

**ARRIVA/NORTHERN RAIL FRANCHISE**  
**ARRIVA'S COMMENTS ON NOTICE OF POSSIBLE REMEDIES**

Arriva's comments on the Remedies Notice (the "**Notice**") are set out in the table below.

REMEDIES NOTICE REF.	ARRIVA COMMENT
<b>1. INTRODUCTION</b>	
2	<ul style="list-style-type: none"> <li>• For the reasons set out in detail in Arriva's response to the CMA's Provisional Findings ("<b>PFs</b>"), Arriva strongly disagrees with the CMA's provisional conclusions that the award of the Northern Franchise to Arriva has resulted or may be expected to result in an SLC on the nine bus routes set out at paragraph 3(a) of the Notice or the four rail flows set out at paragraph 3(b) of the Notice.</li> <li>• There are compelling grounds for the CMA to re-consider its findings on each of the relevant bus/rail and rail/rail overlap flows. In light of the material submitted by Arriva and by third parties, Arriva considers that the CMA cannot properly satisfy itself, on a balance of probabilities, that the Award has resulted or may be expected to result in an SLC on any of the relevant routes<sup>1</sup>/flows.</li> <li>• Should the CMA nonetheless conclude in its final report that the Award has resulted or may be expected to result in an SLC on one or more overlap flows (or routes), Arriva has provided comments below, to the extent possible, on the potential remedies described by the CMA in the Notice. Arriva notes that it is difficult for it to comment fully on these potential remedies without a full understanding of the CMA's theory of harm on each individual overlap flow (or route), which is not always evident from the PFs. Arriva reserves the ability to make further comments on potential remedies after the CMA clarifies its theories of harm.</li> <li>• Arriva's comments on these potential remedies and the Notice more generally are provided without prejudice to its position on the substance of the PFs.</li> </ul>

<sup>1</sup> Arriva notes that with regard to bus/rail overlaps, it is not clear whether the CMA provisionally considers that an SLC arises only on the *flows* where it has identified concerns, or the whole of each *route* on which there are such flows. Arriva refers to both flows and routes for completeness in this document, but it is not 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 (as explained in more detail in Arriva's response to the PFs).

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<b>2. POSSIBLE REMEDIES ON WHICH VIEWS ARE SOUGHT</b>	
11	<ul style="list-style-type: none"> <li>Arriva agrees that the costs of any feasible structural remedy would far outweigh the scale of the adverse effects of any SLC the CMA may find. As explained in further detail at Section 5 below, a structural remedy would therefore be a wholly disproportionate way to remedy any such SLC, particularly given that behavioural remedies would be equally effective in this case.</li> </ul>
12(a)	<ul style="list-style-type: none"> <li>It is not entirely clear but it appears that the CMA may be contemplating restrictions on fare increases across entire routes, rather than only the flows where Arriva's bus service overlaps with the Northern service. Arriva's concerns about this approach and its major flaws are described in detail in section 3 below.</li> </ul>
<b>3. BUS/RAIL</b>	
14-16	<ul style="list-style-type: none"> <li>Arriva agrees that, if the CMA were to find an SLC on bus/rail overlap flows which relates to the potential for fare increases on such flows, a restriction on bus fare increases would be an effective and proportionate way of addressing the CMA's concerns.</li> <li>Arriva agrees that it would be appropriate and proportionate to time-limit such a remedy so that it only applies for as long as Arriva owns the Northern rail franchise, given that there would no longer be any overlap between Arriva's bus businesses and the Northern rail franchise after the franchise is awarded to a different operator.</li> <li>Arriva agrees that it should be relatively simple and cost-effective to monitor a remedy of this nature. Arriva considers that a self-reporting mechanism would be an efficient and appropriate means of monitoring the remedy: this has worked well in the context of the Interim Order, and would minimise the resources involved for both the CMA and Arriva.</li> <li>Arriva considers that any remedy should allow Arriva to seek the CMA's consent to fare increases which are in principle prevented by the remedy. This would allow the remedy to cater for unforeseen circumstances (e.g. a significant increase in Arriva's cost base), rather than imposing an absolute restriction which allows for no flexibility. Again, a mechanism of this nature has worked well in the context of the Interim Order.</li> </ul>
17(a)	<ul style="list-style-type: none"> <li>Arriva notes the importance of ensuring that any restriction on fare increases is appropriately designed so that it is both workable in practice and proportionate in its effects.</li> <li>Arriva's main concern is to ensure that the remedy allows it to make fare changes which are simple and easy to communicate to customers. In particular:</li> </ul>

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	<ul style="list-style-type: none"> <li>○ [REDACTED].</li> <li>○ [REDACTED].</li> <li>• Arriva is continuing to consider the ways in which the remedy could be designed to meet the aims outlined above. At this stage of the process, Arriva is open to discussing the following potential options with the CMA but reserves its position as to whether each of these options is workable in practice (which it is continuing to investigate). <ul style="list-style-type: none"> <li>a) Limiting increases in fares with reference to an industry-specific benchmark such as the index of local bus fares over time, which is published by the DfT and updated on a quarterly basis (table <a href="#">BUS0415</a>). <ul style="list-style-type: none"> <li>○ This would reflect broader conditions of competition in the sector in a way that other more general benchmarks such as RPI and CPI would not. These general benchmarks do not properly reflect the economic reality of operating a bus business, in particular major components of bus operators' cost bases such as wages, fuel costs (the latter only being reflected at a consumer level) and purchase and maintenance of vehicles for the fleet.</li> <li>○ Of the data published by the DfT, Arriva considers that the most representative benchmark in this case would be the index for bus fares in England outside London.</li> <li>○ Arriva proposes that, during the course of any given year for which such a remedy would apply, it should be able to increase fares on any flow on which the CMA may find an SLC by up to the percentage by which bus fares in England outside London have changed over the previous calendar year, subject to a minimum of zero (i.e. Arriva would not be obliged to lower its fares if the index fell below zero).</li> <li>○ Arriva proposes that if it does not implement fare changes in any given year for which such a remedy would apply, the amount by which it could have increased fares that year should be rolled forward and accumulated for subsequent years (so that e.g. if it were permitted to raise fares on a particular flow by 3p in year 1, 3p in year 2 and 4p in year 3, it would be able to raise fares by up to 10p in year 3 if it had not made any changes in year 1 and year 2). In the absence of an accumulation mechanism, there would be a risk that Arriva could only increase fares by e.g. 3p in a particular year, [REDACTED].</li> </ul> </li> <li>b) Limiting increases in fares with reference to a basket of fares covering other routes in the same local area. <ul style="list-style-type: none"> <li>○ As explained above, [REDACTED].</li> <li>○ Arriva would therefore propose that increases in fares on any flow on which the CMA may find an SLC could be limited with reference to the amount by which fares in corresponding price bands on other routes in the local area are increased in any given year. Arriva would suggest that if changes are being made to fares in a particular price band on a specified percentage of routes in the basket, it should be permitted to make the corresponding changes on the</li> </ul> </li> </ul> </li> </ul>

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	<p>relevant flows on which the CMA has found an SLC. For example, if fares between £1.00 and £1.50 were being increased by 10p across the Teesside and North Yorkshire area (or on more than the specified percentage of routes in that area), the remedy should allow Arriva to also change fares between £1.00 and £1.50 on any flow on which the CMA may find an SLC within that area, by up to 10p.</p> <ul style="list-style-type: none"> <li>○ This would allow Arriva to ensure that fares on such flows are consistent with (and continue to move in line with) fares on other non-SLC routes and flows in the area, as passengers are likely to expect.</li> </ul>
17(b)	<ul style="list-style-type: none"> <li>• Arriva is strongly of the view that any restriction on fare increases should only be applied to the overlap flows on which the CMA has found an SLC, not the routes.</li> <li>• Given that the CMA has defined the markets on a flow-by-flow basis, applying the remedy across a route in its entirety would mean that the remedy covers other markets in which there are clearly no grounds for finding an SLC, either because there is no overlap between Arriva's bus business and the Northern franchise, or because any such overlap does not give rise to concerns.</li> <li>• It would be unwarranted and wholly disproportionate to restrict Arriva's commercial pricing freedom by applying a remedy to markets in which there is no SLC, particularly when concerns on specific overlap flows can effectively and proportionately be addressed by flow-specific restrictions on fare increases.</li> </ul>
17(c)	<ul style="list-style-type: none"> <li>• The remedy should apply only to flow-specific tickets, allowing Arriva to increase the prices of zonal and network tickets without breaching the restrictions on fare increases. Changes to the prices of such tickets would not be specific to any overlap flows on which the CMA may find an SLC: rather, they would be of more general application and it would therefore be inappropriate to restrict these broader changes.</li> <li>• In the event that restrictions on fare increases are linked to the index of local bus fares over time, Arriva considers that restrictions on fare increases should be applied to a revenue-weighted fare basket for all flow-specific tickets on a relevant flow, rather than individual fares. This would allow Arriva to ensure that its fare structure on individual flows is coherent and consistent with changes on the remainder of the relevant route and other routes in the local area, whilst still protecting the interests of passengers as a whole. In addition, since the basket would be revenue-weighted there would be little if any scope for Arriva to substantially increase the price of any ticket that makes up a large proportion of route revenue. Therefore, applying the cap to individual tickets in the event of index-linked restrictions would be unnecessarily restrictive and disproportionate.</li> </ul>
17(d)	<ul style="list-style-type: none"> <li>• Arriva is of the firm view that it should not be restricted from changing or removing the relevant services over the period of the</li> </ul>

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	<p>Northern franchise.</p> <ul style="list-style-type: none"> <li>• The CMA has identified provisional concerns <u>only</u> with respect to the potential for fare increases on certain bus/rail overlap flows (and routes). Any remedy should be strictly limited to addressing only the concerns that the CMA has identified. It would be wholly inappropriate for the remedy to apply more broadly to other aspects of Arriva's services.</li> <li>• As the CMA has acknowledged, any changes to frequencies or other aspects of service quality on relevant overlap flows would necessitate changes at a route level. The same would be true of the removal of relevant services.</li> </ul>
<b>4. RAIL/RAIL</b>	
18-20	<ul style="list-style-type: none"> <li>• Arriva notes that it is difficult to comment on the potential remedies that may be applied, without a fuller understanding of the CMA's precise theory of harm on each individual rail-rail overlap flow.</li> <li>• As noted in detail in Arriva's Response to the PFs, the CMA's theory of harm in respect of each flow is not always evident. Arriva therefore reserves the ability to make further comments on potential remedies and the potential scope of such remedies after the CMA clarifies its theories of harm.</li> <li>• However, Arriva agrees that, should the CMA find a properly evidenced SLC on rail/rail overlap flows which relates to the potential for fare increases on particular tickets on such flows, a restriction on rail fare increases which is tailored appropriately to any such SLC found by the CMA could be an effective and proportionate way of addressing the CMA's concerns.</li> <li>• Arriva agrees that a restriction of fare increases by reference to regulated fares increases could represent a simple way of implementing a behavioural remedy in this case.</li> <li>• However, Arriva considers that any such restriction must be limited to the specific concerns that the CMA may observe on a particular flow.</li> <li>• Furthermore, for the reasons set out in detail in Arriva's response to the PFs, Arriva strongly disagrees with the CMA's classification of certain routed inter-available fares as dedicated fares.</li> <li>• Arriva agrees that it should be relatively simple and cost-effective to monitor a remedy of this nature and notes that these considerations are integral to the proportionality of any remedy. Arriva considers that a self-reporting mechanism would be an efficient and appropriate means of monitoring the remedy: this has worked well in the context of the Interim Order, and would minimise the resources involved for both the CMA and Arriva.</li> <li>• Arriva considers that it would be appropriate for the timing of any self-reporting mechanism to be aligned with rail industry</li> </ul>

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	<p>fare-setting periods. Fare setting periods currently occur three times per year. This would reflect appropriately the extent and nature of competition in the sector.</p> <ul style="list-style-type: none"> <li>• It would be entirely disproportionate in this case to impose a more complex monitoring scheme (such as a third party monitor) in light of: (i) the limited number of flows in respect of which the CMA has provisionally found an SLC; (ii) the nature of the CMA's provisional concerns; and (iii) the nature of the proposed remedies.</li> <li>• Arriva considers that any remedy should allow Arriva to seek the CMA's consent to fare increases which are in principle prevented by the remedy. This would allow the remedy to cater for unforeseen circumstances (e.g. a significant increase in Arriva's cost base, or other potential adverse changes) rather than imposing an absolute restriction which allows for no flexibility.</li> <li>• It is imperative that any remedy would not conflict in any way with the terms of Arriva's Franchise Agreements (for example, the fare rationalisation plan under the Northern Franchise Agreement).</li> <li>• To the extent that any remedy would conflict with the terms of such Franchise Agreements, any such remedy should not apply to the extent of such conflict.</li> </ul>
20	<ul style="list-style-type: none"> <li>• Arriva agrees that it would be appropriate and proportionate to time-limit such a remedy: any restriction which extended <u>beyond</u> Arriva's ownership of the Northern Franchise would be entirely disproportionate.</li> <li>• However, any fare restriction must also be time-limited to the concurrent ownership by Arriva of the Northern Franchise and an overlapping rail franchise in respect of which the CMA finds an SLC. <ul style="list-style-type: none"> <li>○ The CMA's provisional findings of SLC on the <b>Leeds-Sheffield</b> and <b>Wakefield-Sheffield</b> flows arise due to the overlap between the Northern Franchise and CrossCountry. The CrossCountry Franchise will expire in October 2016. [X] no overlap will exist between Northern and CrossCountry from the date of expiry of the CrossCountry Franchise Agreement.</li> <li>○ [X] Direct Award would expire in 2019. The CrossCountry Franchise would then be re-tendered and awarded in 2019 after a competitive bidding process. There is no certainty that Arriva would be awarded the franchise at that stage. If the CrossCountry Franchise were to be awarded to a third party TOC in 2019, any behavioural remedies in force at that stage on the Leeds-Sheffield and Wakefield-Sheffield flows should terminate immediately and automatically at the end of the Direct Award period. In such circumstances, there would be no continuing overlap between Northern and CrossCountry and no basis on which the CMA could conceivably maintain any potential theory of harm.</li> <li>○ The CMA's provisional conclusions on the <b>Chester-Manchester</b> and <b>Chester-Stockport</b> flows arise due to the overlap between the Northern Franchise and Arriva Trains Wales. The Wales and Borders Franchise will expire in October 2018. There is significant uncertainty as to the terms on which any future competition for the award of the Wales and Borders</li> </ul> </li> </ul>

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	<p>franchise will be tendered and there is no certainty that Arriva will retain the Wales and Borders franchise in its current form or at all when it is re-awarded in 2018.</p> <ul style="list-style-type: none"> <li>○ If the Wales and Borders franchise is awarded to a third Party TOC in 2018, any behavioural remedies on the Chester-Manchester and Chester-Stockport flows must terminate immediately and automatically at the end of the current Wales and Borders Franchise period. In such circumstances, there would be no continuing overlap between Northern and ATW and no basis on which the CMA could conceivably maintain any potential theory of harm.</li> </ul>
21(a)	<ul style="list-style-type: none"> <li>• Arriva considers that it would be appropriate to limit any restriction on fare increases for specific unregulated and dedicated fares by reference to the government-mandated inflation value for regulated fares. This inflation value has been set as RPI+0% by the current government and is expected to remain at this level until 2020. It is Arriva's expectation that the inflation value may be amended after that time. This value will be reflected in the Northern Franchise agreement.</li> <li>• Any such restriction would reflect an industry-wide benchmark for regulated fares. It would also address in full any potential CMA concerns regarding potential fare increases in respect of unregulated and dedicated fares on relevant SLC flows.</li> <li>• Such an approach would also facilitate simple and cost-effective implementation and monitoring of any remedy imposed by the CMA.</li> <li>• Arriva considers that other potential benchmarks, such as other flows on the same route, or flows on a comparable route, could, in the rail context, introduce additional complexity into any remedy.</li> <li>• Arriva also proposes that, if it does not implement (or implement in full) permissible fare changes in any given year for which the remedy applies, the amount by which it could have increased fares in that year should be rolled forward and accumulated for subsequent years.</li> </ul>
21(b)	<ul style="list-style-type: none"> <li>• Arriva is strongly of the view that any restriction on fare increases should only be applied to the overlap flow on which the CMA ultimately identifies an SLC and must not extend to the whole route containing an overlapping flow.</li> <li>• Given that the CMA has defined markets on a flow-by-flow basis, applying the remedy across a route in its entirety would mean that the remedy covers other markets in which there are clearly no grounds for finding an SLC, either because there is no overlap between Arriva's existing rail business and the Northern franchise, or because any such overlap does not give rise to concerns.</li> <li>• It would be unwarranted and wholly disproportionate to restrict Arriva's commercial pricing freedom by applying a remedy to markets in which there is no SLC, particularly when any concerns on specific overlap flows could effectively and proportionately be addressed by flow-specific restrictions on fare increases.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Furthermore, such an approach would be entirely disproportionate in light of the specific circumstances of the overlap rail flows: <ul style="list-style-type: none"> <li>○ On <u>all</u> of the flows on which the CMA has identified a provisional SLC, the flow revenue comprises [<del>30</del>] proportion of route revenue for either one of Northern or the overlapping existing Arriva TOC ([<del>30</del>]in all cases) and on Wakefield-Sheffield and Chester-Stockport the flow revenue comprises [<del>30</del>] proportion of route revenue for <u>both</u> Northern and the overlapping existing Arriva TOC (i.e. [<del>30</del>] in all cases, and in some cases [<del>30</del>]).</li> </ul> </li> </ul>
21(c)	<ul style="list-style-type: none"> <li>• Arriva does not consider that it is necessary for fare price point groups to be maintained as part of any restrictions on fare increases, particularly as the CMA has not raised any specific concerns in the PFs regarding fare price point groups.</li> </ul>
21(d)	<ul style="list-style-type: none"> <li>• Any remedy should apply only to flow-specific tickets, allowing Arriva to increase the prices of any network tickets (including, without limitation, any Ranger or Rover tickets) without breaching the restrictions on fare increases. Changes to the prices of such tickets would not be specific to any overlap flows on which the CMA may find an SLC: rather, they would be of more general application and it would therefore be inappropriate to restrict these broader changes.</li> <li>• Any remedy should not apply to fares that are otherwise regulated under a Franchise Agreement, or required to be priced to a level which is relative to a regulated fare under the terms of any Franchise Agreement, as such fares are effectively capped by the terms of such Franchise Agreement.</li> <li>• Arriva considers that further clarity would be required in relation to the CMA's proposed theory of harm on affected flows in order to assess whether any restrictions on fare increases should be applied to individual fares or to fare baskets. Arriva reserves the right to comment more fully on this aspect of the potential remedies after the CMA clarifies further its theories of harm.</li> </ul>
21(e)	<ul style="list-style-type: none"> <li>• Arriva firmly considers that any remedy should only be applied to the Northern Franchise and not to Arriva's overlapping rail franchise operations.</li> <li>• Arriva notes that, to the extent that the CMA has articulated any specific theory of harm relating to fare increases on the flows on which it has provisionally found an SLC, it appears that the CMA's concerns relate primarily to potential fare increases by Northern. As such, it is appropriate and proportionate that any remedies are limited to the Northern Franchise only and do not extend to Arriva's overlapping rail franchise operations.</li> <li>• Arriva also considers it imperative that any remedies in this case do not: <ul style="list-style-type: none"> <li>○ Conflict in any way with the terms of Arriva's Franchise Agreements (for example, the fare rationalisation plan under the</li> </ul> </li> </ul>



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	<p>Northern Franchise Agreement); or</p> <ul style="list-style-type: none"> <li>○ Prevent Arriva from implementing any additional requirements or initiatives which may be mandated by DfT or Rail North in respect of such agreements, or more generally.</li> </ul>
<b>5. OTHER POTENTIAL REMEDIES</b>	
22	<ul style="list-style-type: none"> <li>• Arriva agrees with the CMA's statement that a structural remedy for bus operations would be unnecessary in this case. Arriva is strongly of the view that the costs of any feasible structural remedy would significantly outweigh the scale of the adverse effects of any SLC the CMA may find (especially given the very small number of localised concerns found in the PFs, and the CMA's recognition that the vast majority of flows raised no concerns).</li> <li>• A structural remedy would therefore be an entirely disproportionate way to remedy any SLC, particularly so given that behavioural remedies would be equally effective in this case.</li> <li>• As noted above, Arriva is strongly of the view that any findings of SLC (and any consequent remedies) should only be applied to the <u>overlap flows</u> on which the CMA has found an SLC. Any findings of SLC and any application of remedies on a route basis would already be wholly disproportionate.</li> <li>• The impact of remedies would increase exponentially by the application of structural remedies. In the PFs, the CMA has identified a provisional SLC on 9 bus/rail overlap routes: 3 in the Redcar area, 2 in the Huddersfield area; 3 in the Ashington area and 1 in the Darlington area.</li> <li>• Any structural remedy involving those routes (e.g. the disposal of a depot out of which certain routes were operated) would be an incredibly blunt instrument and would necessarily involve a very significant number of additional routes (and a much larger number of flows) which were not the subject of an SLC finding.</li> </ul>
23	<ul style="list-style-type: none"> <li>• Arriva agrees with the CMA's statement that a structural remedy for rail operations would be unnecessary in this case. Arriva is strongly of the view that the costs of any feasible structural remedy would significantly outweigh the scale of the adverse effects of any SLC the CMA may find.</li> <li>• As the CMA points out, based on the SLC provisionally found by the CMA, only a very small number of flows are affected by the merger, representing [X] of Northern Franchise revenue.</li> <li>• A structural remedy would therefore be a disproportionate way to remedy any such SLC, particularly given that behavioural remedies would be equally effective in this case.</li> </ul>

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24-26	<ul style="list-style-type: none"> <li>• Arriva is of the firm view that no other form of remedy (besides appropriately tailored restrictions in fare increases) is necessary in this case.</li> <li>• This remedy is appropriate in light of the provisional concerns identified by the CMA in respect of certain overlap bus/rail flows and rail/rail flows.</li> <li>• It would be wholly inappropriate for the remedy to apply more broadly in respect of other aspects of Arriva's services. Arriva refers the CMA in this regard to the requirement that remedies go no further than strictly necessary in the circumstances, in light of the particular legal test for cases referred back by the European Commission to the CMA under Article 9(8) of the EUMR.</li> </ul>
<b>6. RELEVANT CUSTOMER BENEFITS</b>	
27-28	<ul style="list-style-type: none"> <li>• The award of the Northern Franchise to Arriva will result in a transformational change in the provision of passenger rail services for a very large part of the North of England, resulting in considerable benefits for passengers and businesses. This will be achieved by Arriva investing over £1 billion over the lifetime of the Franchise and will result in faster, better quality and better connected journeys for passengers, with new trains, more services and capacity and station improvements.</li> <li>• The benefits accruing to passengers and businesses do not just reflect the requirements set out by DfT in the ITT. As part of the bidding process, Arriva proposed an ambitious range of service improvements, innovations and performance and satisfaction targets that went beyond the DfT's requirements. These enhanced commitments are now codified in the final franchise agreement, which contains c.2,900 franchise obligations and c.300 committed obligations.</li> <li>• This was also expressly recognised by DfT at the time of the Award, noting that Arriva "<i>went far beyond our requirements with exciting ambitious plans that will make a real difference to customers and...will help the region to realise its full economic potential</i>".</li> <li>• The Northern Franchise was awarded to Arriva following a competitive bidding process. Arriva's bid was chosen as it offered the best outcome from that process. Absent the award to Arriva, such consumer benefits could only have been achieved in a less economically advantageous way, if at all.</li> <li>• It is imperative that any remedies in this case do not: <ul style="list-style-type: none"> <li>○ Hinder delivery of the very substantial customer benefits described above that Arriva's operation of the Northern Franchise will bring.</li> </ul> </li> <li>• It is also imperative that any remedies in this case do not :</li> </ul>

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	<ul style="list-style-type: none"> <li>○ Conflict in any way with the terms of Arriva's Franchise Agreements (for example, the fare rationalisation plan under the Northern Franchise Agreement) or any additional obligations or initiatives that may be mandated by DfT or Rail North in respect of such agreements, or more generally; or</li> <li>○ Prevent Arriva from complying or engaging with any future regulatory initiatives e.g. bus franchising arrangements and partnership schemes or the offering of further enhancements to the Northern Franchise beyond those required under the Franchise Agreement.</li> <li>• Subject to these considerations, Arriva considers that an appropriately tailored behavioural remedy limited to restrictions on fare increases would be unlikely to hinder the delivery of the customer benefits described above.</li> </ul>