

REFERENCE RELATING TO THE ACQUISITION BY ARRIVA RAIL NORTH OF THE NORTHERN RAIL FRANCHISE

Notice of proposal to accept Final Undertakings pursuant to sections 41 and 82 of, and Schedule 10 to, the Enterprise Act 2002 and public consultation on the proposed Final Undertakings (“Notice”)

1. On 9 December 2015, the Department for Transport (“**DfT**”) announced its intention to award the Northern passenger rail franchise (the “**Northern Franchise**”) to Arriva Rail North Limited (“**ARN**”). ARN and the DfT concluded a franchise agreement and associated agreements confirming the award to ARN on 22 December 2015 (the “**Northern Franchise Agreement**”);
2. ARN is a wholly-owned subsidiary of Arriva UK Trains Limited, and was created for the purpose of bidding for, and operating, the Northern Franchise. Arriva UK Trains Limited is wholly-owned by Arriva plc, which is part of Deutsche Bahn AG. In addition to operating the Northern Franchise, Arriva UK Trains Limited also operates, among others, the Wales & Borders franchise (the “**W&B Franchise**”) and the Cross Country franchise (the “**AXC Franchise**”);
3. On 20 May 2016, the Competition and Markets Authority (“**CMA**”), in the exercise of its duty under section 22(1) of the Enterprise Act 2002 (the “**Act**”) referred the completed acquisition by ARN of the Northern Franchise (the “**Merger**”) for further investigation and report by a group of CMA panel members (inquiry group) to decide: a) whether a relevant merger situation has been created and b) if so, whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition (“**SLC**”) within any market(s) in the United Kingdom (“**UK**”) for goods or services;
4. On 1 April 2016 the CMA served an Initial Enforcement Order on Arriva plc and ARN pursuant to section 72(2) of the Act, followed by an Interim Order made on 1 July 2016 pursuant to section 81(2) of the Act for the purpose of preventing pre-emptive action prior to the reference being finally determined. The Interim Order of 1 July 2016 remains in force, as varied on 6 October 2016 pursuant to section 81(5)(b) of the Act and subsequently amended on 4 November 2016.

5. As set out in the CMA's report of 2 November 2016 (the "**Report**"), the CMA concluded, inter alia, that:
 - (a) The award of the Northern Franchise to ARN has created a relevant merger situation;
 - (b) The creation of that situation has resulted or may be expected to result in an SLC on the following overlapping rail flows:
 - (i) **Leeds to Sheffield** and **Wakefield to Sheffield**, being flows on which passenger rail services of the Northern Franchise overlap with passenger rail services of the AXC Franchise (together, the "**AXC Flows**"); and
 - (ii) **Chester to Manchester**, being a flow on which passenger rail services of the Northern Franchise overlap with passenger rail services of the W&B Franchise (the "**W&B Flow**").
6. The Report, having identified SLCs on the above rail overlapping flows, further considered whether any action should be taken for the purpose of remedying, mitigating or preventing the SLCs and any adverse effects which flow from them, and concluded that a fare-based behavioural remedy in the form of a fare increase control would be effective and proportionate, as specified more fully in Section 14 of the Report. In addition, the Report concluded that the remedy should be based on the existing approach to regulated fares within the rail industry and would apply to: a) both the Northern Franchise and the overlapping Arriva rail services; b) fares on the overlapping rail flows only; and c) unregulated fares.
7. The CMA has reached agreement with Arriva plc, ARN and Arriva UK Trains Limited (including on behalf of their Subsidiaries and any Related Person) on the terms of the proposed undertakings to remedy the SLCs identified in the Report and the adverse effects which flow from them, and the proposed undertakings are annexed to this Notice.

Notice of proposal to accept undertakings

8. The CMA now gives notice of the proposed undertakings under paragraph 2 of Schedule 10 to the Act that:
 - (a) The CMA proposes to accept the annexed proposed undertakings; and

(b) The proposed undertakings seek to address the SLCs identified in the Report and the adverse effects which may be expected to flow from them on the AXC Flows and the W&B Flow.

9. The CMA invites written representations on the proposed undertakings from any person or persons who wish to comment. Representations should reach the CMA by 5pm on 20 December 2016 (15 days starting with the date of the publication of this Notice) and should be addressed to:

Remedies Manager
Arriva / Northern merger inquiry
Competition and Markets Authority
Victoria House
Southampton Row
London
WC1B 4AD

Or by email to arrivanorthern@cma.gsi.gov.uk

10. The CMA will consider any representations made in accordance with this Notice and may make modifications to the proposed undertakings as a result. In the absence of any written representations, or in the event that the CMA decides, on consideration of representations made and not withdrawn, not to amend the proposed undertakings, the CMA proposes to accept the undertakings in their present form pursuant to section 82 of the Act. If the CMA considers that any representation necessitates any material change to the proposed undertakings, the CMA will give notice of the proposed modifications.
11. Once accepted the final undertakings may be varied, superseded or released by the CMA under section 82(2) of the Act.
12. This Notice and a non-confidential version of the proposed undertakings will be published on the CMA website.

Signed by authority of the CMA
PHIL EVANS
Group Chair
6 December 2016