

LOCAL TRANSPORT ACT 2008

EXPLANATORY NOTES

COMMENTARY

Part 3: Bus Services

Section 46: Competition scrutiny of functions and agreements relating to buses

133. This section substitutes a new section for section 153 of the TA 2000. Section 153 introduces Schedule 10 to that Act, which applies a competition test to the exercise of functions by a local transport authority relating to quality partnership schemes, ticketing schemes and subsidised local services. The effect of the amendment is to apply a separate competition test and enforcement regime to voluntary partnership agreements (as defined in the substituted section 153) and certain other bus-related agreements, in place of provisions in Chapter 1 of the Competition Act 1998. *Subsection (3)* provides for the amendment of Schedule 10 to the TA 2000 by Schedule 2 to the Act.
134. *Schedule 2* amends existing provisions in Schedule 10 to the TA 2000, and also inserts additional paragraphs which will form a new Part 2 of that Schedule. The amendments to what is now Part 1 of Schedule 10 include a repeal of the provisions under which an application may be made to the Office of Fair Trading for a decision as to whether the exercise of certain local authority functions meets the competition test.
135. *Part 2* applies a modified form of the competition test in the Competition Act 1998 to voluntary partnership agreements, and to certain other agreements, where the object or effect of those agreements is the restriction, prevention or distortion of competition in the market for provision of bus services.
136. The agreements to which the test will apply are:
- agreements between the local authority and more than one operator (“voluntary multilateral agreements”);
 - agreements between the local authority and one operator (“voluntary bilateral agreements”) if, when taken together with one or more other such agreements, they would have an effect on competition; and
 - agreements between bus undertakings, decisions by associations of bus undertakings or concerted practices by bus undertakings, where the agreement, decision or practice in question has been certified by a local transport authority in accordance with paragraph 18(4) of the amended Schedule 10.
137. Paragraph 19 of the amended Schedule 10 provides that price-fixing agreements cannot be subject to the provisions in Part 2 of Schedule 10; such agreements would instead continue to fall to be considered within the provisions of the Competition Act 1998.
138. The Schedule provides that where an agreement is subject to this competition test, the prohibition in Chapter 1 of the Competition Act 1998 on agreements, decisions or concerted practices that would prevent, restrict or distort competition does not apply. The modified competition test applies in place of the provisions of the 1998 Act. The

*These notes refer to the Local Transport Act 2008 (c.26)
which received Royal Assent on 26 November 2008*

Schedule also applies investigation and enforcement powers of the OFT as set out in the Competition Act 1998, with the exception of the power to impose financial penalties, to relevant agreements which do not meet the competition test in Part 2 of this Schedule. The provision includes power for the Secretary of State to modify the application of relevant investigation and enforcement powers in the Competition Act 1998 in respect of agreements subject to this revised competition test. That power could not, however, be used to empower the OFT to impose financial penalties.

139. This section extends to England and Wales.