

ARRIVA/NRF PROVISIONAL FINDINGS – RESPONSE

Arriva's comments on the CMA's Provisional Findings ("PFs") are set out in the table below and in the separate note on Appendix F attached.

PFS REF.	ARRIVA COMMENT
1. GENERAL PROCEDURAL ISSUES	
--	<p>Concerns regarding the CMA's approach to standard of proof, theories of harm and findings of SLC</p> <ul style="list-style-type: none"> • The CMA must satisfy itself, on the balance of probabilities, that the Award may be expected to result in an SLC. • Throughout the PFs, the CMA has made assumptions and leaps of logic which do not meet the standard of proof needed in order to appropriately find an SLC. • The CMA has not even clearly articulated its theories of harm in the PFs: it is difficult to understand what the CMA's merger-specific concerns about the impact of the Award on competition are, and how the evidence it has gathered supports those concerns. • It is also unclear for bus/rail overlap flows whether the CMA considers that an SLC arises only on the flows where it has identified concerns, or on the whole of each route on which there are such flows. The PFs are internally inconsistent on this and the CMA itself does not seem to be clear on the approach it is taking, which is of serious concern to Arriva. • The CMA also takes a cautious approach to several measures in its assessment (in particular, its use of its MOIRA analysis and the GJC threshold) but then applies these "cautious" thresholds as hard benchmarks in its assessment without any acknowledgement that they are cautious and therefore overstate the degree of concern about the relevant flow. • The CMA states a number of times that it will deal with aspects of the assessment in more detail on individual flows but fails to do so (e.g. in paragraph 6.25 the CMA states that it considered submissions on constraints from private transport where relevant in its assessment of individual flows, but in many cases it simply refers back in a circular way to its general assessment without assessing the situation on the specific flow in question at all).
--	<p>Use of this case as a "guinea pig"/opportunity to establish a gold standard</p> <ul style="list-style-type: none"> • The CMA informally indicated to Arriva's advisers that it was using this investigation as a "guinea pig" and indicated to Arriva that it saw this investigation as an opportunity to review its previous practice in transport mergers and establish a new gold standard. • This is entirely unwarranted/inappropriate, particularly to the extent that this approach has led to Arriva having to invest additional management time and resource in the investigation (e.g. the CMA's failure to settle catchment areas and filters for bus/rail overlaps until a very late stage of the process led to Arriva wasting time and resource on assessing overlap flows which were not ultimately

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	assessed in detail).
--	<p>The CMA did not provide Arriva with an opportunity to address the CMA's concerns about individual rail/rail overlap flows</p> <ul style="list-style-type: none"> • The CMA did not give Arriva any indication that it had concerns about any specific rail/rail flows at any stage prior to PFs. • There was almost no discussion of individual rail flows at the main hearing on 4 August. • Arriva invited the CMA to engage in a substantive discussion about rail/rail flows on several occasions subsequently, but received no response. • The CMA did not hold a follow-up meeting with Arriva to discuss individual rail flows (whereas a follow-up meeting was held to discuss the bus/rail overlap flows on which the CMA was focusing, although see further below on this subject). • Arriva has therefore had no opportunity to understand or seek to address the CMA's concerns about the rail/rail flows on which it has provisionally found an SLC.
--	<p>There are also procedural issues with the way the CMA has handled bus/rail overlap flows</p> <ul style="list-style-type: none"> • The CMA did not put to Arriva several routes/flows on which it has provisionally found an SLC (the 83, 84 and 12) at any stage prior to issuing the PFs, despite having a meeting with Arriva the purpose of which was to discuss the bus/rail overlap flows it was focusing on. • As mentioned above, it is not clear whether the CMA provisionally considers that an SLC arises only on the <i>flows</i> where it has identified concerns, or the whole of each <i>route</i> on which there are such flows. Nor is it clear to Arriva how the CMA could find an SLC on routes in their entirety where it has defined the market on a flow basis: the CMA would be finding concerns outside the markets that it has defined in which there are overlaps (except in so far as the route is in itself is a flow on which the CMA has provisionally found an SLC).
--	<p>The CMA provided insufficient putback, and did not take proper account of the responses to putback submitted by Arriva. For example:</p> <ul style="list-style-type: none"> • The CMA provided no putback on its overall assessment of bus/rail overlap flows. • The CMA did not provide sufficient detail on its MOIRA analysis for Arriva to fully understand how the CMA's analysis had been carried out. • Oxera submitted a full response to the concerns voiced by the CMA regarding the design and conduct of the survey (in initial comments following the meeting on 18 August and in response to the CMA's putback from Appendix F of the PFs), which the CMA failed to engage with.

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	<ul style="list-style-type: none"> The CMA indicated to Arriva that it would be taking account of the results of its survey, but has only done so in a very limited, selective and misrepresentative way and has not given Arriva the opportunity to comment on its use of the survey results. The CMA did not indicate to Arriva that it would not be taking account of Arriva's GJC analysis and did not put its own analysis to Arriva or give Arriva an opportunity to comment on its methodology,. The CMA failed to conduct its own profit-incentive analysis, and gave Arriva no opportunity to engage with the CMA on the concerns it has voiced about Arriva's own profit-incentive analysis. The CMA instead carried out a high-level GUPPI analysis to assess incentives, which was not put to Arriva at any stage prior to the PFs.
--	<p>The CMA has not taken proper account of the evidence submitted by Arriva or provided Arriva with sufficient opportunity to address its concerns about that evidence. For example:</p> <ul style="list-style-type: none"> The CMA expressly requested evidence on the competitive constraint posed by private transport, which Arriva duly provided. At no point did the CMA indicate that it would not take account of that evidence unless it fit strictly within the confines of the hypothetical monopolist test, or that Arriva should seek to fit its evidence into that framework (even after the CMA had had time to review and evaluate that evidence). The CMA did not appear to have realised that Arriva had not submitted evidence on the Manchester-Stoke-on-Trent flow prior to receiving the CMA's rail/rail putback paper (in which the CMA indicated that it would analyse that flow in light of Arriva's internal documents), or seem particularly interested in receiving that evidence.
--	<p>Limited access to third party evidence</p> <ul style="list-style-type: none"> The CMA has only published summaries of hearings with three third parties. Arriva understands that the CMA is likely to have spoken to several other third parties at least informally (indeed, references to evidence from these third parties appear in the PFs) but no summary of evidence received through those discussions has been published. As such Arriva has not had a full opportunity to respond to evidence provided by third parties.
2. SUMMARY	
41	<ul style="list-style-type: none"> The number of overlaps depends on the particular catchment area adopted. It would be appropriate for the CMA to specify that there are 1,068 bus-rail overlaps based on a 1,200m walking distance catchment area.
56	<ul style="list-style-type: none"> Arriva's previous comments in response to the CMA's putback paper on the survey (submitted 5 September 2016), and many of which were also included in Oxera's note 'Response to the CMA's feedback on the bus-rail survey' (submitted 23 August 2016) have not been taken into account or even noted by the CMA. It is important that the CMA considers these comments and amends

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	<p>the paragraphs accordingly.</p> <ul style="list-style-type: none"> • Arriva's note makes clear that there are no significant methodological issues in the design of the survey. Furthermore, the CMA did not previously raise many of these concerns about the survey during the meeting with Arriva or during subsequent opportunities that it had to review the survey in advance of the fieldwork commencing. • In addition, while in Appendix F the CMA notes that it has identified some concerns with interviewers on particular flows, these do not apply to all flows. It would be appropriate for the CMA to take account of survey results on flows where there have been no interviewer-specific issues and which have over 100 respondents, which include the flows on routes 110 (Leeds – Wakefield Westgate, Leeds –Outwood), X14/X15/X16/X18 (Morpeth – Newcastle), 189 (Castleford – Wakefield Westgate), 4/X4 (Middlesbrough- Redcar Central), 410 (Leeds – Pontefract Monkhill) and X9 (Cramlington – Newcastle). • Arriva's more detailed response to the CMA's comments on the survey is attached separately.
3. COUNTERFACTUAL	
5	<p>Arriva disagrees with the CMA's conclusion on the appropriate counterfactual</p> <ul style="list-style-type: none"> • Arriva notes that the two situations set out in paragraph 4.3.29 of the Merger Assessment Guidelines are not equivalent, and do not have the same effect: the second alternative would otherwise be completely redundant. The guidance could easily have been worded differently if the underlying intention had been as the CMA suggests. • In this case, there is no bidder who would not have raised concerns. The starting point must therefore be a bidder that does raise competition concerns. It must be acknowledged that remedies would not necessarily resolve those concerns entirely or result in the status quo being retained entirely, given the need for a proportionality assessment prior to the implementation of remedies.
4. MARKET DEFINITION	
6.10	<p>Generalised journey cost analysis needs to be deployed appropriately</p> <ul style="list-style-type: none"> • GJC is part of the assessment of closeness of competition, but a small differential in GJC between overlapping services does not automatically lead to the conclusion that the services are close competitors as the CMA assumes (without foundation). Rather, it is necessary to look more closely at the characteristics of those services to determine whether in fact they are close substitutes or not. This point was raised with the CMA staff and panel during the hearing on 4 August. • In many instances where there is a small differential in GJC (particularly between bus and rail services), it is entirely possible that bus and rail are not good substitutes for individuals but that different groups of passengers prefer each of the two services. For example, a high price, fast rail service may have a very similar GJC to a low price, slow bus service. The CMA takes no account of this and jumps instead to the conclusion that the services are close substitutes.

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6.16-6.27	<p>Arriva disagrees with the CMA's assessment of the constraint from private transport. The CMA has not taken proper account of Arriva's extensive evidence on this.</p> <ul style="list-style-type: none"> • The CMA does not properly reflect the extensive evidence submitted by Arriva on the constraint from car. For example, the CMA makes no reference to the materials set out in Annex D to Arriva's response to annotated issues statement and hearing follow-up (submitted on 16 August); there is no reference to the census data analysis in Arriva's submission dated 24 August (which clearly evidences a competitive constraint from the car); and there is no substantive analysis of the Sapphire research presented by Arriva in its submission of 16 August. • While this evidence submitted by Arriva does not directly address whether Arriva could profitably increase the prices of its bus or rail services given the presence of private transport, it does provide strong evidence about the constraints imposed by the car which the CMA has not taken into account. • With regard to paragraph 6.20 of the PFs, Arriva notes that: <ul style="list-style-type: none"> ○ There may be other extraneous reasons that bus patronage appears to have remained stable while bus fares have risen in the data used by the CMA, and therefore the CMA's conclusion that switching between bus and car is limited is a very simplistic one. As the CMA notes, the comparison does not control for other factors which might affect journey numbers over time, which is a very significant caveat (but is relegated to a footnote). For example, since 2005, the English National Concessionary Fare Scheme has been introduced to provide free fares for older people and disabled people and this has bolstered patronage significantly (i.e. offsetting any underlying decline or switch to travel by car). [§]. ○ Arriva has provided evidence of declining bus use to the CMA, including specifically in the North East, Yorkshire and the Humber, and the North West (see section 3 of Annex D to Arriva's response to the annotated issues statement and hearing follow-up, submitted on 16 August). This data relates specifically to the areas which are the subject of the CMA's investigation and is therefore of more probative value than data which covers the whole of England excluding London, given that the latter does not show the variation in trends by region. ○ Recent trends illustrate a clear link between pump fuel prices and bus patronage. In 2015, pump fuel prices started to fall sharply; in December 2015, they reached a low of 99p per litre and remain at about £1.10 per litre now. Over the same period bus patronage fell sharply and remains depressed (see, for example, the BBC article referred to at section 3.7 of Annex D to Arriva's response to the annotated issues statement and hearing follow-up, submitted on 16 August) . ○ There is therefore no real basis for the conclusion that switching between bus and car is limited, particularly in the geographic areas which are the subject of the CMA's investigation. • Arriva notes that favourable evidence from third parties regarding the constraint from car (including the detailed evidence provided by First in its response to the CMA's issues statement) has also been relegated to footnotes. • Arriva was surprised and disappointed to read paragraph 6.26 of the PFs as it suggests the CMA has fundamentally misunderstood

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	<p>the purpose and design of the survey exercise. As Arriva has previously noted, including in the survey report submitted to the CMA on 17 August, the survey specifically focused on flows that remained after the application of filters. This includes the effective competitor filter, which excluded flows where a competitor has at least 50% of Arriva's peak weekday frequency. Therefore, on the flows surveyed there were few or no bus competitors present. As also noted in the survey report, as the flows were selected after the application of the revenue increment and bus and rail de minimis filters, they are therefore by definition flows that have material bus and rail revenues and, importantly, the revenue imbalance between bus and rail is not extreme. This implies that both Arriva bus and Northern rail are likely to be viable options for travel on these flows. It is therefore not surprising that more passengers would divert to rail than to bus on these flows and the CMA should therefore remove this misleading paragraph from the PFs. Also importantly, for these reasons, it is not possible to extrapolate the conclusions from the surveyed flows to other, non-surveyed flows.</p> <ul style="list-style-type: none"> • Even if the CMA does not conclude that the private car is part of the same market as bus and rail, the CMA should have properly considered on a flow by flow basis whether it nonetheless acts as a constraint on the market from outside it. The CMA fails to do so.
6.30-6.45	<p>Comments on CMA's approach to geographic market definition</p> <ul style="list-style-type: none"> • With regard to paragraph 6.38, in its submissions Arriva proposed a 400m straight line or 650m walking distance catchment for intra-urban flows. • With regard to paragraphs 6.40-6.44: <ul style="list-style-type: none"> ○ Arriva has previously raised questions about the NTS data and concerns about how it is used which have not been addressed by the CMA. For instance, in the bus-rail putback, the CMA included 'coach/express bus' in the bus category so that the walking distances for National Express services are used to define the catchment area for local Arriva services. Arriva considers that such services may not be relevant for assessing the catchment area for Arriva bus services, as previously noted in Arriva's response to the bus-rail putback. ○ The CMA also notes that data was not available from NTS in relation to intra-urban flows and that it has therefore not adopted a different catchment area for these flows. However, the CMA could examine how walking distances differ across different in-vehicle times for bus/rail journeys. This could help determine the correct catchment area for intra-urban flows. ○ The CMA also notes that it considers intra-urban catchment areas as relevant in the flow-by-flow analysis. However, this does not appear to be addressed. • With regard to paragraph 6.45: <ul style="list-style-type: none"> ○ The figure of 179 bus-rail routes does not appear to be up to date: 197 routes (containing 1,068 flows) are identified in the latest version of the pro forma provided to the CMA on a 1,200m walking distance basis (see e-mail of Michele Granatstein to Andreas Hoefele, 1 August, 23:54). In addition, adopting an intra-urban definition can significantly alter the number of

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	<p>routes from this figure: adopting a 650m walking distance catchment area for intra-urban catchment areas (defining intra-urban as initially proposed by Oxera) results in 168 routes being identified, containing 727 flows (see the same e-mail). Using the intra-urban approach would therefore identify 15% fewer routes and 32% fewer flows. Therefore in Arriva's view it is incorrect to assert that the choice of catchment area does not have a significant impact on the number of overlaps.</p> <ul style="list-style-type: none"> ○ Furthermore, by adopting catchment areas that are inappropriately large for intra-urban flows, the CMA substantially overstates the amount of bus revenue that overlaps with rail on these flows. This in turn distorts the application of the filters.
5. COMPETITION FOR THE MARKET	
7	<p>Arriva welcomes the CMA's provisional conclusion that there is no SLC in the award of rail franchises</p> <ul style="list-style-type: none"> • Arriva agrees with the CMA's conclusion and notes that this is consistent with the evidence available to Arriva. • Arriva notes also that third parties did not express concerns.
6. RAIL/RAIL	
<i>General points on CMA approach and methodology</i>	
10.7(b)	<p>Changes to dedicated tickets restricted to the services of individual TOCs</p> <ul style="list-style-type: none"> • As described below in the flow-by-flow analysis in further detail, the numbers of dedicated fares on the relevant flows are [X].
10.7(c)	<p>Definition of inter-available tickets and assessment of routed tickets</p> <ul style="list-style-type: none"> • The CMA's consideration of routed tickets is overly restrictive. • This is inconsistent with CMA's definition of inter-available fares elsewhere in the PFs (see for example paragraph 8.18 where the CMA states that "<i>inter-available fares are (by definition) accepted across multiple TOCs</i>" and the CMA's definition of dedicated fares at 8.20 as a ticket offered by an operator "<i>which is only available on their own services</i>"). • Routed tickets (and in particular those which permit travel on the services of multiple TOCs) should be considered as inter-available tickets. <ul style="list-style-type: none"> ○ In many cases, a routed inter-available ticket can be used for travel on both Northern and Arriva operators (as well as third parties operating on that routing), showing a lack of pre-merger price competition between the Parties. ○ In many cases, a routed inter-available ticket allows travel on a direct/fast route which the vast majority of passengers

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	<p>would use in any case (e.g. on the Leeds-Sheffield flow).</p> <ul style="list-style-type: none"> ○ Even where there is only one operator on the flow (e.g. Chester-Stockport) there is nothing in the construct of a routed fare that would prevent another operator from serving the route and the routed fare being available to that operator as well.
10.12 to 10.15	<p>Suitability of MOIRA for analysis</p> <ul style="list-style-type: none"> • The CMA has conducted MOIRA analysis to examine the effects of removing Northern services and therefore Northern's incentives to degrade services/raise fares on specific flows. Arriva has previously responded to this analysis (response to rail-on-rail put back paper, 3 August) and noted that the removal of a whole train from a timetable or the removal of an origin or destination station is quite an extreme scenario to test within MOIRA. • Arriva suggested that a more robust approach may be to anticipate potential changes that would be of a much smaller nature and therefore appropriate for use of MOIRA. For example, Arriva has previously suggested modelling the impact of a 10% fare increase and converting this to a GJT equivalent through a journey time increase in MOIRA. This would have avoided the issues mentioned by the CMA in footnote 193 regarding MOIRA not accounting for fare differences. • The CMA's MOIRA analysis is unsuitable to identify price competition between the TOCs. MOIRA simulates timetable degradation, including the removal of origin or destination stations from a timetable. However, the focus of the CMA's analysis is price competition as, on the CMA's own assessment, fare increases could potentially be a more likely outcome than service degradation, given the existing regulatory constraints on non-price aspects. Arriva considers it surprising that the CMA uses the MOIRA analysis based on timetable changes as a proxy for fare increases to conclude that there may be SLCs on four rail-rail flows based on the potential for price increases. • The CMA fails to explain adequately in the PFs why MOIRA represents an appropriate proxy for identifying price competition between TOCs. Indeed, at footnote 193 of the PFs, the CMA acknowledges that fare differences are not accounted for in MOIRA but states this is not a significant issue "<i>given that inter-available fares are a relatively small share of flow revenues on the remaining flows</i>". Conversely, at Appendix E, Annex 1, paragraph 24, the CMA states that "<i>where there is a large share of inter-available fares i.e. the proportion of routed tickets is low, this is deemed to be less of an issue</i>". • The CMA applies MOIRA and the resultant revenue ratio analysis as a hard benchmark, without giving appropriate account to the fact that it should, at most, be used as a cautious threshold. While the CMA acknowledges (at Appendix E, Annex 1, paragraph 21) that care should be taken when interpreting the results of the MOIRA analysis, this cautious approach has not been applied in practice in the flow by flow analysis. The CMA has applied MOIRA as the principal indicator of closeness of competition between TOCs rather than using the evidence in the round (as was indicated in Appendix E). • The CMA did not provide sufficient detail on its MOIRA/revenue ratio analysis for Arriva to fully understand how the CMA's analysis had been carried out – Arriva set out its concerns to the CMA in this regard in the response to the rail-rail put-back on 3 August 2016.

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	<ul style="list-style-type: none"> As noted above, Arriva proposed an alternative, and more robust, modelling approach in the response to the rail-rail put-back of 3 August 2016 but the CMA does not appear to have taken this into account in the PFs. The CMA has also not engaged properly with the GJC analysis which was put forward by Arriva in respect of the rail-rail overlap flows. 									
10.21	<ul style="list-style-type: none"> The CMA sets out at paragraph 10.21 the factors which it proposes to apply in the round to the flow by flow analysis to assess whether the Award has resulted or may be expected to result in an SLC on overlapping rail flows. However, the CMA does not appear to have applied properly its own factors when assessing rail/rail competition on a flow by flow basis. By way of example, on the Leeds-Sheffield and Wakefield-Sheffield flows, the CMA has not given appropriate account to the clear constraints from fare regulation, and the difficulties that exist in respect of changing individual fares (paragraph 10.21(d)). On the Chester-Manchester and Chester-Stockport flows, the CMA has also not given appropriate account to the [redacted] which arise as a result of the Award on these flows (paragraph 10.21(a)). Furthermore, on these four flows, the CMA has considered in summary fashion only the potential constraint from coach or car journeys (paragraph 10.21(b)). 									
10.21(c)	<ul style="list-style-type: none"> At paragraph 10.21(c), the CMA proposes to consider on a flow by flow basis whether there is evidence of pre-merger competition on dedicated fares where both Northern and other Arriva TOCs offer dedicated fares. These fares appear to include, on the CMA's analysis, inter-available routed tickets. As noted above, Arriva disagrees with the CMA's analysis. The CMA states that it is "<i>mindful of drawing inferences from fare differentials alone, since ticket types may be differentiated (e.g. in relation to the level of flexibility they offer)</i>". However, the CMA fails to outline precisely what criteria it plans to take into account when assessing the level of pre-merger competition in respect of (what it considers to be) dedicated fares. 									
Table 6	<ul style="list-style-type: none"> The proportion of dedicated fares (if understood as advance ticket sales) is very different to the figures which were presented in the pro-forma provided by Arriva to the CMA and in the detailed Arriva data which was provided to the CMA in mid-August 2016. Arriva sets out below the proportion which dedicated fares (as defined above) comprise of flow revenue on the 11 flows set out at Table 6. <p>Table 1.1 Dedicated fare proportion as a proportion of flow revenue</p> <table border="1" data-bbox="398 1203 1332 1375"> <thead> <tr> <th data-bbox="398 1203 712 1315"></th> <th data-bbox="712 1203 1014 1315">Dedicated fares as a proportion of flow revenue (including third party)</th> <th data-bbox="1014 1203 1332 1315">Dedicated fares as a proportion of flow revenue (excluding third parties)</th> </tr> </thead> <tbody> <tr> <td data-bbox="398 1315 712 1347">Leeds-Sheffield</td> <td data-bbox="712 1315 1014 1347">[redacted]</td> <td data-bbox="1014 1315 1332 1347">[redacted]</td> </tr> <tr> <td data-bbox="398 1347 712 1375">Wakefield-Sheffield</td> <td data-bbox="712 1347 1014 1375">[redacted]</td> <td data-bbox="1014 1347 1332 1375">[redacted]</td> </tr> </tbody> </table>		Dedicated fares as a proportion of flow revenue (including third party)	Dedicated fares as a proportion of flow revenue (excluding third parties)	Leeds-Sheffield	[redacted]	[redacted]	Wakefield-Sheffield	[redacted]	[redacted]
	Dedicated fares as a proportion of flow revenue (including third party)	Dedicated fares as a proportion of flow revenue (excluding third parties)								
Leeds-Sheffield	[redacted]	[redacted]								
Wakefield-Sheffield	[redacted]	[redacted]								

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	York-Wakefield	[X]	[X]
	Bradford-Halifax	[X]	[X]
	Chester-Manchester	[X]	[X]
	Chester-Stockport	[X]	[X]
	Chester-Manchester Airport	[X]	[X]
	Earlestown-Manchester	[X]	[X]
	Newton-le-Willows- Manchester	[X]	[X]
	Manchester-Wilmslow	[X]	[X]
	Manchester-Stoke on Trent	[X]	[X]
Leeds - Sheffield			
-	<p>On this flow, the CMA has provisionally found that there was competition between Northern and CrossCountry and that the merger may lead to higher routed fares and higher dedicated fares or the removal of dedicated fares. Arriva strongly disagrees with the CMA's analysis.</p> <p>The CMA's analysis is not well reasoned or evidenced and does not meet the appropriate standard of proof</p> <ul style="list-style-type: none"> • The CMA makes bald assertions without evidence or detailed reasoning to support its position. <p>The CMA has not properly articulated or considered a theory of harm as to why fares would rise <u>as a result of</u> the merger</p> <ul style="list-style-type: none"> • No explanation is provided as to why the merger will lead to higher routed and dedicated fares or the removal of dedicated fares, other than that Northern sets the routed fare. • Based on the CMA's own analysis, it is clear that there is very little scope for harm on this flow: <ul style="list-style-type: none"> ○ VTEC is the lead operator and sets the inter-available fares for all TOCs on the flow. There is no price competition in respect of these fares and there will be no change to these fares as a result of the Award. ○ Northern is already the flow operator for the 'not via Doncaster' routed fare and sets routed fares for Northern, CrossCountry and certain EMT services. There was no price competition in respect of these fares as between Northern and CrossCountry pre-merger. If Northern wanted to increase unregulated routed fares, it could already do so pre-merger. ○ [X] of tickets sold on this flow are at regulated prices. These fares cannot be increased by more than is permitted by regulation. • In relation to dedicated fares: 		

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	<ul style="list-style-type: none"> ○ The CMA has not taken into account properly Arriva's point that there is limited competition between CrossCountry and Northern's dedicated fares: CrossCountry's fare is nearly twice the price of Northern's dedicated fare. ○ There was clearly headroom for Northern to increase its dedicated fares closer to that of CrossCountry pre-merger, but it has not done so. The CMA has not set out a merger-specific theory of harm as to why it would do so now. ○ The CMA has not taken into account properly the constraint provided by EMT's dedicated fare. For people who want to travel at the lowest price (and are therefore willing to book AP tickets on specific trains), EMT would be a valid alternative if Northern were to increase/withdraw its dedicated fares even if sales of EMT dedicated tickets are not currently high. This constrains Northern's ability to increase or withdraw dedicated tickets on this flow. <p>The CMA has not evidenced that Arriva would have merger-specific incentives to raise routed or dedicated fares / withdraw dedicated fares</p> <ul style="list-style-type: none"> ● The CMA has not properly evidenced the assertion that Arriva would have the incentives to increase unregulated/dedicated fares and has not taken into account at all the comments made at the hearing on 4 August regarding how difficult it would be to identify and tweak individual fares in a way that did not cause unintended consequences. ● In any event, unregulated fares [X] of tickets sold on the flow, and dedicated fares account for [X]. ● There are very limited incentives to increase any unregulated/dedicated tickets or withdraw dedicated tickets given the small proportion of revenue accounted for by them. Arriva notes that the unregulated tickets on this flow account for [X] of total route revenue for Northern and [X] of total route revenue for CrossCountry. Dedicated tickets on this flow account for [X] of total route revenue for Northern and significantly [X] of total route revenue for CrossCountry. <p>Competition between CrossCountry and Northern on this flow is more limited than CMA has acknowledged</p> <ul style="list-style-type: none"> ● There was limited price competition between CrossCountry and Northern on this flow pre-merger, as set out above. ● As noted above, the CMA's MOIRA analysis is unsuitable to identify price competition between the operators (which is the focus of the CMA's analysis). In any event, a RR ratio of [X] is: (i) [X] 50% threshold used to prioritise flows; (ii) and gives a conservative view of the closeness of competition given that it essentially models a forced frequency diversion, rather than a price increase. The CMA has not properly taken this into account. ● The CMA has not taken any account of Arriva's previous explanation of the internal documents referenced by CMA, or of the different areas of focus of the CrossCountry and Northern franchises, both of which were outlined in Arriva's response to the rail/rail putback on 9 September 2016.
10.41	<ul style="list-style-type: none"> ● See Arriva's general comments above on the use of MOIRA analysis, in particular given the CMA's focus on price rises. ● The MOIRA analysis only shows an RR ratio of [X]. This is [X] to the 50% threshold used by the CMA to prioritise flows and will in

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	<p>any event overstate the position given that it models a "forced diversion" in essence. Adjusting for this suggests that they are not particularly close alternatives. Arriva also notes that Wakefield to Sheffield has a similar RR but the CMA only says they "may be close alternatives" whereas on this flow they "are close alternatives". This is inconsistent.</p> <ul style="list-style-type: none"> The CMA also does not appropriately address the GJC figures put forward by Arriva which show that the services are not close competitors.
10.42	<p>The CMA has not taken any account of the response to the rail/rail putback provided by Arriva on 7 September 2016 which provided further context on the internal Northern document referred to by the CMA. This explained that:</p> <ul style="list-style-type: none"> The Northern document referred to by the CMA also listed EMT as a TOC offering AP fares on the flow, suggesting competition with EMT as well which the CMA has not taken into account. Only [X] of revenue on the flow is from dedicated tickets – so there is no basis to use this document as a general assertion that there was pre-merger price competition between Northern and CrossCountry. Arriva had made comments at the main party hearing (see comments by Roger Cobbe on pages 64 – 66 of the marked up version of the transcript), in particular in respect of this document and the Leeds – Sheffield flow that illustrate that [X].
10.43	<p>See Arriva's overview comments above which discuss the limited price competition on this flow pre-merger.</p>
Footnote 204	<ul style="list-style-type: none"> The CMA had told Arriva that it intended to remove the text redacted from the published version of the PFs in this footnote and replace it with different wording on the basis that the CMA had not been able to locate the document referred to in the footnote. This has not been reflected in the version of the PFs made available to Arriva. Arriva requests that the CMA either produces the relevant document referred to in the footnote so that Arriva may comment on it or that the statement is replaced. In any event, [X].
10.44	<ul style="list-style-type: none"> The CMA's own analysis indicates that [X] of revenues on the flow are from dedicated tickets. Regardless of the share of this revenue attributable to Northern and CrossCountry, the proportion and relative importance of flow revenue from dedicated tickets remains low. In any event, [X] of dedicated fares (i.e. advance ticket sales) on this flow are derived from Northern and CrossCountry ticket sales: [X] of all flow revenue derives from Northern and CrossCountry sales of dedicated tickets. Furthermore, dedicated sales represent a [X] proportion of tickets sales for both Northern ([X]) and CrossCountry ([X]) on this flow.
10.47 – 10.48	<ul style="list-style-type: none"> Given that the CMA's concerns appear to focus on price increases for unregulated or dedicated fares, the CMA should consider the proportion of route revenue accounted for by these ticket types in order to assess Arriva's incentives to raise such fares. Focussing

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	<p>on total revenue will significantly overstate the position.</p> <ul style="list-style-type: none"> Revenue from unregulated fares / dedicated fares on this flow as a proportion of total route revenue is low. As noted above, unregulated tickets on this flow account for [%] of total route revenue for Northern and [%] of total route revenue for CrossCountry. Dedicated tickets on this flow account for [%] of total route revenue for Northern and [%] of total route revenue for CrossCountry. It is therefore clear that Arriva does not have significant incentives to raise these fares, particularly given the significant administrative work and risk of unintended consequences of making changes to individual fares highlighted by Arriva at the main party hearing on 4 August (see comments by Roger Cobbe on page 44 of the marked up transcript).
10.50 and fn 206	<p>This is a bald assertion. The CMA does not seem to have conducted GJC analysis to assess whether the GJC of rail services is likely to be more similar than that between Northern and coach services or otherwise evidenced this point. It is therefore not appropriate for the CMA to make any findings on this point.</p>
10.51	<ul style="list-style-type: none"> The routed fares on this flow are inter-available and can be sold by any operator on that routing (as described in this para and 10.43) and so should be included in the proportion of inter-available tickets; it is inappropriate to limit this only to "any permitted" inter-available fares. Further, as set out in Arriva's response to the rail/rail putback (dated 7 September 2016), Arriva has not been able to replicate the CMA's calculations. The presence of inter-available routed tickets that are valid on Arriva and on Northern indicates a lack of pre-merger price competition between the Parties. The CMA has not put forward any merger-specific theory of harm to explain why Northern would have the incentive to increase the routed fares post-merger. Further, Northern already sets these fares and the merger does not therefore change Northern's ability to increase these fares. Northern cannot increase the regulated routed fare by more than is permitted by regulation. Such fare increases are already built into the franchise agreement.
Wakefield - Sheffield	
-	<p>On this flow, the CMA has provisionally found that there was competition between Northern and CrossCountry and that the merger may lead to higher inter-available or routed fares and higher dedicated fares or the removal of dedicated fares. Arriva strongly disagrees with the CMA's analysis.</p> <p>The CMA's analysis is not well reasoned or evidenced and does not meet the appropriate standard of proof</p> <ul style="list-style-type: none"> CMA makes bald assertions without evidence or detailed reasoning to support its position <p>The CMA has not properly articulated or considered a theory of harm as to why fares would rise <u>as a result of the merger</u></p>

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	<ul style="list-style-type: none"> • The CMA simply asserts that "any permitted" or routed fares may rise as they are set by the Northern Franchise • However, based on the CMA's own analysis, it is clear that there is very little scope for harm on this flow: <ul style="list-style-type: none"> ○ Northern is already the lead operator and sets the inter-available fares for all TOCs on the flow. There is no price competition in respect of these fares as between Northern and CrossCountry. This will not change post-merger. If Northern wanted to increase inter-available fares, it could already do so pre-merger. ○ Northern is also already the flow operator for the 'not via Doncaster' routed fare and sets routed fares for Northern, CrossCountry and certain EMT services. There was no price competition in respect of these fares as between Northern and CrossCountry pre-merger. If Northern wanted to increase unregulated routed fares, it could already do so pre-merger. • [X] of tickets sold on this flow are at regulated prices. These fares cannot be increased by more than is permitted by regulation. • In relation to dedicated fares: <ul style="list-style-type: none"> ○ The CMA has not taken into account properly the point that there is limited competition between CrossCountry and Northern's dedicated fares: CrossCountry's fare is nearly twice the price of Northern's dedicated fare. ○ There is already headroom for Northern to increase its dedicated fares closer to the price of CrossCountry's dedicated fare, but it has not done so. The CMA has not set out a merger-specific theory of harm as to why it would do so now post-merger. ○ The CMA has not taken into account properly the constraint provided by EMT's dedicated fare. For people who want to travel at the lowest price (and are therefore willing to book AP tickets on specific trains), EMT would be a valid alternative if Northern were to increase/withdraw its dedicated fares (even if sales of EMT dedicated tickets are not currently high). This constrains Northern's ability to increase or withdraw dedicated fares on this flow. <p>The CMA has not evidenced that Arriva would have incentives to raise fares / withdraw dedicated fares</p> <ul style="list-style-type: none"> • The CMA has not properly evidenced the assertion that Arriva would have the incentives to increase unregulated/dedicated fares post-merger and has not taken into account at all the comments made at the hearing on 4 August regarding how difficult it would be to identify and tweak individual fares in a way that did not cause unintended consequences. • In any event, unregulated fares [X] account for [X] of tickets sold on the flow, and dedicated fares account for [X]. • There are very limited incentives to increase fares on any unregulated/dedicated tickets or withdraw dedicated tickets given the [X] proportion of revenue accounted for by them. Arriva notes that the unregulated tickets on this flow account for [X] of total route revenue for Northern and [X] of total route revenue for CrossCountry. Dedicated tickets on this flow account for [X] of total route revenue for both Northern [X] and CrossCountry [X].

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	<p>Competition between CrossCountry and Northern on this flow is more limited than CMA has acknowledged</p> <ul style="list-style-type: none"> • There is limited price competition between CrossCountry and Northern on this flow, as set out above. • As noted above, the CMA's MOIRA analysis is unsuitable to identify price competition between the operators (which is the focus of the CMA's analysis). In any event, a RR ratio of [X%]: (i) [X%] to the 50% threshold used by the CMA to prioritise flows; and (ii) gives a conservative view of the closeness of competition given that it essentially models a forced diversion, rather than a price increase. The CMA has not properly taken this into account.
10.61	<ul style="list-style-type: none"> • See Arriva's general comments above on the use of MOIRA analysis, in particular given the CMA's focus on price rises. • The MOIRA analysis only shows an RR ratio of [X%]. This is [X%] to the 50% threshold used by the CMA to prioritise flows and will in any event overstate the position given that it models a "forced diversion" in essence. Adjusting for this suggests that they are not particularly close alternatives. • The CMA also does not appropriately address the GJC figures put forward by Arriva which show they are not close competitors.
10.62	<ul style="list-style-type: none"> • See Arriva's overview comments set out above which discuss the limited price competition on this flow pre-merger. • Further, the CMA's own analysis shows the proportion of dedicated fares is [X%] indicating that the extent of any price competition between CrossCountry and Northern is [X%].
10.63	<ul style="list-style-type: none"> • The routed fares on this flow are inter-available and can be sold by any operator on that routing (as acknowledged in paragraphs 10.62 and 10.63) and so should be included in proportion of inter-available tickets. There is no reason to limit the proportion of inter-available tickets to only "any permitted" inter-available tickets. Further, as set out in Arriva's response to the rail/rail putback (dated 7 September 2016) Arriva has not been able to replicate the CMA's calculations. • The CMA has not put forward any merger-specific theory of harm to explain why Northern would have the incentive to increase the routed fares post-merger. Further, Northern already sets these fares and the merger does not therefore change Northern's ability to increase these fares. • Northern cannot increase the regulated routed fare by more than is permitted by regulation. Such fare increases are already built into the franchise agreement.
10.66	<ul style="list-style-type: none"> • Given that the CMA's concerns appear to focus on price increases for unregulated or dedicated fares, the CMA should consider the proportion of route revenue accounted for by these ticket types in order to assess Arriva's incentives to raise fares. Focussing on total revenue for the flow will significantly overstate the position. • Revenue from unregulated fares / dedicated fares on this flow as a proportion of total route revenue is [X%]. As noted above, unregulated tickets on this flow account for [X%] of total route revenue for Northern and [X%] of total route revenue for CrossCountry.

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	<p>Dedicated tickets on this flow account for [X] of total route revenue for Northern and [X] of total route revenue for CrossCountry.</p> <ul style="list-style-type: none"> It is therefore clear that Arriva does not have significant incentives to raise these fares, particularly given the significant administrative work and risk of unintended consequences of making changes to individual fares highlighted by Arriva at the hearing on 4 August (see comments by Roger Cobbe on page 44 of the transcript). It is nonsensical for the CMA to claim that the overlap flows account for a significant proportion of route revenue for CrossCountry, when the figure is [X]. Further, at a flow level it is [X]. In contrast, on Manchester – Stockport, a [X] route revenue proportion is described as being a "small proportion". This is an inconsistent approach by the CMA.
10.67	<p>The CMA has not put forward any work or analysis to support its assertion that passengers prefer rail over coach or car as they are not prone to congestion. Further, the CMA has not evidenced any significant congestion on the flow.</p>
<i>Chester – Manchester</i>	
-	<p>On this flow, the CMA has provisionally found that there was competition between Northern and ATW. Arriva considers that any competition between Northern and ATW is limited.</p> <p>The CMA has not articulated in its analysis any theory of harm in support of its provisional conclusion (at paragraph 10.91) that the Award has resulted or may be expected to result in an SLC on this flow. Arriva is therefore unable to comment fully on the CMA's PFs in respect of this flow.</p> <p>However, to the extent that the CMA may be considering a theory of harm relating to potential increases in the prices of unregulated or routed fares or in respect of the withdrawal of particular fares on this flow as a result of the merger, such concerns are unfounded.</p> <p>The CMA's analysis is not well reasoned or evidenced and does not meet the appropriate standard of proof</p> <ul style="list-style-type: none"> Throughout its analysis in respect of this flow, the CMA has made a number of assertions but has not supported these with evidence or detailed reasoning. <p>No clear theory of harm has been articulated in respect of this flow by the CMA. Therefore, Arriva is unable to comment fully on the CMA's PFs in respect of this flow.</p> <ul style="list-style-type: none"> In its summary and provisional conclusion (at paragraphs 10.90 and 10.91), the CMA merely notes that: (i) Northern and ATW provide the majority of services on the flow; (ii) the Northern-set 'via Altrincham' fare may attract passengers from the indirect 'via Crewe' services; and (iii) VTWC dedicated walk-up tickets are likely to be a limited constraint; before concluding that an SLC arises on this flow.

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	<p>Based on the CMA's own analysis, it is difficult to see what the merger-specific theory of harm might be in respect of this flow.</p> <ul style="list-style-type: none"> • Pre-Award, ATW was and remains lead operator on the flow, and therefore sets the inter-available fare. To the extent that the CMA is considering a theory of harm that ATW could increase the level of the unregulated inter-available peak day return and peak single fare (the unregulated fares set by ATW), it was already open to ATW as lead operator to do so pre-Award. • Pre-Award Northern was, and remains post-Award, fare setter on the 'via Altrincham' routed inter-available fare. To the extent that the CMA is considering a theory of harm that Northern could increase the price of the routed 'via Altrincham' fares, Northern could already do so pre-Award, in light of its position as fare setter. • Furthermore, [REDACTED] of fares sold on this flow are at regulated prices. These fares (including the routed peak day return) cannot be increased by more than is permitted by regulation. • To the extent that the CMA considers that Northern could withdraw the routed 'via Altrincham' fares, [REDACTED]. Having made all reasonable enquiries, [REDACTED]. • As between Northern and ATW, only Northern offers dedicated fares on this flow. These fares were introduced very recently by Northern on this flow. There was no pre-Award price competition between Northern and ATW in respect of dedicated fares. To the extent that the CMA considers that Northern and ATW were competing pre-Award, there will, in fact, be a greater degree of competition between them post-Award in respect of dedicated fares. • The CMA has not indicated any potential theory of harm on this flow relating to removal of dedicated fares by Northern. In any event, as these fares have only recently been introduced by Northern, it is very unlikely that they would be removed by Northern. <p>The degree of competition pre-Award between Northern and ATW on this flow is significantly more limited than the CMA has acknowledged in its PFs.</p> <ul style="list-style-type: none"> • As described above in further detail, there was limited price competition between Northern and ATW pre-Award. • As noted above, the CMA's MOIRA analysis is entirely unsuitable to identify price competition between the Northern and ATW services (which is the focus of the CMA's analysis). • The CMA states, at paragraph 10.89 that there is "<i>an apparent preference for shorter journeys on this flow (evidenced by CrossCountry [sic] having a larger share of revenues and shorter journey times than the Northern Franchise.)</i> As such, and on the CMA's own analysis, Northern and ATW should not be considered by the CMA to be close competitors, given the significant difference in journey times (69 minutes on ATW compared to 95 minutes on the Northern Franchise). <p>In any event, the CMA has not provided any evidence that Northern would have an incentive to increase fares on this flow</p> <ul style="list-style-type: none"> • The Chester-Manchester flow represents [REDACTED] proportion of Northern route revenue [REDACTED], as acknowledged by the CMA at paragraph 10.87 The CMA also acknowledges that the proportion of Northern route revenue comprised of overlapping flows is

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	<p>[REDACTED]. As such, Northern would have limited incentives to increase fares in respect of this flow.</p> <ul style="list-style-type: none"> • Furthermore, the Award results [REDACTED] on this flow [REDACTED].
10.73	<p>The CMA has failed to take appropriate account of the limited increment which arises as a result of the merger [REDACTED] when assessing the Parties' incentives on this flow.</p>
10.77 / Table 14	<p>Table 14 at paragraph 10.77 contains a number of inaccuracies. For example, (and as noted in Arriva's response to the CMA's put-back of 7 September 2016):</p> <ul style="list-style-type: none"> • The Northern Franchise is listed incorrectly as the lead operator and fare-setter of the Any Permitted fare. ATW is lead operator on the flow. • The share of total flow journeys totals to more than 100% and does not allocate any share of total flow journeys to third parties (including VTWC). Arriva considers that the Arriva (Other) share of total journeys should be reflected as [REDACTED], and the third party share of journeys reflected as [REDACTED]. • The TOC flow revenue as % of route revenue figures are also reflected incorrectly. The correct percentages are [REDACTED] for Northern (as stated correctly at paragraph 10.87) and [REDACTED] for Arriva (Other). <p>This indicates that the CMA has not taken appropriate account of Arriva's comments on the rail-rail put-back of 7 September 2016.</p>
10.80	<p>See Arriva's general comments above on the use of MOIRA, in particular given the CMA's focus on price rises.</p> <p>While the MOIRA analysis shows an RR ratio of [REDACTED], MOIRA will significantly overstate the position given that it models a "forced diversion" due to the removal of an origin or destination Northern station. Adjusting for this suggests that the Northern and ATW services are not particularly close alternatives.</p>
10.81	<p>Contrary to the CMA's statement at paragraph 10.81, ATW is lead operator and sets the inter-available fare on the flow.</p>
10.82	<ul style="list-style-type: none"> • An earlier version of this paragraph provided by the CMA in the rail-rail put-back on 5 September 2016 indicated a potential CMA concern regarding the withdrawal by Northern of the routed 'via Altrincham' ticket. While no such concerns appear in the PFs, Arriva notes, for completeness, [REDACTED]. Having made all reasonable enquiries, [REDACTED]¹. • Arriva disputes the CMA's analysis that the 'via Altrincham' fares are effectively Northern Franchise dedicated tickets. Arriva notes that there is nothing in the construct of this fare that would prevent another operator from serving the route and the routed fare being available to that operator as well. Indeed, this routed fare permits travel on other services (including third party operators

¹ The CMA does not appear to have raised this as a potential theory of harm on other flows on which it has found a provisional SLC. However, for completeness, [REDACTED].

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	<p>such as VTWC and EMT) on the Stockport-Manchester part of the flow.</p> <ul style="list-style-type: none"> • Further, as set out in Arriva's response to the rail/rail putback (dated 7 September 2016), Arriva has not been able to replicate the CMA's calculations in respect of this flow. • In any event, Arriva notes that, even on the CMA's own analysis, the proportion of fully inter-available fares on this flow is [%]. Moreover, there is a [%] proportion of regulated fares [%], meaning that regulated fares (including the regulated peak day return routed fare) cannot be increased by more than is permitted by regulation. Such fare increases are already built into the Northern franchise agreement.
10.85	<p>Based on the CMA's analysis of other rail-rail overlap flows, it is possible that the CMA is exploring a theory of harm relating to potential price increases on unregulated and routed fares on this flow, although this is entirely unclear from the PFs.</p> <p>There are limited incentives to increase fares on any unregulated/routed fares on this flow, given the small proportion of revenue accounted for by them. Arriva notes that the unregulated tickets on this flow account for [%] of total route revenue for Northern and [%] of total route revenue for ATW. Routed tickets on this flow account for [%] of total route revenue for Northern.</p>
10.86	As discussed in further detail in Arriva's response to the CMA's rail-rail put-back of 7 September 2016, [%].
10.87 to 10.88	Arriva notes that paragraphs 10.87 and 10.88 of the PFs are internally inconsistent. The CMA states at paragraph 10.87 that, for Northern, overlap flows comprise a " <i>small proportion</i> " of route revenue at [%]. Arriva agrees with this analysis. However, the CMA then continues to state, at paragraph 10.88 that overlap flows are a " <i>significant proportion of route revenues, particularly for ATW</i> ", implying that they also comprise a significant proportion for Northern. This is incorrect.
10.89	<ul style="list-style-type: none"> • The CMA erroneously refers at paragraph 10.89 to CrossCountry rather than ATW as the overlapping Arriva TOC on this flow. • Arriva notes that, if there is indeed a preference for short journeys on the flow, as the CMA asserts, then Northern and ATW should not be considered close competitors in light of the significant differences in journey times between their services – the ATW service can complete the journey in 69 minutes, whereas the Northern Franchise service is significantly slower at 95 minutes. • Furthermore, the CMA has not conducted a proper analysis to assess the constraint from private car. The CMA merely notes that a significant variation in journey times means that car is unlikely to be a significant constraint. However, travel time via private car which is estimated at 60-90 minutes during peak times may be similar to or faster than rail. At off-peak times, it is likely that the journey time would be towards the lower end of that range. • The CMA also does not appear to have conducted a GJC analysis to assess the constraint from coach on this flow. It is therefore not appropriate for the CMA to make any findings on this point.
10.90 to	The CMA has not articulated in its analysis of this flow any clear theory of harm in support of its conclusion (at 10.91) that the Award

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10.91	has resulted or may be expected to result in an SLC on this flow. At paragraph 10.90, the CMA merely rehearses three characteristics of the flow before reaching a provisional conclusion that the Award results in an SLC.
Chester - Stockport	
-	<p>On this flow, the CMA has provisionally found that there was competition between Northern and ATW. Arriva considers that any competition between Northern and ATW is limited.</p> <p>The CMA has not articulated in its analysis of this flow any clear theory of harm in support of its provisional conclusion (at paragraph 10.109) that the Award has or may be expected to result in an SLC on this flow. Arriva is therefore unable to comment fully on the CMA's PFs in respect of this flow.</p> <p>However, to the extent that the CMA may be considering a theory of harm relating to potential increases in unregulated or routed fares on this flow, or in respect of the withdrawal of the routed fare on this flow, such concerns are unfounded.</p> <p>The CMA's analysis is not well reasoned or evidenced and does not meet the appropriate standard of proof.</p> <ul style="list-style-type: none"> • Throughout its analysis in respect of this flow, the CMA has made a number of assertions but has not supported these with evidence or detailed reasoning. <p>No clear theory of harm has been articulated in respect of this flow by the CMA. Therefore, Arriva is unable to comment fully on the CMA's PFs in respect of this flow.</p> <ul style="list-style-type: none"> • In the summary and provisional conclusion (at paragraphs 10.108 and 10.109) the CMA merely notes that (i) Northern and ATW provide the majority of services on this flow; (ii) Northern offers a routed 'via Altrincham' ticket which may attract passengers from the 'via Crewe' services; and (iii) the VWTC dedicated walk-up ticket may provide some competitive constraint on Northern and ATW services and fares; before concluding that an SLC may arise on the flow. <p>Based on the CMA's own analysis, it is difficult to see what the merger-specific theory of harm might be in respect of this flow.</p> <ul style="list-style-type: none"> • Pre-Award, ATW was and remains lead operator on this flow and therefore sets the inter-available fare. To the extent that the CMA is considering a theory of harm that ATW could increase the level of the unregulated inter-available peak single fare (the only unregulated fare set by ATW) it was already open to ATW as lead operator to do this pre-Award. • Pre-Award, Northern was and remains post-award fare-setter on the 'via Altrincham' routed inter-available fare. To the extent that the CMA is considering a theory of harm that Northern could increase the price of the unregulated peak single fare 'via Altrincham' this appears to be constrained by the Virgin dedicated fare (there is currently 10p difference between the fares). • To the extent that the CMA considers that Northern could increase the price of the routed off-peak day return fare or the routed open return fare, Northern could already do so pre-Award in light of its position as fare setter.

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	<ul style="list-style-type: none"> • To the extent that the CMA considers that Northern could withdraw the routed 'via Altrincham' fares, [X]. <p>The CMA's own analysis indicates that there is limited pre-merger competition between Northern and ATW on this flow</p> <ul style="list-style-type: none"> • The CMA refers (at paragraph 10.105) to the existence of "<i>significant headroom</i>" between the Northern routed '<i>via Altrincham</i>' fare and the inter-available fare. This indicates that any pre-merger price competition between Northern and ATW was extremely limited. • The CMA merely states that the Northern routed ticket "may" attract passengers from the ATW service. However, no further evidence has been provided by the CMA to support this statement. • As noted above, the CMA's MOIRA analysis is entirely unsuitable to identify price competition between Northern and ATW (which is the focus of the CMA's analysis). It significantly overstates the position given that it essentially models a forced frequency diversion rather than a price increase, due to the removal of an origin or destination Northern station. Adjusting for this suggests that Northern and ATW are not particularly close alternatives. • Furthermore, the RR ratio of [X] calculated by the CMA is [X] to the 50% threshold which the CMA used to prioritise flows and therefore indicates that Northern and ATW are not particularly close competitors. <p>The CMA has significantly underplayed the significance of VTWC as a competitor and has failed to take appropriate account of statistics reflected in the PFs relating to the competitive constraint from VTWC</p> <ul style="list-style-type: none"> • The CMA merely states that the VTWC dedicated walk-up ticket may provide "<i>some competitive constraint</i>" on Northern and ATW services and fares and that, while this competitive constraint may exist, VTWC "<i>services, although comparable in journey times, are indirect</i>" (see, for example, paragraph 10.106). • This assertion ignores entirely the flow statistics set out at Table 17 which show that VTWC earns [X] of revenue flow revenue compared to ATW's [X] and is therefore a significant competitor on this flow. In contrast, on the Chester-Manchester flow, where VTWC generated a [X] proportion of revenue on the flow, this was considered as part of the CMA's analysis (see paragraph 10.90 above). • The CMA also appears to disregard the fact that <u>both</u> ATW and VTWC services are indirect services via Crewe. Any dismissal by the CMA of VTWC as a competitive constraint on the basis that it operates an indirect service, should apply equally to ATW. <p>In any event, the CMA has not provided any evidence that Arriva would have an incentive to increase fares on this flow.</p> <ul style="list-style-type: none"> • The flow comprises a very small proportion of route revenue for both Northern and ATW and indeed all overlapping flows on the route represent a small proportion of route revenue for both TOCs. This indicates that neither ATW nor Northern would have any incentive to make changes in respect of fares on this flow. • The CMA includes these figures in its flow summary/tables but does not take account of them in the analysis.

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10.95	<p>The CMA has described inaccurately Arriva's submissions and the operation of services on the flow.</p> <p>Contrary to the CMA's summary at paragraph 10.95, Northern operates on different tracks to <u>both</u> the VTWC service and the ATW service: VTWC and ATW both operate indirect services requiring an interchange at Crewe, whereas Northern operates a direct service via Altrincham.</p>
10.96	<p>The CMA fails to take any account in its substantive analysis of the GJC submitted by Arriva: VTWC peak-time GJC was [X] higher than the direct Northern Franchise services and [X] lower than the ATW GJC and therefore represented a close alternative for passengers. In the off-peak, the GJC of using the VTWC service was the same as the ATW service and [X] lower than the Northern service. This indicates that if Northern were to increase fares (or degrade services), passengers may divert to VTWC rather than ATW.</p>
10.97	<p>The CMA fails to take any account in its substantive analysis of the fact that the flow accounts for a [X] proportion of route revenues for both Northern and ATW ([X] respectively) and that all overlap flows on Northern and ATW routes account only for a [X] proportion of total route revenue ([X] respectively).</p> <p>As such, neither Northern nor ATW have any material incentive to increase fares (or degrade services) on this flow.</p>
Table 17	<ul style="list-style-type: none"> • Table 17 at paragraph 10.99 contains some inaccuracies. As noted in Arriva's response to the CMA's put-back of 7 September 2016), the TOC flow revenue as % of route revenue figures are reflected incorrectly. The correct percentages are [X] for XC and [X] for ATW%. This indicates that the CMA has not taken appropriate account of Arriva's comments on the rail-rail put-back of 7 September 2016. • The CMA fails to take any account in its analysis of the statistics set out at Table 17 in the PFs as they apply in respect of VTWC. VTWC earns [X] of revenue on this flow, which is [X] than ATW's [X], indicating that VTWC may in fact be a closer competitor to Northern than ATW. • In addition, flow revenue on this flow is [X].
10.101	<ul style="list-style-type: none"> • See Arriva's general comments above on the use of MOIRA analysis, in particular given CMA's focus on price rises. • The MOIRA analysis only shows an RR ratio of [X]. As noted above, this is [X] to the 50% threshold used by the CMA to prioritise flows and will in any event overstate the position given that it models a "forced diversion" in essence. This also suggests that ATW and Northern [X]. Indeed the CMA itself only states that ATW and Northern "may" be close alternatives for passengers. • The CMA also fails to address properly the closeness of competition from VTWC in light of the GJC analysis provided by Arriva.
10.102	<ul style="list-style-type: none"> • These routed fares are inter-available and so should be included in proportion of inter-available tickets on the flow. Arriva notes that there is nothing in the construct of this fare that would prevent another operator from serving the route and the routed fare

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	<p>being available to that operator as well.</p> <ul style="list-style-type: none"> • Further, as set out in Arriva's response to the rail/rail putback (dated 7 September 2016), Arriva has not been able to replicate the CMA's calculations. • Northern cannot increase the regulated routed peak day return fare by more than is permitted by regulation. Such fare increases are already built into the franchise agreement.
10.103, 10.106 and 10.108	<ul style="list-style-type: none"> • The CMA underplays significantly the importance of VTWC as a competitor on this flow. • The CMA merely acknowledges that the VTWC dedicated walk-up ticket may provide some competitive constraint on Northern Franchise and ATW services and fares, but that VTWC "<i>services, although comparable in journey times, are indirect</i>". This ignores fact that ATW services are also indirect and therefore, to the extent that indirect services do not operate as a close constraint to Northern direct services, both ATW and VTWC services would fall within this category. • The CMA ignores that VTWC accounts for [X] of revenue on the flow (see Chester-Manchester above). • The CMA ignores the fact that journey time on VTWC (61 minutes) is same as on ATW.
10.104 and 10.105	<p>Based on the CMA's analysis of other rail-rail overlap flows, it is possible that the CMA is exploring a theory of harm relating to potential price increases on unregulated and routed fares on this flow, although this is entirely unclear from the PFs. However, no merger-specific concerns arise on this flow:</p> <ul style="list-style-type: none"> • Pre-Award, ATW was (and remains) lead operator on this flow and therefore sets the inter-available fare. To the extent that the CMA is considering a theory of harm that ATW could increase the level of the unregulated inter-available peak single fare (the only unregulated fare set by ATW) it was already open to ATW as lead operator to do this pre-Award. • Pre-Award, Northern was (and remains post-Award) fare-setter on the 'via Altrincham' routed inter-available fare. • To the extent that the CMA is considering a theory of harm that Northern could increase the price of the unregulated peak single fare 'via Altrincham' this is constrained by the Virgin dedicated fare (there is currently 10p difference between the fares). • To the extent that the CMA considers that Northern could increase the price of the routed off-peak day return fare or the routed open return fare, Northern could already do so pre-Award in light of its position as fare setter. • In any event, there are limited incentives to increase fares on any unregulated/routed fares on this flow, given the [X] proportion of revenue accounted for by them. Arriva notes that the unregulated tickets on this flow account for [X] of total route revenue for Northern and [X] of total route revenue for ATW. Routed tickets on this flow account for [X] of total route revenue for Northern.
10.104 and	The CMA has not articulated in its analysis of this flow any clear theory of harm in support of its conclusion (at paragraph 10.109) that

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10.105	<p>the Award has resulted or may be expected to result in an SLC on this flow.</p> <p>At paragraph 10.108, the CMA merely rehearses three characteristics of the flow before reaching a provisional conclusion that the Award results in an SLC. As noted above, no merger-specific harm will arise as a result of the Award.</p>
10.107	<p>The CMA has not conducted any proper analysis to assess the constraint from private car. The CMA merely notes that private car "may be a weak alternative" because there is a significant variation in journey times and that intra-modal competition is likely to be weaker than inter-modal competition. In fact, at the lower end of the travel time range, travel time by private car (50 minutes) is faster than by public transport. Even at the upper end of the range (80 minutes) overall travel time is similar to travel time on Northern's service (74 minutes). Arriva also notes that these estimates are for peak time journeys and that at off-peak times it is likely that the journey time would be towards the lower end of the range.</p> <p>The CMA also dismisses coach as a potential constraint on this flow. However, Arriva did not raise coach travel in its submissions as a potential alternative on this flow.</p>
10.108 and 10.109	<p>The CMA has not articulated in its analysis of this flow any clear theory of harm in support of its conclusion that the Award has resulted or may be expected to result in an SLC on this flow. The CMA merely rehearses three characteristics of the flow before reaching a provisional conclusion that the Award results in an SLC.</p>
7. BUS/RAIL	
<i>General points on CMA approach and methodology</i>	
11.8 – 11.11 and 11.17	<p>The CMA wrongly concludes that there are relatively few costs to adjusting a fare stage.</p> <ul style="list-style-type: none"> • The CMA acknowledges that there would be a risk to adjusting a fare stage if it were to affect the coherence of fares on the wider route, but the CMA has not considered in the flow by flow analysis whether this risk would affect any of the flows on which it finds an SLC. • The CMA also does not take account of the fact that adjusting a fare stage might mean having to move non-overlapping flows into different fare stages which may have an unintended negative effect on those flows, e.g. where an overlap SLC flow is in the middle of a fare stage. <p>The CMA does not make any reference to or comment on the existence of Arriva's zonal tickets or multi-operator tickets in its assessment of the SLC flows.</p> <ul style="list-style-type: none"> • Arriva's day saver, weekly and monthly tickets on many of the flows on which the CMA found an SLC correspond to its zonal tickets. • Arriva could not increase these fares without either amending its zonal ticket prices altogether which could have unintended

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	<p>consequences for all the non-overlap flows they cover, or taking these flows out of the zonal structure, which would create confusion and customer dissatisfaction. [REDACTED]. This also affects Arriva's incentives to amend these fares.</p> <ul style="list-style-type: none"> • The CMA should take full account of this in considering whether Arriva has the incentive to implement fare rises on the flows on which the CMA has provisionally found SLCs and the extent of any such incentive. Evidence suggests that revenues from zonal tickets are substantial. For example, Figure 2.2 of Oxera's survey report demonstrates [REDACTED]. • There is no evidence in the flow by flow assessment of the SLC flows that the CMA considered the impact of network tickets (despite the CMA setting out in its methodology that it would do so).
11.13 and fn 218	<p>Relationship with PTEs and councils</p> <ul style="list-style-type: none"> • The CMA says that it has not seen any evidence on the SLC flows that Arriva's relationships with councils or PTEs inhibit its ability to flex fares or services. • As Arriva has previously explained to the CMA, [REDACTED] and these authorities exercise substantial and increasing influence over Arriva's bus businesses. While these authorities do not generally control Arriva's bus fares directly, they do exercise an indirect constraint. <ul style="list-style-type: none"> ○ For example, [REDACTED]. Fares are among a number of bus service parameters which these authorities monitor (as well as operating standards, vehicle age and quality, frequencies, network coverage, etc.). [REDACTED]. ○ Similarly, Arriva notes that almost every service and fare change is subject to scrutiny and comment by the West Yorkshire Combined Authority (WYCA), which does not hesitate to raise issues and concerns and often does so. [REDACTED].
11.15, 11.19 and 11.97(c)(i)	<p>Flow revenue as a proportion of route revenue</p> <ul style="list-style-type: none"> • A 10% threshold for the proportion of route revenue accounted for by the overlapping flows was selected for the filter exercise as a conservative indication of incentives so a flow could be excluded without further consideration. However, in the flow by flow assessment, the CMA seems to treat proportions of not much more than 10% as indicative of there being significant incentives to raise fares. • Where revenue is more than 10% of total route revenue on an SLC flow, the CMA often asserts that this is a "high" or "significant" amount of route revenue, even where it is only 15%, which is nonsensical. • The CMA has also inappropriately aggregated route and flow revenues in some instances for the purposes of its assessment (e.g. routes 83 and 84), instead of undertaking an individual route and flow analysis. Such aggregation gives rise to an inaccurate overall assessment. • Further, on three bus routes (route X14/X15/X18), the CMA has not even addressed the proportion of route revenue accounted for by the overlapping flows in its conclusion provisionally finding an SLC. In fact, the proportion of route revenue in this case is [REDACTED],

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	<p>which is [redacted] and suggests Arriva would have no incentives to raise fares on the overlap flows. No consideration is given to whether Arriva would be likely to deploy management time and bear the expense and risks of unintended consequences on the very much larger non-overlap portion of the route given the relatively minor importance of the overlap flows.</p> <ul style="list-style-type: none"> • CMA has therefore not considered revenue proportion as an indication of incentives in an appropriate or logical way.
11.16 and 11.18	<p>The CMA is correct that there are no incentives to degrade bus services</p> <ul style="list-style-type: none"> • Arriva welcomes the CMA's assessment. Arriva considers that there are no incentives for Arriva to degrade its bus services.
11.23 – 11.24	<p>The CMA is wrong to discount the impact of the transitory nature of the Northern franchise</p> <ul style="list-style-type: none"> • The CMA's view that Arriva can just raise bus fares to move passengers to rail during the franchise, and then on expiry of the franchise reduce fares to win passengers back does not reflect commercial reality. • Given the churn of bus passengers and the overall decline of bus patronage, there would be a significant risk that Arriva could not win back these passengers – especially after a period of 9 years. By that time it would have done irreparable harm to [redacted] part of its business. • The CMA has provided no evidence that passengers are willing to switch from the train to bus in any event – all analysis by the CMA has focussed on passengers moving from bus to train. • It is also not appropriate for the CMA to rely on Arriva's arguments on low barriers to entry and expansion to support its point here when it has not accepted that such low barriers exist otherwise – this is a selective use of Arriva's submissions.
11.25 – 11.29	<p>CMA's generalised journey cost analysis</p> <ul style="list-style-type: none"> • The CMA applied a 25% GJC threshold for its prioritisation; this was acknowledged to be "cautious". However, 25% appears to be used in the SLC flow analysis as a definitive marker of closeness of competition. GJCs below 25% are described as indicative that bus and rail are close competitors (regardless of how close they are to 25%). In any event, and as explained above, a small differential in GJC does <u>not</u> automatically indicate that the services in question are close substitutes. • The CMA mentions Arriva's views on the use of generalised cost analysis and the appropriate threshold for the analysis. However, the CMA does not cite Arriva's figures based on its calculations for the generalised cost analysis for bus-rail overlaps and only cites the CMA's own figures. Arriva's figures differ from the CMA's for a number of flows and it is inappropriate that the CMA has not cited Arriva's figures even where they differ from the CMA's analysis. • For instance, in paragraph 11.107 the CMA notes that "On routes X3/X3A/3 the differences in GJC between the bus and the Northern Franchise services are broadly low, with an average GJC of [redacted] on the overlap flows (Table 22). For example, the GJC on the flow between Redcar Central and Saltburn is [redacted]. All flows have a GJC below 25%, with the highest GJC difference being

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	<p>[REDACTED] ([REDACTED]).” However, Arriva’s analysis shows the average difference in generalised journey cost is approximately [REDACTED], with one flow above [REDACTED] and three flows above [REDACTED]</p> <ul style="list-style-type: none"> • In paragraph 11.108, the CMA notes that: “On routes X4 the differences in GJC between the bus and the Northern Franchise services are broadly low, with an average GJC of [REDACTED] on the overlap flows (Table 22). For example, the GJC on the flow between Middlesbrough and Redcar Central is [REDACTED]. The highest GJC difference is [REDACTED] ([REDACTED]).” However, Arriva’s analysis shows that there are three flows that have a difference in generalised cost of over [REDACTED], including [REDACTED], and the average difference in generalised cost is [REDACTED]. • The CMA also mentions in footnote 221 that: “We use a different methodology to the Parties to calculate GJC. In particular, we use the approach suggested in the Passenger Demand Forecasting Handbook (PDFH), while the Parties use the approach specified in WebTAG. We note that, in contrast to the PDFH, WebTAG does not account for frequency.” However, it is not the case that WebTAG, and therefore Arriva’s analysis, does not account for frequency. As stated in the generalised cost analysis submitted to the CMA on 15 August, “WebTAG notes that the simplest assumption for the calculation of the mean wait time is to assume that it is half the service headway. This assumes that passengers arrive randomly at the stop/station and that the service is reliable. However, the DfT also notes that in instances where the gap between services is larger, passengers will try to time their arrival at the stop/station to minimise waiting time. The DfT therefore suggests that the waiting time should be assumed to be half the headway for headways up to 15 minutes, after which the wait time is capped at 7.5 minutes. Oxera has applied these assumptions in our analysis.” Furthermore, Arriva considers that WebTAG is more appropriate to use than the PDFH for the analysis of the generalised cost of bus-rail overlaps given that the PDFH specifically refers to parameters for rail while WebTAG covers multiple public transport modes. • The CMA has not conducted GJC for some of the SLC flows but makes broad-brush assertions about closeness of competition, e.g. routes 3, X14/X15/X18 and 12. It has not produced any proper analysis to support this.
11.32 – 11.34	<p>The CMA has not properly addressed the profit incentive analysis and has not even attempted to assess Arriva’s financial incentives to raise fares on overlap bus/rail routes.</p> <ul style="list-style-type: none"> • The CMA did not engage with Oxera on the profit incentive analysis prior to issuing its PFs and did not raise any concerns or give Oxera the opportunity to try to address the CMA’s comments. • The CMA notes that it has a number of methodological concerns regarding Arriva’s profit incentive analysis. However, all of these concerns relate to the use of the survey evidence to calculate the profit incentive to divert passengers from bus to rail. Indeed, the concerns in paragraphs 11.34(a) and 11.34(c) seem to be identical to one another and both relate to a concern about the use of flow-level diversion ratios to calculate the profit incentive. However, Arriva has used the aggregate diversion ratio across all but three flows to report the profit incentive results and therefore the methodological concerns raised by the CMA are not valid for the majority (nearly all) of the flows. Arriva is considering the CMA’s findings on the profit incentive analysis further and reserves the right to make further comments in relation to this before the end of the allotted period for comments on the PFs.

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	<ul style="list-style-type: none"> • In paragraph 11.34(b), the CMA also notes that using an average diversion ratio might misrepresent the actual diversion ratio on a flow. Arriva agrees that there will be differences in diversion ratios across flows. However, as noted in the survey report submitted by Arriva on 17 August, the flows that were surveyed were those remaining after the application of a number of filters. Therefore, flows with significant bus competitors, where rail and/or bus revenue is very small, or where there is a significant discrepancy between bus and rail services on the flow were not surveyed. As a result, it is likely that the flows that were surveyed would have higher diversion ratios from Arriva's bus to rail services than flows that were not surveyed. Therefore, the use of the average results for surveyed flows for those that were not surveyed is likely to be a conservative approach. • In any event, it would be quite simple for the CMA to have still engaged in the profit incentive analysis and used sensible sensitivities to test the results – this would have been the more appropriate course of analysis, especially since it has not otherwise properly considered incentives as part of the flow by flow assessment.
11.35 11.36	<p data-bbox="398 635 1713 662">In Arriva's view there seems to be little if any added value in the GUPPI analysis carried out by the CMA.</p> <ul style="list-style-type: none"> • The CMA does not provide sufficient information on the GUPPI analysis it has undertaken. However, as set out in the survey report submitted by Oxera on 17 August (see page 24): <ul style="list-style-type: none"> ○ [✂] ○ [✂] ○ [✂] ○ [✂]
11.40 11.50	<p data-bbox="398 959 1310 986">CMA has failed to take Oxera's putback on the survey into account at all</p> <ul style="list-style-type: none"> • The CMA has not taken Oxera's comments from the survey putback into account, or even noted that Oxera submitted comments. • The CMA has improperly represented some of the "issues" they identify with the survey. • The CMA should be taking account of the results for individual flows (at least in some cases) as there are a number of flows where the CMA does not cite interviewer issues and there are over 100 respondents. • The flows surveyed are not representative of all bus-rail overlaps (e.g. precisely because flows were intentionally selected because they failed the filters.) • Fuller comments are presented in the separate note attached to this response.
11.51- 11.88	<p data-bbox="398 1305 1989 1364">Barriers to entry and expansion: Arriva welcomes the CMA's provisional conclusion that expansion by existing operators may act as a competitive constraint, but does not agree with the CMA's conclusion that new entry is unlikely to be timely,</p>

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	<p>likely and sufficient to constrain the Parties' commercial behaviour.</p> <ul style="list-style-type: none"> • Arriva would refer the CMA back to Arriva's previous submissions on barriers to entry, in particular as regards de novo entry (see, for example, paragraphs 8.44-8.45 of Arriva's response to the annotated issues statement and hearing follow-up), which do not appear to have been taken properly into account. Arriva's comments on individual paragraphs of this section of the PFs are set out below. • Paragraph 11.70: Arriva notes that the CMA has not contemplated the fact that a key determinant of whether there is entry/expansion is whether there is unmet passenger demand. Where an existing operator/operators are meeting demand fully and providing services that meet customers' expectations, potential new entrants may see little scope for profitable entry. It is therefore simplistic and unrepresentative to conclude that entry has been limited simply based on the absolute number of examples provided by Arriva. • Paragraph 11.71: Arriva would refer the CMA back to its previous submissions on these allegedly persisting barriers to entry, in particular in Arriva's response to the barriers to entry putback. In addition, the CMA has not provided any evidence that these alleged barriers have any bearing in respect of the individual bus/rail overlap flows that the CMA has focused on. • Paragraph 11.74: Arriva notes that new operators are nonetheless fierce competitors who are driven by a need to establish themselves in the relevant area. Previous exits have no bearing on the likelihood of entry or degree of competitive constraint that new operators would impose. • Paragraph 11.76: <ul style="list-style-type: none"> ○ it is not clear to Arriva whether the CMA has actually asked relevant LTAs whether they use tendering as a means of encouraging entry and expansion (although this is not the conventional purpose for tendering, which is to procure services that are not sufficiently profitable that operators choose to run them on a commercial basis) or whether LTAs were able to identify specific flows in the way the CMA suggests. ○ as per Arriva's previous submissions, there is fierce competition for tenders [✂] (see paragraph 8.17 of Arriva's response to the annotated issues statement and hearing follow-up). • Paragraph 11.78: Timing between tender processes would not appear to be an issue as the CMA indicates, given that there are no tendered services on many of the flows that the CMA considers to raise concerns. • Paragraph 11.80: with regard to multi-operator tickets: <ul style="list-style-type: none"> ○ The CMA's conclusion that multi-operator tickets are unlikely to sufficiently mitigate other barriers to entry and expansion is unsubstantiated and does not take into account Arriva's previous evidence (see in particular paragraphs 8.6-8.9 of Arriva's response to the annotated issues statement and hearing follow-up). The CMA does not even seek to assess the position on individual flows that it considers to raise concerns.

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	<ul style="list-style-type: none"> ○ The CMA notes (paragraph 11.80(c)) that joining a multi-operator ticketing scheme requires surrendering some commercial flexibility. Arriva notes that operators who are party to a multi-operator ticketing scheme are generally still free to offer their own dedicated tickets. In any event, the CMA's assertion also logically implies that Arriva's own participation in such schemes would limit its ability to increase fares, which the CMA has not reflected in any of its individual flow assessments. ○ Paragraph 11.80(d): Arriva has already explained that the levels of investment required to join a multi-operator ticketing scheme are much reduced now (see paragraph 8.8 of Arriva's response to the annotated issues statement and hearing follow-up). ● Paragraph 11.82: the CMA does not appear to assess barriers to entry in any detail at route and flow level in the way it suggests here (unless it is in redacted parts which have been withheld from Arriva and therefore Arriva cannot comment on them). Where the CMA states that it does not have evidence as to the likelihood of entry or expansion on individual flows, it is not clear whether the CMA has actually sought that evidence from third parties or not. Arriva is clearly not able to provide this type of evidence. ● Paragraph 11.85/fn270: Arriva notes that its submissions on entry and expansion in relation to individual flows concern third parties who already have established operations in the relevant local areas. In addition, an entrant would not necessarily need to operate on the longer Arriva routes of which the relevant flows are part (e.g. they could operate on a different route which simply intersects with Arriva's route on the relevant flow).
11.114-11.149	<ul style="list-style-type: none"> ● Some of the flow revenue figures in Tables 23, 26, 29 and 32 do not appear to be in line with the 1,200m walking distance catchment area chosen by the CMA (which impacts upon the bus stops captured and their corresponding revenues). ● For instance, the Middlesbrough - Marske flow on the X4 has revenue of [£] recorded in Table 23. This appears to be the revenue on this flow if a 1,200m straight line catchment area were used. The version of the pro forma provided to the CMA on 1st August 2016, using a 1,200m walking distance catchment area, shows that the estimated revenue on this flow is [£].
Routes 3, X3/X3A and X4 (Redcar)	
-	<p>Arriva disagrees with the CMA's provisional finding of an SLC on the X3/X3A, 3 and X4 flows in the Redcar region. The CMA's analysis:</p> <ul style="list-style-type: none"> ● does not set out clearly a theory of harm as to why any fares would rise as a result of the Award; ● contains a number of unfounded assertions and unsubstantiated assumptions; ● contains factual inaccuracies and gaps in its analysis; and ● fails to take proper account of Arriva's evidence.
Table 22	The CMA states in Table 22 that the peak hour frequency for the Northern service on the Middlesbrough - Whitby flow is 1.5 per hour.

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	<p>This figure is incorrect; information provided by Arriva in its pro forma response shows 0.5 services during peak times. Even this figure significantly overstates the frequency of services on this flow over the course of the day. In fact there are only 4 services per day in each direction on this flow, with a gap of at least 3 hours between each of them. Accordingly this inaccuracy is likely to result in an understatement of the GJC differential between bus and rail in respect of this flow.</p>
Fn 277	<p>Constraint from private transport</p> <p>The CMA has completely disregarded Arriva's arguments on the constraint from private car in respect of these routes, making only a brief reference to the general comments it made at paragraphs 6.16 – 6.27. Despite the CMA's comment at paragraph 6.22 that the extent of actual constraint from private transport would vary on a flow-by-flow basis, the CMA has not included any detailed individual analysis of the flows in question despite the drive times being comparable to / faster than the bus/rail options in respect of a number of overlap flows on these routes.</p>
11.107 – 11.109	<p>X3/X3A/3 GJC analysis</p> <ul style="list-style-type: none"> Paragraph 11.107 claims that the differences between the GJC on these bus-rail flows are "broadly low" taking an average of GJC across each overlap flow considered. The CMA does acknowledge that the highest GJC it found was [X] but not that, based on its own calculations, half of the total 6 flows considered had a GJC difference of [X], meaning that as a whole these GJCs should not be considered "broadly" [X]. The CMA also fails to consider Arriva's own generalised cost analysis which (as noted above) shows that the average difference in generalised journey cost is approximately [X], with one flow above [X] (the CMA's own adopted filter) and three flows above [X]. <p>X4 GJC analysis</p> <ul style="list-style-type: none"> Paragraph 11.108 claims that the differences between the GJC on these bus-rail flows are "broadly low", commenting that the highest GJC is [X]; however, according to Table 22, the highest difference in GJC is in fact [X]. In addition other flows on this route have differences of [X]; therefore, [X] have a GJC of [X], again indicating they are not "broadly low". As noted above, Arriva's own analysis shows that there are three flows that have a difference in generalised cost of [X], and the average difference in generalised cost is [X]. <p>Conclusions</p> <ul style="list-style-type: none"> The CMA uses the erroneous and selectively quoted figures above to conclude that across both routes there is limited differentiation and that passengers are likely to view bus and rail as close substitutes. The CMA offers no supporting evidence for this assertion and does not conduct any further analysis on the closeness of competition on a flow by flow basis.
11.112 and 11.113	<p>Incentives to raise prices</p> <ul style="list-style-type: none"> The CMA implies (but does not specifically state) that overlap flow revenue of [X] (and representing only [X] of total route

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	<p>revenue) would provide sufficient incentive for Arriva to raise fares, with no sound basis for doing so.</p> <ul style="list-style-type: none"> The CMA again implies in paragraph 11.113 that that overlap flow revenues of [X] would provide sufficient incentive for Arriva to raise prices on its X4 services. This is inconsistent with the CMA's findings elsewhere in the PFs that overlap revenues of [X] are a "small proportion".
Incentives / ability generally	<p>The CMA does not address at all Arriva's arguments that:</p> <ul style="list-style-type: none"> Arriva's ability to increase prices is constrained in respect of some flows by the multi-operator tickets in this region – the Teesside/Easyrider ticket [X]; and Arriva's incentives to increase prices on certain flows is constrained due to the subsequent changes that would be required to Arriva network tickets such as the All Zones Saver, and Teesside and East Cleveland Zone saver. <p>Similarly, the CMA also does not take into consideration the fact that Arriva's ability and incentives on these flows are also constrained by the types of passengers on these routes and that the level of constraint may differ depending on the flow:</p> <ul style="list-style-type: none"> There are a significant number of student fares on certain flows on these routes. The largest number of students beginning journeys on these routes is in Middlesbrough. According to data collected by Arriva during a two week window in November 2015, students represented [X] of all passengers leaving from Middlesbrough on these routes. Arriva considers it likely that the vast majority of these journeys are students [X]. Based on the data on students boarding at other stops it appears a majority of the students on overlap flows travel between Middlesbrough and either Redcar or Saltburn. [X]. Therefore Arriva would have a lower incentive to raise fares in respect of these flows on which significant numbers of [X] students travel compared other flows on the routes. Similarly, these students would be unlikely to switch to rail following a fare increase as they travel for free. There is also a significant percentage of concessionary passengers on each of these routes. Based on the ticketing data referred to above, concessionary passengers comprise [X] of total passengers on the X3/X3A, X4 and 3, with [X] starting their journeys in Middlesbrough, Marske, Redcar or Saltburn. The [X] proportion of concessionary passengers on these flows means that Arriva's incentive to increase fares is even lower than would otherwise be the case: Arriva is unlikely to benefit fully from any material increase in fares for these passengers as the revenue Arriva receives in respect of such passengers [X]. In addition, as these passengers enjoy complimentary bus travel, fare increases on the relevant services would not increase these passengers' propensity to switch from bus to rail or private car. <p>The CMA has not taken the above variations in incentives and ability on individual flows into account or indeed conducted any detailed flow level analysis at all in provisionally finding that there is an SLC in respect of flows on these routes.</p>
11.115	<p>The CMA states here that it "has not seen any evidence to suggest" that Redcar and Cleveland Borough Council would expand its bus services. However the CMA does not suggest, as it does in respect of other SLC flows (see paragraph 11.117), that it asked for or received any submissions directly from the council on this point.</p>

PFS REF.	ARRIVA COMMENT
11.117-11.119	<p>Threat of entry</p> <p>Stagecoach's and Stagecarriage's comments regarding the threat of entry are completely redacted and therefore Arriva has not been given an opportunity to respond to anything said in those paragraphs.</p> <p>The CMA also provisionally finds that a competitor would have to "invest substantially" in order to "match Arriva's extensive network". This analysis ignores the following key points:</p> <ul style="list-style-type: none"> • Evidence from "third parties" (identities not revealed) at paragraph 11.59 that barriers to entry / expansion were low provided depots were available; • The CMA's statement at paragraph 11.74 that larger operators (such as Stagecoach) may be more likely to sustain successful entry than smaller operators; • The fact that a competitor would not have to match Arriva's full offering or coverage in order to compete on the relevant overlap flows. There are a number of overlap flows which Stagecoach could easily enter (for example the Middlesbrough - Redcar flow) without matching Arriva's existing offering in its entirety; • The CMA's earlier statement at paragraph 11.102 that Stagecoach runs an extensive network within Middlesbrough and would therefore only have to expand rather than enter the region from scratch; and • Arriva's evidence detailed in paragraph 11.116 that Stagecoach, Stagecarriage and Croft Coach all have depots within 10 minutes of the start of these routes in Middlesbrough.
11.120	The CMA states that it has not received evidence of how the Tees Valley VPA would inhibit Arriva's ability to flex fares. Arriva needs to maintain a close working relationship with the Tees Valley councils [X].
Routes 83 and 84 (Huddersfield)	
11.122-11.133	<p>Arriva disagrees with the CMA's provisional finding of an SLC on flows between Huddersfield and Shepley on routes 83 and 84. The CMA's analysis:</p> <ul style="list-style-type: none"> • does not set out clearly a theory of harm as to why any fares would rise as a result of the merger; • contains a number of unfounded assertions and assumptions which are unsubstantiated; • has inconsistencies in its analysis compared to the approach taken on other flows; • takes a selective approach in respect of the evidence considered generally; and • fails to take proper account of Arriva's evidence.

PFS REF.	ARRIVA COMMENT
Fn 284	<p>Constraint from private transport</p> <p>The CMA has completely disregarded Arriva's arguments on the constraint from private car in respect of these routes, making only a brief reference to the general comments it made at paragraphs 6.16 – 6.27. Despite the CMA's comment at paragraph 6.22 that the extent of actual constraint from private transport would vary on a flow-by-flow basis, the CMA has not included any detailed individual analysis of the flows in question despite the private car drive times for each flow being substantially faster than the bus and comparable to the rail options on both these overlap flows.</p>
11.126	<p>The CMA aggregates the overlap flow revenue for the 83 and 84 in its analysis of revenues on the flow. Doing so masks the fact that the relevant overlap flow on the 83 accounts for [X] in revenue, and that the CMA's analysis has failed to establish any clear incentive on behalf of Arriva to raise prices in respect of the 83 overlap flow.</p>
11.127	<p>The CMA has relegated an important argument in Arriva's favour, that Northern's revenues on these flows account for [X] of total route revenue, to a footnote. The CMA has also not provided any indication that it has considered this key piece of evidence and factored it into its provisional finding of an SLC on these flows.</p>
11.128 – 11.130	<p>GJC analysis</p> <ul style="list-style-type: none"> • The CMA seeks to analyse the difference in GJC between the 83 route and the 84 route compared to the Northern service. It attributes the difference in GJC to the longer journey time on the 83 service, but provides no supporting evidence for this assertion. This analysis is simplistic and fails to take into account the individual characteristics of these flows, despite the CMA's claims at paragraph 11.29 that it considers the GJC assessment "in the round" with other evidence. Based on Table 25 it may appear that the frequencies of the two services are similar. However the 83 is in fact far more sporadic, characterised by a large number of earlier morning services (six services before 09:15) and followed by intermittent services during the day. In contrast the 84 is a much more regular service, leaving at the same time on the hour in both directions during its hours of operation. • The CMA attributes the "relatively small" difference in GJC for the 84 bus compared to Northern to the fact that the frequencies in the two services are similar. No supporting evidence is provided for this assertion, yet on the basis of this unsubstantiated conclusion the CMA finds that passengers are likely to consider bus and rail as viable alternatives. The CMA does not appear to have taken into account the fact that the 84 service ends significantly earlier in the day (around 6pm) compared to the Northern service (after 10pm), that the 84 does not run on a Sunday, or the overall differences in frequency between the two services in reaching this conclusion.
Incentives / ability generally	<p>The CMA does not address at all Arriva's arguments that:</p> <ul style="list-style-type: none"> • Arriva's ability to increase prices is constrained by the multi-operator tickets in this region – the WYCA Metro ticket and TGM System one ticket [X]; and

PFS REF.	ARRIVA COMMENT
	<ul style="list-style-type: none"> Arriva's ability to increase prices on certain flows is also constrained due to the corresponding changes that would be required to Arriva network tickets such as the Tiger Day and Tiger Week. <p>The CMA also does not consider that Arriva's incentives on these flows are also constrained by the [X] of concessionary passengers on the route. Based on rolling 12 month data, the total percentage of ENCTS passengers on the 83 and 84 is [X] and [X] respectively. Arriva receives [X] for carrying concessionary passengers and would gain no additional revenue in respect of this [X] proportion of passengers by increasing its fares on these flows, limiting its incentive to do so. In addition, as these passengers enjoy complimentary bus travel, fare increases on the relevant services would not increase these passengers' propensity to switch from bus to rail or private car.</p>
11.132	<p>Threat of entry</p> <p>The CMA concludes that it has not seen evidence that FirstGroup has plans to enter this flow. However, the CMA does not suggest, as it does in respect of other SLC flows (see paragraph 11.117), that it asked for or received any submissions from First Group on this point. The CMA's analysis fails to properly take into account:</p> <ul style="list-style-type: none"> Evidence from "third parties" (identities not revealed) at paragraph 11.59 that barriers to entry / expansion were low provided depots were available; That FirstGroup already operates the 372 service in the area which covers the first 15 minutes of the overlap flow (from Huddersfield to around Wakefield Road), which it could easily expand in response to any action taken by Arriva post Award; The CMA's statement at paragraph 11.74 that larger operators (such as FirstGroup) may be more likely to sustain successful entry than smaller operators; That FirstGroup's current plans for the region are not necessarily indicative of how it would react should Arriva try and degrade its bus services or increase fares post Award (which would provide an opportunity for FirstGroup to expand to better fulfil customer demand); and Arriva's evidence set out in paragraph 11.132 that FirstGroup has a depot within 6 minutes of the start of these routes.
11.133	<p>The CMA provisionally finds that [X] of total route revenue (aggregated between both services) is a "large" share of total revenue giving it the ability to increase fares. Arriva notes that the proportion of route revenue accounted for by a particular flow provides no indication of Arriva's ability to increase fares on the flow. With regard to incentives, the [X] figure quoted is not particularly significant given this percentage accounts for only [X] in revenue and that any profit resulting from an increase in fares would be only a [X] proportion of that figure (particularly taking into account the [X] numbers of concessionary passengers on the route).</p>
<p>Routes X14, X15 and X18 (Morpeth – Newcastle)</p>	
11.134-	<p>Arriva disagrees with the CMA's provisional finding of an SLC on the X14, X15 and X18 (Morpeth – Newcastle flow). The</p>

PFS REF.	ARRIVA COMMENT
11.145	<p>CMA's analysis contains a number of unfounded assertions and assumptions, is unsubstantiated and fails to take proper account of Arriva's evidence.</p> <ul style="list-style-type: none"> • The CMA does not properly articulate or substantiate any theory of harm as to how or why Arriva would increase fares on the Morpeth – Newcastle flow. Arriva would refer the CMA back to the detailed flow analysis submitted at Annex 5 of its note following up on the meeting of 18 August (submitted on 24 August), which explained why no concerns should arise from the overlap on this flow. • It is not clear from paragraph 11.134 of the PFs why the CMA has brought the Newcastle – Widdrington flow back in for analysis; nor is it clear what conclusion the CMA has reached on that flow (Arriva assumes that the CMA has provisionally concluded that there is no SLC on that flow, given the lack of further detailed analysis). • The CMA undertakes no analysis of whether private transport is a competitive constraint on this flow and does not comment on Arriva's submissions and evidence (including at the hearing on 4 August and the meeting on 18 August) at all. Car is a constraint on this flow. In particular: <ul style="list-style-type: none"> ○ [X] the survey respondents on the flow had access to a car, van or motorbike (compared to [X] on average), and a [X] proportion ([X]) reported they had previously used car to make the journey. ○ A [X] proportion of passengers divert to private car, i.e. [X] compared to [X] on average across all survey respondents in response to the forced divert question (based on unweighted results). ○ Arriva North East has also explained to the CMA [X]. • The CMA is silent as to whether it conducted a GJC analysis on this flow. If so, Arriva would invite the CMA to share its analysis; if the CMA was unable to conduct an analysis with the information it had, Arriva would have expected the CMA to request the information that would have enabled it to do so. • The CMA has undertaken no analysis of Arriva's <u>ability</u> to raise fares on this flow and has completely failed to take into account the existence of zonal tickets, which act as a significant constraint. Arriva simply could not increase the price of return tickets, weekly tickets or four-weekly tickets on this flow without breaking the zonal ticketing fare structure. Multi-operator tickets (i.e. the North East Explorer) also remain a constraint. With regard to single tickets, Arriva could not increase its single fare on the X15 or the X18 by more than c.8% without breaking the graduated fare structure on these routes or having to amend fares on subsequent fare stages (as the next fare stage is £5.60), thus affecting the coherence of fares on the wider route; for the X14, Arriva could not amend the single fare at all without upsetting the coherence of the fare structure unless it also increased all fares for longer flows on the route (as the £5.20 fare applies to all subsequent fare stages). • With regard to incentives: <ul style="list-style-type: none"> ○ the CMA notes that the overlap flows on these routes (including Newcastle-Widdrington) accounts for [X] of total route revenue (paragraph 11.138 of the PFs). This is unreasonably described as so "significant" that it gives Arriva an incentive

PFS REF.	ARRIVA COMMENT
	<p>to increase fares, which is demonstrably inconsistent with the CMA's approach in other parts of the PFs (e.g. paragraph 10.87, where [X] is said to be a "small" proportion of route revenue). Neither has the CMA undertaken any analysis of the profitability of such action.</p> <ul style="list-style-type: none"> ○ The CMA fails to acknowledge that (as explained at Annex 5 of Arriva's note following up on the meeting of 18 August) [X]. ○ The survey showed that there was a [X] proportion of concessionary passengers travelling on this flow: [X] compared to [X] across the flows surveyed (based on unweighted results). Arriva's ticketing data for a two-week period from 2 November to 15 November 2015 also provides a snapshot of the types of passengers boarding the X14, X15 and X18 services in Morpeth and in Newcastle. Of [X] boarding these services at Newcastle Haymarket during that period and travelling in the direction of Morpeth, [X] were concessionary passengers; of [X] persons boarding at Morpeth Bus Station and travelling in the direction of [X] were concessionary passengers. The [X] proportion of concessionary passengers on this flow means that Arriva's incentive to increase fares is even lower than would otherwise be the case: Arriva is unlikely to benefit fully from any material increase in fares for these passengers as the revenue Arriva receives in respect of such passengers is [X]. In addition, as these passengers enjoy complimentary bus travel, fare increases on the relevant services would not increase these passengers' propensity to switch from bus to rail or private car. ○ As noted above, Arriva could not readily increase the price of day saver, weekly or four-weekly tickets without breaking the design of its zonal ticketing fare structure, and this in effect reduces the number of ticket types to which any fare increase could be applied. The ticketing data for the two week period referred to above shows that [X] of passengers boarding at Morpeth Bus Station and travelling in the direction of Newcastle were travelling using "passes" including season tickets and adult/child return tickets,² while [X] of passengers boarding at Newcastle Haymarket and travelling in the direction of Morpeth were using such passes. This further reduces any incentives that Arriva might have to raise fares. ○ Based on this ticketing data, only [X] of passengers boarding at Morpeth Bus Station and travelling in the direction of Newcastle and only [X] of passengers boarding at Newcastle Haymarket and travelling in the direction of Morpeth were travelling on tickets other than passes or concessionary fares, meaning that any hypothetical incentive to increase fares on this flow are significantly lower than the CMA suggests. <ul style="list-style-type: none"> ● There is a unjustified leap of logic in paragraph 11.140: the CMA's comparison of fares and journey times does not justify a conclusion that the degree of differentiation between bus and rail is low or that passengers are likely to view them as viable alternatives. ● With regard to paragraph 11.141, the bus and train stations clearly serve different parts of the city, given the distance between them, and it is not clear what further evidence the CMA is looking for here. ● Paragraph 11.144: it is not clear whether the CMA has <i>sought</i> evidence from Glen Valley Tours as to whether it would expand its

² Not including scholar/student passes.

PFS REF.	ARRIVA COMMENT
	<p>services or from Go North East as to whether it would enter this flow in the event of a fare increase by Arriva. Arriva clearly cannot provide this evidence itself. Arriva is surprised at the CMA's conclusion in relation to Go North East, given its presence and experimentation with its services in the area, and the fact that the CMA considers third party operators to pose a constraint on Arriva's behaviour in similar circumstances on other flows.</p> <ul style="list-style-type: none"> • Paragraph 11.145: the CMA cannot reasonably conclude from the journey metrics that the rail and bus services compete closely on this flow. In particular <ul style="list-style-type: none"> ○ The bus journey time (based on timetables) is in fact 32-33 minutes, i.e. 50% longer than the train. ○ If the CMA is choosing to look at these services taken together as opposed to individually, as it seems to be, there are three buses an hour (in operating hours during the week) compared to one Northern service per hour – i.e. a significant difference in frequency. • Paragraph 11.145: there is no basis for concluding that Arriva has an incentive to raise fares in light of the points above.
Route 12 (Darlington - Dinsdale)	
General points	<p>The CMA has provisionally found an SLC on the Darlington-Dinsdale flow and/or the entirety of route 12. Arriva makes the following general points in response to the PFs in respect of route 12:</p> <ul style="list-style-type: none"> • In May 2016, Arriva North East reduced the frequency of route 12 on the Darlington-Dinsdale flow from two services an hour to one service an hour. The CMA's analysis in its PFs correctly reflects the current level of frequency on this flow, but it is important to note that as a result of this certain data in the pro forma will be overstated compared to the present situation (e.g. revenue figures which will now be lower due to this change). • The CMA has not articulated any merger-specific theory of harm on this flow. The CMA concludes without proper basis that Arriva is likely to have an incentive to increase fares, but it has not conducted any analysis as to how significant any incentive might be or the reason(s) why Arriva would have any such incentive. Moreover, the CMA refers to "fares" generically without analysing which fares the CMA considers might be increased and the degree to which Arriva might hypothetically be incentivised to increase them. • The CMA has not conducted a GJC analysis to assess the degree of comparability between bus and rail on this flow (as it has done for other flows). Arriva notes that there are substantial differences in the characteristics between the rail and bus services on this flow which Arriva highlighted in its flow-by-flow analysis (e.g. Northern offers over twice as many services a week as the Arriva bus service, and journey times are four times quicker).³ Arriva's own GJC analysis shows that the generalised cost on the Northern

³ Annex 2, paragraph 17.1.4 of Arriva's Bus/Rail Overlap Analysis dated 15 August 2016

PFS REF.	ARRIVA COMMENT
	<p>service is [X] than the 12 service, which is [X] to the 25% filter applied by the CMA and further demonstrates that the bus and rail services are not close competitors.⁴ Arriva's GJC analysis appears to have not been considered at all by the CMA in its PFs on this flow.</p> <ul style="list-style-type: none"> The CMA has not conducted any analysis of the constraints that Arriva's network tickets and graduated fare structure place on its ability to increase bus fares. As explained in Arriva's previous submissions to the CMA, Arriva's ability to increase fares on this flow is limited by the fact the flow falls within Arriva North East's Aycliffe & Darlington zone network ticket and is part of a graduated fare structure.⁵ The CMA previously stated that it would analyse network tickets at a flow level but has failed to do so in respect of route 12 (see paragraph 11.12 of the PFs). Arriva considers that there is no real analysis on this flow of the competitive constraint imposed by private car or other modes of transport, despite the fact that the CMA acknowledges in paragraph 6.22 of the PFs that competition by car varies on a flow-by-flow basis. The CMA has not articulated why it considers that the bus journey (which takes 20 minutes) competes with the rail journey (5 minutes) but then discounts any competitive constraint from car (which takes only 10-14 minutes at <u>peak</u> times). In addition, the CMA has not considered at all Arriva's submissions on competition from cycling which, given the short length of this flow, takes only 23 minutes, i.e. only 3 minutes longer than the Arriva North East service.
11.147	<ul style="list-style-type: none"> The CMA has not taken into account the fact that the Arriva North East bus service and Northern service do not overlap <i>at all</i> at certain times on the Darlington-Dinsdale flow. As Arriva noted in its bus/rail flow-by-flow analysis, the 12 service does not operate on this flow on Sundays and during early mornings and evenings.⁶ There is no recognition by the CMA of the limited degree of overlap between the two services or Arriva's submissions in this regard at all in the PFs.
11.148	<ul style="list-style-type: none"> The CMA appears to concur with Arriva's view that the bus and rail services are differentiated but appears to try to show that the two services are comparable on the basis of higher bus revenue figures, concluding that "<i>passengers generally prefer to travel by bus</i>". The fact that bus revenues are higher does not in itself indicate whether passengers are likely to consider the two services as substitutable and may simply represent different groups of passengers who prefer one mode over another.⁷ Indeed, Arriva notes that it is likely that the bus and rail serve different types of passengers on this flow due to the fact that route 12 stops at a number of villages near Dinsdale which the train does not serve. Moreover, Arriva's ticketing data for the two week period from 20 July 2016 to 3 July 2016, which provides a snapshot of the types

⁴ Annex 2, paragraph 17.1.4(G) of Arriva's Bus/Rail Overlap Analysis dated 15 August 2016; for the avoidance of doubt this figure remains at 21% following the reduction in frequency noted above.

⁵ Annex 2, paragraph 17.1.5 of Arriva's Bus/Rail Overlap Analysis dated 15 August 2016

⁶ Annex 2, paragraph 17.1.4(F) of Arriva's Bus/Rail Overlap Analysis dated 15 August 2016

⁷ In any event, given the reduction in frequency of the Arriva 12 service is it likely that bus revenues will be even lower in the future.

PFS REF.	ARRIVA COMMENT
	<p>of passengers travelling on this route, shows that a [%] proportion of passengers boarding the 12 service at Dinsdaleany Stop/Chapel Street (the nearest to Dinsdale Station) are concessionary passengers, which further demonstrates the differing passenger demographics of the bus and rail services (see below for further details).</p>
11.149	<ul style="list-style-type: none"> • Arriva does not agree with the CMA that [%] is a "relatively high proportion" or "significant" amount of route revenue. As noted in Arriva's bus/rail overlap analysis, Arriva's incentive to alter fares on this flow would be limited as [%] represents a minor part of overall route revenue. Moreover, the CMA has not conducted any analysis as to why a revenue share of only [%] would alter Arriva's incentives on this flow post-merger. In addition, following the reduction of frequency in May 2016 this figure is [%] and reduces to [%] for 2016 up to and including 11 September 2016. • In any event, the overlap represents a very small amount of revenue given the very small number of passengers which travel on this flow (previously [%] in absolute terms). Following the reduction in frequency by Arriva in May 2016, Arriva's revenue on this flow will be [%] for this year, further reducing any hypothetical incentive it might have to increase fares. It is also important to note that the frequency change on this flow was made by Arriva North East [%]. Arriva is therefore highly unlikely to have any incentive to increase fares on this flow due to the very small amount of revenue (and profit) any such action could in theory possibly generate. • Finally, Arriva's ticketing data for the two week period from 20 July 2016 to 3 July 2016 shows that of passengers boarding the 12 service at Dinsdaleany Stop/Chapel Street (the nearest to Dinsdale Station), [%] passengers of a total of [%] passengers were concessionary passengers (i.e. [%] of all passengers). The [%] proportion of concessionary passengers on this flow means that Arriva's incentive to increase fares is even lower than would otherwise be the case: Arriva is unlikely to benefit fully from any material increase in fares for these passengers as the revenue Arriva receives in respect of such passengers is fixed on a yearly basis under the English National Concessionary Travel Scheme through negotiation with local councils. In addition, as these passengers enjoy complimentary bus travel, fare increases on the relevant services would not increase these passengers' propensity to switch from bus to rail or private car.
11.150	<ul style="list-style-type: none"> • The CMA has inappropriately discounted possible future entry by Scarlet Band based in County Durham which Arriva considers would be well-placed to enter on this flow if a suitable opportunity arose. Moreover, the CMA appears to have not asked Scarlet Band whether, if Arriva were to increase its fares on this flow post-merger, it would be minded to enter the flow. • Similarly, there appears to be limited engagement by the CMA with Arriva's depot analysis with regard to Croft Coach and Stagecoach. The CMA appears to have not sought either competitor's views on the likelihood of potential entry in the event of a post-merger fare increase by Arriva.
11.152	<ul style="list-style-type: none"> • The CMA identifies at paragraph 11.152 of the PFs "<i>an SLC on the Darlington to Dinsdale flow</i>", however the conclusion drawn in paragraph 11.153 of the PFs appears to relate to the entirety of route 12. Notwithstanding the CMA's inconsistent approach, Arriva considers that it is simply not possible for the CMA find an SLC at the route level given the complete lack of any overlap with the

PFS REF.	ARRIVA COMMENT
	Northern franchise on [X] of the overall route (by revenue for 2016 up to and including 11 September 2016).
8. TRANSPORT NETWORKS	
12	<p>Arriva welcomes the CMA's provisional conclusion that there is no SLC in respect of transport networks</p> <ul style="list-style-type: none"> • Arriva agrees with the CMA's conclusion and notes that this is consistent with the evidence available to Arriva. • Arriva notes also that third parties did not express concerns.
9. APPENDICES	
F	Please see the separate note attached responding to Appendix F.
A-E, G-H	Arriva has no further comments on the other appendices to the PFs at this stage, except as set out in its comments on the main body of the PFs above.

Paragraph
in
Provisional
Findings

Relevant text in provisional findings, with mark-up
to reflect suggested changes

Comments

Response on Provisional Findings Appendix F: survey

Note prepared for CMA

21 September 2016

- Paragraph 2 In summary, the survey was designed to interview bus passengers on a subset of 18 of the 65 flows remaining after application by the Parties of a set of filters on overlap flows.¹ These were chosen as: flows where the rail station and bus stop are within 1,200m straight-line distance of one another for rural/long flows and 400m straight-line distance for intra-urban/short flows; flows which have annual passenger journey numbers of over 10,000; the largest flow on each remaining route, with the exception of route 110 where there were two larger flows (revenue of over £200,000 each) so both flows were surveyed.²
- As set out in Oxera's survey report (section 1.3, pp.3-4), the flows were also selected based on the following criteria:
- flows where the rail station and bus stop are within 1,200m straight-line distance of one another for rural/long flows and 400m straight-line distance for intra-urban/short flows; and
 - flows which have annual passenger numbers of over 10,000.
- The text should therefore be amended to reflect this.
- Paragraph 4 Based on feedback from the CMA, A-a target minimum of 100 completed questionnaires per flow was set.
- This target was set based on discussions with the CMA at an initial meeting on the surveys on 7 July 2016 and Arriva proposes amending the text to clarify this.
- Paragraph 6 The Parties' survey was designed by the Parties to provide a representative sample of passengers on specific overlap bus flows which were not filtered out by the initial filters.
- It is important that the CMA incorporates the amendments in tracked changes for accuracy.
- The survey was not designed to provide evidence on substitution between bus and rail travel across the Northern franchise area, or even across all flows on which Arriva's bus services overlap with Northern rail. Instead, the purpose was to obtain evidence for specific flows that were not excluded from further analysis by any of the filters. Therefore these flows may not be representative of all overlapping flows (i.e. those that were excluded on

¹ Bus de minimis, rail de minimis, proportion of overlapping route revenue, effective competitor and revenue increment

² There is a flow (Cramlington-Manors/Cramlington-Newcastle) on the X9 which has the same bus origin and destination stops, but different rail destination stations listed as the destination bus stops are equidistant from two rail stations. This flow was only surveyed once.

the basis of filters.) For example, the results of the survey may not be representative for flows that were excluded by the effective competitor flows as these flows would have third party bus operators which respondents could switch to. This could therefore affect the responses to diversion questions.

Table 1

Table 1 is missing information for the Leeds - Wakefield Westgate & Outwood (110) flows. The missing figures are 'in person' 157, 'online' 75, 'telephone' 17. The totals at the bottom of each column, including the Total column, should be updated to reflect the total number of surveys carried out.

Paragraph 12 Ahead of survey work the CMA had explained -its concerns about the difficulty of ensuring high quality fieldwork in ~~bus~~ surveys of this type, particularly when employing an ad hoc field force of freelance interviewers. The Parties also made amendments to the survey to reflect the concerns raised by the CMA. However, the CMA notes that this issue is common to virtually all face-to-face consumer survey exercises as all major market research agencies use freelance interviewers.

Arriva notes that the CMA raised these concerns during a meeting in relation to the rail-rail survey, which was not carried out in the end. It appears however from the Provisional Findings that the CMA was making these comments in general terms rather than in relation to rail or bus surveys specifically.

It is standard practice to use freelance interviewers for face-to-face surveys as very few/no market research companies directly employ interviewers to undertake this type of field work. This criticism could therefore be made of all surveys which are carried out using interviewers. Indeed, this is also the case for face-to-face interviewing which the CMA itself has commissioned and relied on as evidence many times in the past.

Furthermore, all interviewers working on this project were personally briefed by either the Project Manager or the Field Manager. The initial briefing for face-to-face interviewers was by phone and was attended by representatives of the CMA. Briefing notes were provided for face-to-face and telephone interviewers. Given that Accent does a lot of face-to-face interviewing, most of the interviewers used work for them on a regular basis.

Arriva therefore proposes the amendments set out in tracked changes to ensure that a complete and accurate picture is presented in the CMA's final report.

Paragraph 14 When making spot checks, most of the interviewers were present for shifts although several shifts started late and, as stated above, one was not fulfilled due to illness.

It is unclear whether being 'late' refers to interviewers starting the shifts a few minutes late or working a shift which was actually starting later than originally scheduled. In any event, a good spread of times of day was achieved for interviews, as is evident from the data, and therefore this would not have affected the survey results.

In light of the anecdotal nature of this assertion, Arriva does not consider that it is possible for the CMA to place much weight on this evidence and therefore proposes that this paragraph is not included in the CMA's Final Report. .

Paragraphs
14 (a) and
(b)

In Durham, interviewers were not allowed to conduct fieldwork in the bus station. When we visited Durham bus station the interviewer was not there. We therefore phoned the Accent field manager who said that interviewers were being asked to interview at the next bus stop on the route. However, he subsequently gave incorrect directions to us for getting to this stop. This gives rise to some uncertainty about where the interviewers on different shifts actually conducted their interviews, although in Durham the bus and train stations are close to each other and so it is unlikely that interviewers would interview outside the overlap catchment area and there is no evidence that interviews were performed at out-of-scope bus stops-.

In Featherstone the interviewer was not at the bus stop ('F6') where we were told she would be and contact was made via the Accent area supervisor. The interviewer said that she had not received a map or any guidance about where to interview. On the previous day she had chosen F6 after local people had told her that it was the busiest stop, but on the day of the CMA's visit she had chosen a different stop as F6 was 'too hot'. However, there is no evidence that interviews were performed at out-of-scope bus stops.

There appears to be no evidence that the interviewers were not working at in-scope bus stops and it would be incorrect for the CMA to assume that this was the case in these two instances. Arriva has therefore proposed additional text as indicated by the tracked changes in the previous column for completeness and accuracy.

Paragraph

In Liverpool (Charlotte Street) the interviewer was not at The interviewers were working at in- scope bus stops in Liverpool. One interviewer worked

14(c)	<p>the designated bus stop, but at another location. There was some confusion at the time about exactly where this was, although we now understand it to have been at One Bus Station, on <u>closer to</u> the edge of, but still <u>well</u> within, the catchment area. The interviewer said that she had been asked to move there by Accent's fieldwork manager after she had reported that it was hard to recruit passengers at the designated stop. She had worked several shifts including some at the other end of the flow (in Halewood). <u>In one case, for half of one shift, she where she had also</u> interviewed at a different location to the one intended (a shopping centre on the bus route nearer to Liverpool city centre which we believe must have been Belle View Shopping Centre – well outside the catchment area).</p>	<p>half of one shift at the Belle Vale Shopping Centre, having correctly done the first half at Halewood Leathers Lane; Arriva considers that this would not have materially impacted the survey's results. Moreover, subsequent shifts were in the correct location. Oxera's supplementary note on the survey also includes a table (Appendix A1) listing where all the Liverpool-Halewood shifts were conducted, which the CMA does not appear to have taken account of.</p> <p>Arriva therefore proposes that the text should be amended as tracked to properly reflect the position in the CMA's final report.</p>
Paragraph 14 (e)	<p>When analysing the survey dataset we found a number of cases where a journey origin or destination town/city stated by the respondent did not correspond to the intended overlap flow. <u>However, this is likely to be a result of some passengers misunderstanding the question rather than interviewers interviewing out-of-scope passengers.</u></p>	<p>This is likely to be related to the issue which had been identified in Oxera's survey report (p 16). As noted in Oxera's report, '[X]'. It is imperative that the CMA's Final Report takes this point into account properly, and Arriva has proposed changes to the text accordingly. Arriva notes that the CMA's Provisional Findings do not in fact imply that out-of-scope respondents were interviewed. The survey included a number of measures to ensure that only in-scope respondents completed the survey: these measures are provided in detail in Oxera's survey report (submitted 17 August 2016) and Oxera's response to the CMA's feedback (submitted 24 August 2016).</p> <p>Arriva considers it important that the CMA has due regard to all of Arriva's evidence and submissions on the survey, including Oxera's 'Response to the CMA's feedback on the bus-rail survey' note, which does not seem to be taken into account by the CMA in the Provisional Findings.</p>
Paragraph 14	The geographical starting and stopping points of the	Arriva notes that the CMA has not explained why the results would be biased in the way

15	<p>respondents' journeys are important to the accuracy of the survey results. If either end of a respondent's journey was outside the overlap catchment area then train travel would have a diminished chance of being cited as a diversion alternative. There is some evidence that this has happened in some cases and that the magnitude of this bias varies by individual flow. <u>However, we note that survey recruitment was carried out at specific in-scope bus stops and that the recruitment section of the survey questionnaire specifically checks the specific bus stop to which respondents are travelling. Furthermore, interviewers were carefully briefed to ensure that they only recruited in-scope respondents and- Accent carried out supervisor checks and back-checks to ensure that only in-scope respondents were recruited.</u></p>	<p>suggested or the magnitude of any such bias. Arriva is therefore unable to respond to this statement unless the CMA provides an explanation for this statement in the extract. If no explanation is provided, Arriva considers that it should not be included in the CMA's Final Report.</p> <p>Arriva also proposes the changes tracked in the previous column to reflect the position more accurately. The recruitment section of the survey questionnaire specifically checks where respondents are travelling; the interviewer first enters the bus number that they were recruiting for into the tablet, then the start point and would then have been shown the only possible destinations for that route. As noted in Oxera's survey report, this included interviewers showing passengers a map and allowing them to choose the destination bus stop in order to ensure the respondent was making an eligible journey that was not outside the overlap catchment area. Furthermore, face-to-face interviewers were accompanied by their supervisor on a number of occasions and all interviewers working on this project were personally briefed by either the Project Manager or the Field Manager. Six out of 36 interviewers were then subject to checks by supervisors and back-checks were carried out to ensure that recruitment had been carried out correctly. None of those interviewed by phone were unable to recall being recruited or said that they had caught a different bus to the one for which they were recruited.</p>
Paragraph 17	<p>We observed a high degree of variation in the way that interviewers conducted interviews. Some only conducted full interviews at the bus stop, while others chose only to ask screener questions in person and collect details of eligible customers. <u>However, we note that Oxera's sensitivity analysis, which examined correlation by interviewer, did not indicate any particular patterns by interviewer or flag any 'rogue' interviewers.</u></p>	<p>The survey was specifically designed so that it could be conducted either face-to-face at the bus stop, on the telephone or online, with different versions designed for each. Given time constraints, interviewers were specifically briefed to undertake face-to-face interviews where possible. Arriva notes that the CMA did not actively raise any issues or concerns with the survey being designed in this way during the 7 July meeting with Oxera and Accent in which the survey design was discussed, and that it would have been appropriate to raise any such concerns prior to the survey being undertaken.</p> <p>Some variation is likely to occur in most surveys where face-to-face or telephone interviews are used. Furthermore, some of the variation by interviewer is likely to be driven by the times of the shift (e.g. peak vs. off-peak) or the type of flow (commuter vs. leisure flow) rather by the interviewer.</p>

Paragraph 18 The quality of interviewing was very variable. Some interviewers were good, following the script closely, but there were many instances of paraphrasing and prompting. However, we note that Oxera's sensitivity analysis which examined correlation by interviewer did not indicate any particular patterns by interviewer or flag any 'rogue' interviewers.

Oxera's sensitivity analysis which examined correlation by interviewer did not indicate any particular patterns by interviewer or flag any 'rogue' interviewers and therefore Arriva has proposed the tracked amendments for completeness and accuracy.

As explained above, some variation is likely to occur in most surveys where face-to-face or telephone interviews are used. Oxera's sensitivity analysis which examined correlation by interviewer did not indicate any particular patterns by interviewer or flag any 'rogue' interviewers.

Furthermore, all interviewers working on this project were personally briefed by either the Project Manager or the Field Manager. The initial briefing for face-to-face interviewers was by phone and was attended by representatives of the CMA. Briefing notes were provided for face-to-face and telephone interviewers.

In addition, Accent conducted a back-checking on all 622 interviewees who did a phone or online survey to assess whether the recruitment interview was conducted in a professional manner. Only 7 people (1%) responded no, suggesting that interviewees felt that the quality of interviewing was good.

Paragraph 18 First, there was a tendency by more than one interviewer to ask the screener questions in a leading affirmative way. For example, rather than asking which bus the passenger was waiting for, asking 'Did you know it was Arriva?' This accentuates the problem of including passengers in the survey who might not be eligible and again may lead to fewer customers citing rail as an alternative to the diversion questions.

It is not clear from this extract how this point would bias the survey results in the way the CMA has suggested. Arriva is unable to comment fully on the accuracy of the extract without further explanation from the CMA in this regard. If no explanation is provided, Arriva considers that this statement should not be included in the CMA's Final Report.

The CMA should also make clear that this evidence is anecdotal and set out how it observed such instances and the proportion that these instances account for (as the text refers in very general terms to "more than one interviewer"). If the number or proportion of instances where this occurred is small, it would be appropriate for the CMA to disregard these as these instances are unlikely to have had any material impact on the survey results.

Paragraph 18 Second, the frequency diversion question was long and complex and we only heard one interviewer reading it out in full. The others paraphrased it in a variety of ways and we have consequently decided not to use responses to this question.

If there had been a systemic problem with the interviewer delivery or understanding of the frequency diversion question, one would have expected to see many more 'don't know' answers, or a high proportion of apparently random/ irrational answers that were out of line with those in the rest of the survey. There is no evidence of this. Instead, the answers to this question are consistent with the answers that individual respondents give in the rest of the survey. There is therefore no good reason for the CMA to disregard the responses to this

question in particular. This question also directly tests the CMA's theory of harm and is an alternative to/cross check of the price diversion question.

To Arriva's knowledge, the CMA did not raise these concerns about the frequency diversion question in advance of the fieldwork, despite being provided with opportunities to review the survey before that work was undertaken. Arriva therefore considers it inappropriate for the CMA to raise this as a concern at this late stage of the process.

Oxera also examined responses across the different diversion questions and found these to generally be consistent. Furthermore, in the few instances where there were inconsistent responses, Oxera performed sensitivity analysis and found that removing these results did not significantly change the responses of the analysis (as noted in Appendix A2.3 in Oxera's survey report).

Arriva requires the CMA to take full account of the comments on this point in Oxera's response to the CMA's feedback (submitted 24 August 2016; see section 2.3, which makes the points set out above). The CMA does not appear to have done this based on the text of the Provisional Findings.

Arriva therefore proposes that the CMA excludes this extract from its Final Report and includes the results from this question in its analysis.

Paragraph 20 The questionnaire was unnecessarily long

Arriva does not consider that the questionnaire was unnecessarily long. All questions in the survey were included for a reason. Many of the answers to the questions provide useful indications about the extent to which bus passengers on the Arriva services concerned consider rail to be a close substitute, which is relevant to the CMA's potential theories of harm. Furthermore, the CC's previous publications on survey design have made clear the importance of asking factual questions before asking hypothetical questions so as to put the respondent's mind back to the moment that they made the purchasing decision rather than asking the hypothetical question 'cold'. (see <http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non->

[inquiry/our_role/analysis/cc_surveys_2007.pdf](#) - e.g. paragraphs 15-22).

As noted by the CMA, the survey took around 10 minutes to complete, which is a typical length for surveys of this type. The CMA's own guidance on survey design list two examples of previous surveys that lasted up 10 and 15 minutes respectively. (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284391/Good-practice-guide.pdf)

To Arriva's knowledge, the CMA did not raise any specific concerns about the length of the survey in advance of the fieldwork, despite being provided with opportunities to review the methodology and the survey itself at that early stage. Arriva considers it inappropriate for the CMA to newly raise this as a concern at this late stage of the process and proposes that the CMA exclude this comment from its Final Report.

Paragraph 20 The questionnaire was unnecessarily long and made little attempt to mitigate the perception that this was a survey about buses.

The survey included questions about which other modes respondents had used to travel on this flow in the past, and this question was asked before passengers were asked the diversion questions. The survey also contained questions about other modes used to get to the bus stop, access to private transport, and questions about train fares.

Oxera also received feedback from the CMA on this specific issue as part of the commenting process, and made changes to the questionnaire to deal with the CMA's concerns and to ensure that passengers were in the mind-set of the time they decided to make that specific journey. For example, changes were made to the wording of several questions (i.e. Q5, Q26, Q27, Q22 and, Q29). Arriva notes that at the time the CMA raised no further issues. It is therefore inappropriate for the CMA to raise this issue again at such a late stage particularly in light of the specific changes made to account for the CMA's earlier comments.

Arriva considers that, in light of the points above, the survey contained a sufficient number of questions about other transport modes and therefore sought adequately to mitigate any perception that this was a survey about buses. Arriva therefore proposes that the CMA exclude this comment from its Final Report.

Survey
results (22-
32)

Tables 2-7

The survey results do not show price diversion ratios as a proportion of all respondents. As this is the actual proportion of passengers who would divert, and is the relevant figure for the profit incentive analysis, Arriva considers that this is the more appropriate and informative way to present this analysis. More generally, it is highly relevant to understanding the proportion of marginal customers. Showing only the passengers diverting to rail as a proportion of those diverting away from Arriva bus does not capture the proportion of marginal customers. By choosing to disregard this statistic the CMA risks missing some of the most important evidence that the survey was designed to elicit and it is imperative that the CMA has full and proper regard to that evidence.

In addition, the forced diversion figures are not necessarily representative of whether passengers see bus and rail as good substitutes on the flows. The forced divert responses combine the choices of marginal customers and also infra-marginal customers (i.e. those who would remain on Arriva bus following a 10% price increase or a 50% frequency reduction). Given the very high proportion of infra-marginal customers in the survey, questions arise over the forced divert results as a way of measuring closeness of competition between bus and rail because they are heavily reliant on customers who would only switch away from Arriva bus in extreme circumstances, which may be outside the normal parameters of competition on the flows in question. It would therefore be inappropriate for CMA to give undue weight to these results.

This table sets out Arriva's response to Appendix F. The vast majority of these points were included in Arriva's response to the CMA's putback on 5 September,³ however, none of these points appear to have been taken into account. Arriva considers that these points should be taken into account in the CMA's final report. If the CMA disagrees with the responses, Arriva would expect the CMA to engage in further discussion on the points which are at issue so that these can be appropriately resolved.

³ [redacted].