption, rather s. 9 CA 1998.

OFT PROPOSED MARKET REFERENCE

37. We note that CBT and other public sector and industry parties with whom it is on contact are concerned that the OFT's August 2009 Report on the market study and proposed decision to make a market investigation reference (OFT1112con) may further discourage operators from entering into schemes permitted under the TA2000, or discussing such cooperation (particularly where prices are concerned), because of a fear of infringing competition law.
38. The apparent caution of bus operators to enter into agreements that may be in the best interests of passengers was addressed in our previous advice in August 2007. Since then, matters have obviously moved on, not least since the coming into force of the LTA 2008 and the publication of the DfT and OFT guidance documents relating to the TA 2000 as amended.
39. It does not seem to us that the OFT's market study report and proposed reference should necessarily affect the willingness of bus operators to enter into discussions under the auspices of the SAQNP or a related ticketing scheme.
40. We appreciate that some operators may regard it as further evidence that the OFT has a particular interest in the bus industry and intends to crack down on infringements of competition law in that industry. However, if anything, the OFT is expressing concerns in its latest report that operators, particularly incumbent, larger operators, are unwilling to enter into multi-ticketing arrangements with smaller rivals, and that that unwillingness / lack of incentive to do so may prevent, restrict, or distort competition (see, e.g. at ¶¶4.33-4.34).
41. At ¶¶B.11-B.13 and B.17 the OFT also expresses the view that the proposed reference does not affect its approach to VPAs or its guidance on ticketing schemes. In relation to VPAs it makes the point that the LTA2008 removes the risk of financial penalties where such agreements are entered into in good faith. On that basis, bus operators ought to be more relaxed about entering into discussions under the auspices of a VPA, since the power for OFT to

impose financial penalties in respect of a non-compliant agreement does not apply.

CONCLUSION

42. As the ticketing proposal is in its early stages, and as we are not asked to advise on any specific proposals under the VPA, there is a limit to how specific this advice can be in relation to compliance with the various competition tests under the CA 1998, and TA 2000.
43. Broadly, the ticketing proposals appear to be compatible with the Part 1, Schedule 10 test (so far as the local authority functions are concerned), and it is likely that with some adjustments, any necessary agreements between operators (including as to maximum prices) are capable of being shown to be compatible with the Schedule 10 Part 2 test as part of the VPA, or (where they relate, for example, to an agreed price for a multi-operator travel card), under the ticketing block exemption.
44. We cannot emphasise too strongly that competition law is sufficiently flexible to be adapted to the particular circumstances or context within which one or more agreements should be assessed for compatibility with the relevant statutory provisions. Our previous advice (August 2007) observed that there was a serious risk that pro-competitive and beneficial cooperative agreements between bus operators were not being pursued because of a concern that agreements or exchanges of information in respect of prices or routes would be regarded as price fixing or market sharing agreements and thus prohibited, or even subject to criminal sanctions.
45. Since then, there have been both changes to the law and further guidance given by the OFT and the DfT, which encouragingly point in the direction of regulatory support for partnership agreements between local authorities and commercial operators the object and effect of which will be to promote the use of public service networks and bring about a modal shift from private to public transport. It remains our view that those responsible for developing such partnerships and networks should look primarily at the goal of

consumer benefit and then consider what are the least restrictive means of achieving them.

46. We understand the concerns of regulatory authorities that partnership agreements should not be the means by which actual or potential competition between bus (or train) operators should be suppressed. However, we also share the concern of CBT that a bespoke agreement, which is regarded by a local authority as containing the necessary elements to secure the provision of a new and innovative bus transport system, might be frustrated by the application of a system of general rules that does not acknowledge the differences on the ground in different areas of the country, with different needs and different resources to meet those needs.
47. We are necessarily giving general advice on this occasion, as on the last occasion, even though we do have a focus in respect of the SAQNP. Our view is that the SAQNP should direct its attention first to what it expects to see delivered for the benefit of consumers and then consider the least restrictive means of delivering it, rather than working from the basis of what the general provisions of the law allow it to do. Our advice covers the general framework of those rules but should not be considered as ruling out any means which can objectively be seen as necessary for the purpose of achieving and delivering the result, with no costs to the consumer that outweigh those benefits: in other word a kind of cost/benefit appraisal .
48. We would be happy to advise further in relation to any of the current proposals or any other matter relevant to the subject matter of this Advice.

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