

**Consent to certain actions for the purposes of the Interim Order
made by the Competition and Markets Authority (CMA) on 1 July
2016**

**Completed acquisition by Arriva Rail North Limited (Arriva) of the
Northern Rail Franchise**

We refer to your emails of 10 November 2016 requesting that the CMA consents to certain derogations to the Interim Order of 1 July 2016 as varied on 6 October 2016, (the '**Interim Order**'). The terms defined in the Interim Order have the same meaning in this letter.

Under the Interim Order, save for written consent by the CMA, provision was made that Arriva will hold separate the Northern Franchise Business from any Arriva Business and refrain from taking any action which might prejudice the Reference or impede the taking of any remedial action following such a Reference.

On 4 November 2016, Schedule 1 to the Interim Order, in particular the list of Specified Routes, was amended by the CMA to include in the definition of 'Specified Routes' only the relevant rail overlapping flows on which the CMA found a substantial lessening of competition (SLC) following the publication of its final report in the Arriva Rail North / Northern rail franchise merger inquiry (the '**Report**') on 2 November 2016. The relevant rail overlapping flows are the Leeds to Sheffield, Wakefield to Sheffield and Chester to Manchester flows (the '**relevant rail overlapping flows**').

By email dated 10 November 2016, Arriva requested a general derogation to allow Arriva to proceed with certain actions which are currently covered by the Interim Order but which are otherwise unrelated to the SLC identified by the CMA.

Arriva stated that Arriva is aiming to deliver both the Northern Franchise and its other franchises in the most efficient and cost effective way possible. However, some of the actions required for this are being unduly restricted by the Interim Order. Arriva argued that given the small number of flows and limited grounds on which the CMA found the SLCs, there are a number of restrictions which are no longer appropriate.

For example, Arriva argued that the Interim Order unduly restricts Arriva's ability to jointly negotiate and procure goods and services, such as [X] requirements, as well

as the ability to integrate and update Arriva Rail North Limited's [X] systems. This means that Arriva Rail North Limited is not able to take advantage of Arriva's existing relationships with [X] suppliers in order to maximise the value achieved in delivering the Northern Franchise's [X] requirements.

Arriva provided a number of planned activities which it is planning to undertake in order to improve performance [X], such as:

- Arriva is [X] that it wishes to share and discuss with Northern Franchise;
- Arriva would like to integrate Northern Franchise into its [X] at a divisional level and appoint a single individual to represent all Arriva TOCs at relevant industry forums for which a derogation has not already been sought and in discussion with clients;
- Arriva would like to share management resource generally at divisional level with Northern Franchise;
- Arriva would like to take an active role in the review and implementation of Northern Franchise's future business plans;
- Arriva would like to undertake a procurement review of Northern Franchise's existing supplier base and determine whether its needs can be better served by any existing Arriva businesses; and
- Arriva would like to put in place intra-group trading arrangements to allow Northern Franchise to [X] to support its own or other Arriva TOCs performance.

Derogations

After due consideration based on the information received from Arriva and in the particular circumstances of this case, Arriva may carry out actions that fall within the following paragraphs of the Interim Order:

4(a): Actions which might lead to the integration of the Northern Franchise Business and the Arriva Business;

5(a): Operation of the Northern Franchise Business and Arriva Businesses separately;

5(c): Integration of IT systems and changes to the hardware / software platforms of the Northern Franchise Business;

5(d): Arriva and ARNL to create, maintain and use joint supplier lists and to negotiate and enter supply agreements;

5(e): All existing contracts to be serviced by any Arriva Business or the Northern Franchise Business;

5(f): Sharing of ARNL's business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature;

5(g)(i): Substantive changes to organisational structure or management responsibilities within the Northern Franchise Business and the Arriva Businesses;

5(g)(iii): Assets of the Northern Franchise Business and the Arriva Business are maintained and preserved, including facilities and goodwill;

5(g)(iv): Assets of the Northern Franchise Business and the Arriva Business to be disposed of; and

5(g)(v): Creation or disposal of interests in the assets of the Northern Franchise Business or the Arriva Business.

In its Report the CMA found SLCs on the three overlapping rail flows mentioned previously in terms of higher fares and/or volume limitation or withdrawal of certain fares. Moreover, the Report concluded on a fare-based behavioural remedy in the form of a fare increase control.

As such, the actions on which Arriva is seeking derogations would not create a risk of pre-emptive action that would be costly or difficult to reverse pending the final determination of the reference under section 22 of the Act and, therefore, granting such derogations would not prejudice that reference or impede the taking of any action by the CMA which is justified by the CMA's decision on the reference pursuant to the Report and the pending behavioural remedies implementation.

Arriva is, accordingly, permitted to undertake the aforementioned actions to which consent has been given to the extent that these do not relate to the SLCs identified in the Report and do not prejudice the reference or impede the taking of any action by the CMA under Part 3 of the Act.

The CMA's consent to the aforementioned actions does not, under any circumstances, permit Arriva from taking any other action prohibited under the Interim Order.