

**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 17 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 17 November 2016, Arriva stated that its Train Operating Companies ('TOCs') are currently undertaking their regular fares review as part of the December fare setting round, with any resulting changes due to come into effect from 1 January 2017. This review would cover many of its fares, including those on the Specified Routes, and Arriva therefore sought a derogation to allow it to make certain proposed changes to unregulated fares on the relevant rail overlapping flows in the December fare setting round.

Arriva stated that it was mindful of the CMA's findings in respect of the relevant rail overlapping flows. Therefore, in undertaking its review, and with the aim of ensuring consistency with the remedies that the CMA will soon be implementing, Arriva stated that it limited any proposed fare increases on the Specified Routes to the level of

increase permitted for regulated fares. This is consistent with the Report (eg paragraph 14.115).

Arriva provided evidence that the proposed increases for each individual fare on the Specified Routes was below that permitted for regulated fares (ie the annual increase was below 1.9%, the increase in RPI between July 2015 and July 2016).

### **Derogation**

After due consideration based on the information received from Arriva and in the particular circumstances of this case, Arriva is permitted to make the aforementioned proposed changes to its fares on the Specified Routes that fall within the following paragraph of the Interim Order:

#### **Derogation from paragraph 5(g)(ii) of the Interim Order: Changes in nature, description, range and/or quality of services provided by Northern Franchise Business/Arriva**

In its Report the CMA found SLCs on the three relevant rail overlapping flows 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 that would align with the existing approach to regulated fares in the rail industry (which currently restricts fare increases to RPI+0% each year).

As such, the fare increase action on which Arriva is seeking derogation 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. Therefore, granting such derogation 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.

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. This derogation is allowed to the extent that it does not prejudice the reference or impede the taking of any action by the CMA under Part 3 of the Act.