

ACQUISITION BY ARRIVA RAIL NORTH LIMITED OF THE NORTHERN RAIL FRANCHISE

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (CMA) has reasonable grounds for suspecting that it is or may be the case that, pursuant to section 66(3) of the Railways Act 1993, Arriva plc (Arriva), through its wholly-owned Subsidiary, Arriva Rail North Limited (ARN) has acquired Control over the enterprise engaged in supplying the railway passenger services to which the Northern Franchise Agreement relates (Northern Franchise Operator) and that, accordingly, Arriva and the Northern Franchise Operator have ceased to be distinct;
- (b) the CMA is considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (UK);
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act, the CMA makes the following order addressed to ARN and Arriva (**Order**).

Commencement, application and scope

1. This Order commences on the Commencement Date: 1 April 2016.
2. This Order applies to Arriva.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Arriva to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the Commencement Date.

Management of the Arriva and Northern Franchise businesses until determination of proceedings

4. Except with the prior written consent of the CMA, Arriva shall not, during the Specified Period, take any action which might prejudice a reference of the Transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of ARN or the Northern Franchise Business with any Arriva Business;
 - (b) transfer the ownership or Control of the Arriva Business, ARN or the Northern Franchise Business or any of their Subsidiaries; or
 - (c) otherwise impair the ability of the Northern Franchise Business or any Arriva Business to compete independently in any of the Specified Routes, which relate to the markets affected by the Transaction.
5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, Arriva shall at all times during the Specified Period procure that, except with the prior written consent of the CMA:
 - (a) ARN and the Northern Franchise Business is carried on separately from any other Arriva Business and the Northern Franchise Business's separate service, route, sales and brand identity is maintained including but not limited to the activities pursuant to the Passenger Facing Obligations;
 - (b) each of the Northern Franchise Business and the Arriva Business is maintained as a going concern and sufficient resources are made available for the development of the Northern Franchise Business and the Arriva Business, on the basis of the bid submitted by ARN for the

Northern Franchise, the Franchise Documents, and the pre-merger Business Plan(s) respectively;

- (c) except in the Ordinary Course of Business or as strictly required under Paragraph 6 of this Order, no substantive changes are made to the organisational structure of, or the management responsibilities within the Northern Franchise Business or the Arriva Business;
- (d) except in the Ordinary Course of Business or as strictly required under Paragraph 6 of this Order, the nature, description, range and quality of goods and/or services supplied in the UK by each of the Northern Franchise Business and the Arriva Business as at the Commencement Date are maintained and preserved;
- (e) except in the Ordinary Course of Business for the separate operation of the Two Businesses:
 - (i) all of the assets of the Northern Franchise Business and the Arriva Business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Northern Franchise Business or the Arriva Business are disposed of; and
 - (iii) no interest in the assets of the Northern Franchise Business or the Arriva Business is created or disposed of;
- (f) there is no integration of the information technology of the Northern Franchise Business or the Arriva Business, and the software and hardware platforms of the Northern Franchise Business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the supplier lists of the Two Businesses shall be operated and updated separately and any negotiations with any existing or potential suppliers in relation to the Northern Franchise Business will be carried out by the Northern Franchise Business alone and for the avoidance of doubt the Arriva Business will not negotiate on behalf of the Northern Franchise Business (and vice versa) or enter into any joint agreements with the Northern Franchise Business (and vice versa);
- (h) all existing contracts of the Northern Franchise Business and the Arriva Business continue to be serviced by the business to which they were awarded;

- (i) no changes are made to Key Staff and Key Personnel of the Northern Franchise Business or Arriva Business;
 - (j) no Key Staff or Key Personnel are transferred between the Northern Franchise Business and the Arriva Business;
 - (k) all reasonable steps are taken to encourage all Key Staff to remain with the Northern Franchise Business and the Arriva Business; and
 - (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the Two Businesses shall pass, directly or indirectly, from the Northern Franchise Business (or any of its employees, directors, agents or Affiliates) to the Arriva Business (or any of its employees, directors, agents or Affiliates), or vice versa, except where strictly necessary in the Ordinary Course of Business (for example, where required for compliance with external regulatory and/or accounting obligations) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.
6. This Order shall not prevent actions required to ensure compliance with:
- (a) ARN's obligations owed to the Secretary of State in relation to the Northern Franchise Business pursuant to the Franchise Agreement as at the Commencement Date; and
 - (b) Arriva's obligations owed to the Secretary of State by CrossCountry Trains Limited and Arriva Trains Wales pursuant to the CrossCountry Trains Franchise Agreement or the Arriva Trains Wales Franchise Agreement respectively as at the Commencement Date.

Compliance

- 7. Arriva shall procure that each of its Subsidiaries complies with this Order as if the Order had been issued to each of them.
- 8. Arriva shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Arriva and its Subsidiaries with this Order. In particular, on 15 April 2016 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Arriva or other persons of Arriva as agreed with the CMA shall, on behalf of Arriva,

provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.

9. At all times, Arriva shall, or shall procure that ARN shall, actively keep the CMA informed of any material developments relating to the Northern Franchise Business and the Arriva Business, which includes but is not limited to:
 - (a) copies of all requests for Secretary of State consent pursuant to the Franchise Agreement;
 - (b) copies of any notice to the Secretary of State of a breach of the terms of the Franchise Agreement;
 - (c) any Events of Default;
 - (d) details of Key Staff and Key Personnel who leave or join the Northern Franchise Business or the Arriva Business;
 - (e) any interruption of the Northern Franchise Business or Arriva Business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the Ordinary Course of Business for more than 24 hours;
 - (f) all substantial passenger volumes won or lost or substantial changes to the supplier contracts for the Northern Franchise Business or Arriva Business including any substantial changes in passenger and/or supplier demand;
 - (g) substantial changes in the Northern Franchise Business or Arriva Business's contractual arrangements or relationships with key suppliers; and
 - (h) Arriva shall notify the CMA at least 28 days in advance of any proposed timetable, price or route changes made in the Ordinary Course of Business to Specified Routes.
10. If Arriva has any reason to suspect that this Order might have been breached, it shall immediately notify the CMA and any monitoring trustee that Arriva may be directed to appoint under paragraph 11.
11. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure

compliance with the Order. The CMA may vary or revoke any directions so given.

12. Arriva shall comply in so far as it is able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

14. For the purposes of this Order:

'ARN' means Arriva Rail North Limited (Company number 04337712, Companies House);

'Act' means the Enterprise Act 2002;

'Affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

'Arriva' means Arriva PLC (Company number 00347103; Companies House) and its Subsidiaries;

'Arriva Business' means all businesses engaged in or relating to the provision of passenger rail services and bus services operated by Arriva and its Subsidiaries insofar as they relate to the Specified Routes as at the Commencement Date, in particular its Subsidiaries known to be:

- operating rail services: CrossCountry Trains Limited; Arriva Trains Wales; Grand Central Railway Company Limited; DB Regio Tyne and Wear Metro Limited; and Alliance Rail; and
- operating bus services: Arriva Durham County Limited; Arriva North West limited; Arriva Northumbria Limited; Arriva Tees & District Limited; Arriva Yorkshire Limited; and Yorkshire Tiger Limited;

but, for the purposes of the operative provisions of this Order, excluding the Northern Franchise Business;

'Arriva Trains Wales Franchise Agreement' means the Franchise Agreement relating to the services for the carriage of passengers by railways to be provided by Arriva Trains Wales/Trenau Arriva Cymru Limited between (1) The Strategic Rail Authority, (2) Arriva Trains Limited and (3) Arriva Trains Wales/Trenau Arriva Cymru Limited dated 18 October 2003;

'business' has the meaning given by section 129(1) and (3) of the Act;

'Business Plan' means the Initial Business Plan (as defined in the Franchise Agreement) or any Annual Business Plan (as defined in the Franchise Agreement), as the context requires, to be delivered in accordance with paragraph 2.1 and 2.3 of Schedule 13 (Information and Industry Initiatives) of the Franchise Agreement;

'Certificate of Commencement' means the certificate to be issued by the Secretary of State pursuant to the Conditions Precedent Agreement;

'Commencement Date' means 1 April 2016;

'Conditions Precedent Agreement' means the agreement between the Secretary of State and ARN of the same date as the Franchise Agreement specifying certain conditions to be satisfied or waived by the Secretary of State prior to the issue of a Certificate of Commencement;

'Control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

'CrossCountry Trains Franchise Agreement' means the New Cross Country Franchise Agreement incorporating by reference the National Rail Franchise Terms (Third Edition) between the Secretary of State for Transport and Arriva Trains Cross Country Limited dated 9 July 2007;

'decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

'Event of Default' means any of the events set out in paragraph 2 of Schedule 10.3 of the Franchise Agreement;

'Franchise Agreement' means the Agreement and the Conditions Precedent Agreement (which together constitute a single agreement which is a 'franchise agreement' for the purposes of the Railways Act 1993 and any regulations or orders made thereunder) which was entered into between ARN and the Secretary of State on 22 December 2015;

'Franchise' means the rights tendered by the Secretary of State in February 2015 to operate railway passenger services over the routes prescribed in paragraph 2.2 of Schedule 1.6 (Franchise Services) of the Franchise Agreement;

'Franchise Documents' means: (a) the Franchise Agreement, Train Service Requirement (as defined in the Franchise Agreement), Funding Deed (as defined in the Franchise Agreement) and Conditions Precedent Agreement; and (b) any other agreement signed by ARN at the time of the award of the Franchise which is in the possession of the Secretary of State and which is notified by the Secretary of State to ARN as being required for publication;

'Franchise Services' means such of the Passenger Services (as defined in the Franchise Agreement), the Light Maintenance Services (as defined in the Franchise Agreement), the Station Services (as defined in the Franchise Agreement) and the Ancillary Services (as defined in the Franchise Agreement) as ARN may provide or operate from time to time, including any of such services as ARN may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;

'Key Personnel' means those persons identified by ARN in accordance with paragraph 2.1 of Schedule 11 (Agreement Management Provisions) of the Franchise Agreement;

'Key Staff' means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business (including but not limited to those listed in the Key Contacts List (as defined in the Franchise Agreement));

'Northern Franchise Business' means the business carried out by the ARN, comprising the Franchise Services insofar as they relate to the Specified Routes as at the Commencement Date;

'Northern Franchise Operator' means the enterprise engaged in supplying the railway services to which the Northern Rail Franchise Agreement relates;

'Ordinary Course of Business' means matters connected to the day-to-day supply of goods and/or services by Northern Franchise or Arriva and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Northern Franchise Business and Arriva;

'Passenger Facing Obligations' means the obligations specified in Schedule 1.4 of the Franchise Agreement;

'Specified Period' means the period beginning on the Commencement Date and terminating in accordance with section 72(6) of the Act;

'Specified Routes' means each entire bus service route or rail overlap flow serviced by Arriva or the Northern Franchise Operator as represented in Schedule 1 of this Order based on the information provided by Arriva;

'Subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'Transaction' means the transaction by which ARN and the Northern Franchise Operator have ceased to be distinct within the meaning of section 23 of the Act;

'Two Businesses' means the Arriva Business and the Northern Franchise Business;

unless the context requires otherwise, the singular shall include the plural and vice versa.

Greg Bonné
Assistant Director, Mergers

Schedule 1: Specified Routes



Compliance statement for Arriva

I [insert name] confirm on behalf of Arriva that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Arriva has complied with the Order made by the CMA in relation to the Transaction on 1 April 2016 (the Order).
 - (b) Arriva's Subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Arriva that might prejudice a reference of the Transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Northern Franchise Business with the Arriva Business;
 - (ii) transfer the ownership or Control of the Arriva Business or the Northern Franchise Business or any of their Subsidiaries; or
 - (iii) otherwise impair the ability of the Northern Franchise Business or the Arriva Business to compete independently in any of the markets affected by the Transaction.
 - (b) The Northern Franchise Business has been carried on separately from the Arriva Business and the Northern Franchise Business's separate service, route, sales or brand identity has been maintained.
 - (c) The Northern Franchise Business and the Arriva Business have been maintained as a going concern and sufficient resources have been made available for the development of the Northern Franchise Business and the Arriva Business, on the basis of the bid submitted by ARN for the Northern Franchise, the Franchise Documents, and the pre-merger Business Plan(s) respectively.
 - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Northern Franchise

Business or the Arriva Business, except in the Ordinary Course of Business.

- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Northern Franchise Business and the Arriva Business have been maintained and preserved.
- (f) Except in the Ordinary Course of Business for the separate operation of the Two Businesses:
 - (i) all of the assets of the Northern Franchise Business and the Arriva Business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Northern Franchise Business or the Arriva Business have been disposed of; and
 - (iii) no interest in the assets of the Northern Franchise Business or the Arriva Business has been created or disposed of.
- (g) There has been no integration of the information technology of the Northern Franchise Business or Arriva Business, and the software and hardware platforms of the Northern Franchise Business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the Commencement Date, the supplier lists of the Two Businesses have been operated and updated separately and any negotiations with any existing or potential suppliers in relation to the Northern Franchise Business have been carried out by the Northern Franchise Business alone and, for the avoidance of doubt, the Arriva Business has not negotiated on behalf of the Northern Franchise Business (and vice versa) or entered into any joint agreements with the Northern Franchise Business (and vice versa).
- (i) All existing contracts of the Northern Franchise Business and the Arriva Business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the Commencement Date.
- (j) No changes have been made to Key Staff and Key Personnel of the Northern Franchise Business or the Arriva Business.
- (k) No Key Staff or Key Personnel have been transferred between the Northern Franchise Business and the Arriva Business.

- (l) All reasonable steps have been taken to encourage all Key Staff to remain with the Northern Franchise Business and the Arriva Business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the Two Businesses, has passed, directly or indirectly, from the Northern Franchise Business (or any of its employees, directors, agents or Affiliates) to the Arriva Business (or any of its employees, directors, agents or Affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
 - (i) requests for Secretary of State consent pursuant to the Franchise Agreement;
 - (ii) notices to the Secretary of State of a breach of the terms of the Franchise Agreement;
 - (iii) Events of Default;
 - (iv) Key Staff or Key Personnel that have left or joined the Northern Franchise Business or the Arriva Business;
 - (v) interruptions of the Northern Franchise Business or the Arriva Business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the Ordinary Course of Business for more than 24 hours;
 - (vi) substantial passenger volumes won or lost or substantial changes to the passenger tickets and/or terms for the Northern Franchise Business or the Arriva Business; or
 - (vii) substantial changes in the Northern Franchise or Arriva Business's contractual arrangements or relationships with key suppliers.
- (o) *[list of material developments]*

3. Arriva and its Subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Northern Franchise Business and the Arriva Business in accordance with paragraph 9 of the Order.

Interpretation

- 4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF Arriva

Signature

Name

Title

Date