

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

### Notice of acceptance of Final Undertakings pursuant to sections 41 and 82 of, and Schedule 10 to, the Enterprise Act 2002

#### Background

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 CMA, having identified SLCs on the above rail overlapping flows, then 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 CMA 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.

## **Notice of acceptance of undertakings**

7. The CMA published a Notice of Proposal to Accept Undertakings on 6 December 2016. No representations were received that provided cause for us to amend the undertakings on which we consulted. The CMA has therefore decided to accept undertakings given by Arriva plc, ARN and Arriva UK Trains Limited to remedy 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 in the form set out in the attached annex.

8. This Notice is the formal acceptance by the CMA of the undertakings.
9. The undertakings may be varied, superseded or released by the CMA under section 82(2) of the Act.
10. This Notice and a non-confidential version of the undertakings will be published on the CMA website.

Signed by authority of the CMA

PHIL EVANS  
Group Chair  
22 December 2016

## ACQUISITION BY ARRIVA RAIL NORTH LIMITED OF THE NORTHERN RAIL FRANCHISE

### UNDERTAKINGS GIVEN BY ARRIVA PLC, ARRIVA RAIL NORTH LIMITED, ARRIVA UK TRAINS LIMITED AND ON BEHALF OF THEIR SUBSIDIARIES AND ANY RELATED PERSON TO THE COMPETITION AND MARKETS AUTHORITY PURSUANT TO SECTION 82 OF THE ENTERPRISE ACT 2002

#### WHEREAS:

- (A) 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**”);
- (B) 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**”);
- (C) 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;
- (D) 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 and subsequently amended on 4 November 2016.
- (E) As set out in the CMA's report of 2 November 2016 (the “**Report**”), the CMA concluded, among others, 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:

- (1) **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
  - (2) **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”**).
- (F) The Report, having identified SLCs further considered whether any action should be taken for the purpose of remedying, mitigating or preventing the SLCs and any adverse effects 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.

**NOW THEREFORE Arriva plc, ARN and Arriva UK Trains Limited, including and on behalf of their Subsidiaries and any Related Person**, hereby give to the CMA the following Undertakings under section 82 of the Act for the purpose of remedying, mitigating or preventing the SLCs and any adverse effects which flow from the SLCs as identified in the Report.

## 1. **INTERPRETATION**

- 1.1 The appendices form part of these Undertakings.
- 1.2 The purpose of these Undertakings is to give effect to the Report and they shall be construed accordingly.
- 1.3 Any word or expression used in these Undertakings or the recitals to these Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report.
- 1.4 In these Undertakings the word ‘including’ shall mean including without limitation or prejudice to the generality of any description, definition, term of phrase preceding that word, and the word ‘include’ and its derivatives shall be construed accordingly.
- 1.5 The headings used in these Undertakings are for convenience and shall have no legal effect.
- 1.6 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 1.7 References to recitals, paragraphs, subparagraphs, appendices, Parts and schedules are references to the recitals to, paragraphs and subparagraphs of, appendices, Parts and schedules to these Undertakings unless otherwise stated.

- 1.8 Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons include bodies of persons whether corporate or incorporate.
- 1.9 The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
- 1.10 References in these Undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 1.11 Further, in these Undertakings:

<b>“Advance Fare(s)”</b>	means single (one-way) train-specific fares which must be purchased in advance of travel and is/are only valid on the date and train service(s) shown on the fares and described as "Advance Fare" in Appendices 1 and 2
<b>“Affiliate”</b>	means that a person is an affiliate of another person if they or their respective enterprises are regarded as being under common control for the purposes of section 26 of the Act
<b>“Arriva”</b>	means, collectively, Arriva plc, ARN and Arriva UK Trains Limited
<b>“Arriva plc”</b>	means Arriva plc, (Companies House Registration Number 00347103), a wholly-owned subsidiary of Deutsche Bahn
<b>“Arriva UK Trains Limited”</b>	means Arriva UK Trains Limited (Companies House Registration Number 03166214), a wholly-owned subsidiary of Arriva plc
<b>“ARN”</b>	means Arriva Rail North Limited, (Companies House Registration Number 04337712), a wholly-owned subsidiary of Arriva UK Trains Limited
<b>“Associated Person”</b>	means a person who is an associated person within the meaning of section 127 of the Act

<b>"AXC Agreement"</b>	means the Cross Country franchise agreement between the Secretary of State for Transport and XC Trains Limited entered into on 28 September 2016 in respect of the direct award of the AXC Franchise to XC Trains Limited (as may be extended by any further direct award, interim franchise agreement or other similar arrangement in respect of the AXC Franchise)
<b>"AXC Flows"</b>	means the Leeds to Sheffield and Wakefield to Sheffield flows
<b>"AXC Franchise"</b>	means the Cross Country franchise, currently named as CrossCountry and currently operated by XC Trains Limited (Companies House Registration Number 04402048), a wholly-owned subsidiary of Arriva UK Trains Limited
<b>"Confidential Information"</b>	means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature
<b>"Control"</b>	includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise within the meaning of section 26 of the EA2002
<b>"CMA"</b>	means the Competition and Markets Authority or any successor body
<b>"Commencement Date"</b>	means the date on which these Undertakings are accepted by the CMA
<b>"Compliance Statement"</b>	has the meaning given by Part 7 and is to be in the format set out in Appendix 4
<b>"DfT"</b>	means the Department for Transport
<b>"Directions"</b>	means directions or instructions given to Arriva by the CMA pursuant to Part 6 of these Undertakings

<b>“EA2002”</b>	means the Enterprise Act 2002
<b>“Fare Increase Control”</b>	means the restrictions on fare increases provided in Part 3 of these Undertakings
<b>“Fare Year”</b>	means the period from 1 January in any year to 31 December in the same year
<b>“Group of Interconnected Bodies Corporate”</b>	has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time
<b>Merger</b>	means the completed acquisition by ARN of the Northern Franchise
<b>“Northern Franchise”</b>	means the Northern passenger rail franchise, currently named as Northern and currently operated by ARN, a wholly-owned subsidiary of Arriva UK Trains Limited
<b>“Northern Franchise Agreement”</b>	means the Northern Franchise agreement and associated agreements between the Secretary of State for Transport and ARN, announced by the DfT on 9 December 2015 and entered into by the Secretary of State for Transport and ARN on 22 December 2015 in respect of the award of the Northern Franchise to ARN (as may be extended by any direct award, interim franchise agreement or other similar arrangement in respect of the Northern Franchise)
<b>“Operator of the W&amp;B Franchise”</b>	means the company responsible for operating the W&B Franchise, namely Arriva Trains Wales / Trenau Arriva Cymru Limited
<b>“Operator of the AXC Franchise”</b>	means the company responsible for operating the AXC Franchise, namely XC Trains Limited
<b>“Operator of the Northern Franchise”</b>	means the company responsible for operating the Northern Franchise, namely ARN



<b>Related Person</b>	means any Subsidiary, Affiliate, Associated Person or Group of Interconnected Bodies Corporate of Arriva plc from time to time
<b>Report</b>	means the CMA's report under section 22 of the Act dated 2 November 2016 in connection with the Northern Franchise
<b>“Secretary of State for Transport”</b>	means the member of the cabinet in Her Majesty's Government responsible for the Department for Transport
<b>“Specified Unregulated Fare(s)”</b>	means the fare(s) set out in Appendices 1, 2 and 3 which are not constrained by the terms of the agreements in respect of the AXC Franchise, the W&B Franchise or the Northern Franchise
<b>“Subsidiary/Subsidiaries”</b>	shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended) unless otherwise stated
<b>SLCs</b>	means substantial lessening of competition pursuant to section 35 of the Act
<b>“Trustee”</b>	means any potential trustee to be appointed in accordance with paragraph 6.3. of the Undertakings
<b>“Undertakings”</b>	means these Undertakings
<b>“UK”</b>	means the United Kingdom or Great Britain and Northern Ireland
<b>“W&amp;B Flow”</b>	means the Chester to Manchester flow
<b>“W&amp;B Franchise”</b>	means the Wales and Borders franchise, currently named as Arriva Trains Wales and currently operated by Arriva Trains Wales / Trenau Arriva Cymru Limited (Companies House Registration Number 04337645), a wholly-owned subsidiary of Arriva UK Trains Limited

<b>"W&amp;B Franchise Agreement"</b>	means the W&B Franchise agreement between the Strategic Rail Authority, Arriva Trains Limited (now Arriva UK Trains Limited) and Arriva Trains Wales / Trenau Arriva Cymru Limited entered into on 18 October 2003 in respect of the award of the W&B Franchise to Arriva Trains Wales Limited and Arriva Trains Wales / Trenau Arriva Cymru Limited (as may be extended by any direct award, interim franchise agreement or other similar arrangement in respect of the W&B Franchise)
<b>"Working Day"</b>	means a day other than a Saturday or Sunday or a public holiday in England, Wales or Scotland, and any reference in these Undertakings to 'days' means calendar days

## 2. COMMENCEMENT DATE OF THE UNDERTAKINGS

- 2.1 These Undertakings will come into force on the Commencement Date in accordance with section 82(2) of the Act.

## 3. UNDERTAKINGS WITH REGARD TO FARE INCREASE CONTROL

### The AXC Flows

- 3.1 The provisions of paragraphs 3.2 to 3.4. shall apply to each Specified Unregulated Fare from Leeds to Sheffield and Sheffield to Leeds and from Wakefield to Sheffield and Sheffield to Wakefield offered by each of the Northern Franchise and the AXC Franchise.
- 3.2 Except with the prior written consent of the CMA, Arriva, its Subsidiaries and any Related Person undertake to ensure that each Specified Unregulated Fare on the AXC Flows offered by each of the Northern Franchise and the AXC Franchise shall not exceed the value specified by the following formula:

$$F_{r,i,j,t} = F_{r,i,j,t-1} * (RPI_t + \frac{k_t}{100})$$

$F_{r,i,j,t}$  is the maximum fare allowed;

$r$  is the Northern or AXC rail franchise, as set out in Appendices 1 and 2;

$i$  is the specific flow;

$j$  is the Specified Unregulated Fare as set out in Appendices 1 and 2;

$t$  is the Fare Year;

$F_{r,i,j,0}$  is the Specified Unregulated Fare in 2016, as set out in Appendices 1 and 2;

$RPI_t$ , in respect of any relevant Fare Year means RPI as defined in paragraph 4.2 of Schedule 5.4 to the Northern Franchise Agreement, or any successor index as published from time to time; and

$k_t$ , in respect of any Fare Year shall until the expiry of the Northern Franchise Agreement have the value attributed to that term in paragraph 4.2 of Schedule 5.4 to the Northern Franchise Agreement, which may be varied from time to time by the DfT pursuant to paragraph 5 of Schedule 5.7 to the Northern Franchise Agreement.

- 3.3 Arriva undertakes to provide a copy of the confirmation provided to the DfT pursuant to paragraph 2.2 of Schedule 5.8 to the Northern Franchise Agreement to the CMA at the same time as it is provided to the DfT;
- 3.4 At the same time as the confirmation referred to at paragraph 3.3 above is provided to the CMA, Arriva shall provide to the DfT and the CMA an update on the Northern and AXC fares. Arriva undertakes to do so by completing the relevant tables set out at Appendices 1 and 2 to these Undertakings.

#### **The W&B Flow**

- 3.5 The provisions of paragraphs 3.6 to 3.8 shall apply to each Specified Unregulated Fare from Chester to Manchester and Manchester to Chester offered by each of the Northern Franchise and the W&B Franchise.
- 3.6 Except with the prior written consent of the CMA, Arriva, its Subsidiaries and any Related Person undertake to ensure that each Specified Unregulated Fare offered by each of the Northern Franchise and the W&B Franchise on the W&B Flow for any given year shall not exceed the value specified by the following formula:

$$F_{r,j,t} = F_{r,j,t-1} * (RPI_t + \frac{k_t}{100})$$

$F_{r,j,t}$  is the maximum fare allowed;

$r$  is the Northern or W&B rail Franchise, as set out in Appendix 3;

$j$  is the Specified Unregulated Fare as set out in Appendix 3;

$t$  is the Fare Year;

$F_{r,j,0}$  is the Specified Unregulated Fare in 2016 as set out in Appendix 3;

$RPI_t$ , in respect of any relevant Fare Year means RPI as defined in paragraph 4.2 of Schedule 5.4 to the Northern Franchise Agreement, or any successor index as published from time to time; and

$k_t$ , in respect of any Fare Year shall until the expiry of the Northern Franchise Agreement have the value attributed to that term in paragraph 4.2 of Schedule 5.4

to the Northern Franchise Agreement, which may be varied from time to time by the DfT pursuant to paragraph 5 of Schedule 5.7 to the Northern Franchise Agreement.

- 3.7 Arriva undertakes to provide a copy of the confirmation provided to the DfT pursuant to paragraph 2.2 of Schedule 5.8 to the Northern Franchise Agreement to the CMA at the same time as it is provided to the DfT.
- 3.8 At the same time as the confirmation referred to at paragraph 3.7 above is provided to the CMA, Arriva shall provide to the DfT and the CMA an update on the Northern and W&B fares. Arriva undertakes to do so by completing the relevant tables set out at Appendix 3 to these Undertakings.
- 4. UNDERTAKINGS WITH REGARD TO AVAILABILITY OF ADVANCE FARES**
- 4.1 Except with the prior written consent of the CMA, Arriva, its Subsidiaries and any Related Person undertake to ensure that they maintain the availability of Advance Fares offered by each of the Northern Franchise and the AXC Franchise on the AXC Flows.
- 4.2 Arriva undertakes to provide to the DfT and the CMA by 31 January of each Fare Year written confirmation that it has maintained the availability of Advance Fares offered by each of the Northern Franchise and the AXC Franchise on the AXC Flows by providing such written confirmation from an internal legal representative of Arriva. Such written confirmation shall indicate whether the Northern Franchise and the AXC Franchise have complied with their obligations contained in paragraph 4.1 above.
- 5. PROCEDURE FOR CONSENT AND NOTIFICATION**
- 5.1 Where the consent or approval of the CMA (however that requirement is expressed in these Undertakings) is required, Arriva, its Subsidiaries and any Related Person will seek the consent or approval in writing, which shall include email.
- 5.2 Arriva, its Subsidiaries and any Related Person undertake that any application by them for the CMA's consent or approval shall make full disclosure of every material fact and matter within their knowledge that they believe is relevant to the CMA's decision.
- 5.3 Arriva, its Subsidiaries and any Related Person recognise that where the CMA grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CMA.
- 5.4 In the event that Arriva, its Subsidiaries or any Related Person discover that an application for consent or approval has been made without full disclosure to the CMA, they undertake to:
- 5.4.1 inform the CMA in writing identifying the information that they omitted to include in the application for consent within 2 Working Days of becoming aware that the relevant information is misleading or incomplete; and
- 5.4.2 at the same time or no later than 2 Working Days starting with the date on which they have informed the CMA of the omission in accordance with paragraph 5.4.1

above, provide to the CMA an application for consent that includes the missing information.

5.5 Unless a different period is expressly provided for in these Undertakings, Arriva, its Subsidiaries and any Related Person shall use all reasonable endeavours to make each application or to procure that each application, for consent or approval is made so that it is received by the CMA at least 5 Working Days, or such lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of these Undertakings.

5.6 Arriva, its Subsidiaries and any Related Person recognise that the CMA shall not be required to use more than its reasonable endeavours to grant or refuse any consent or approval within the period referred to in paragraph 5.5 above in particular where the CMA considers that it is necessary to carry out an investigation or to consult any other person prior to granting such consent or approval.

## 6. DIRECTIONS

6.1 Arriva, its Subsidiaries and any Related Person shall comply promptly with such written Directions as the CMA may from time to time give:

6.1.1 to take such steps as may be specified or described in the Directions for the purpose of carrying out or securing compliance with these Undertakings; or

6.1.2 to do or refrain from doing anything so specified or described which it might be required by these Undertakings to do or to refrain from doing.

6.2 Any delay by the CMA in making a written Direction shall not affect the obligations of Arriva, of its Subsidiaries and of any Related Person at such time as the CMA makes any written Direction under paragraph 6.1.

6.3 The CMA reserves the right to require Arriva to commission an independent audit of Arriva's, including its Subsidiaries' and any Related Person's, compliance with these Undertakings at any time while these Undertakings remain in force, including to request Arriva to secure at its cost the appointment of a monitoring Trustee should this become necessary in accordance with the procedure the CMA shall direct. This is without prejudice to the CMA's order making powers pursuant to section 83 of the Act. Arriva undertakes to secure at its cost the appointment of a Trustee to oversee on behalf of the CMA the compliance process should this be directed. The appointment of the Trustee and his terms and conditions must be approved by the CMA.

## 7. FURTHER UNDERTAKINGS - COMPLIANCE

7.1 Arriva, its Subsidiaries and any Related Person further undertake that as of the Commencement Date they shall take no action which frustrates compliance with these Undertakings.

7.2 Arriva, its Subsidiaries and any Related Person shall co-operate fully with the CMA when the CMA is:

7.2.1 monitoring compliance with the provisions of these Undertakings; and

7.2.2 investigating breaches of the provisions of these Undertakings.

7.3 Arriva shall procure that any Related Person complies with these Undertakings and actions and omissions of any Related Person shall be attributed to Arriva for the purposes of these Undertakings.

7.4 Arriva, its Subsidiaries and any Related Person shall deliver a Compliance Statement to the CMA during each year in which these Undertakings remain in force, in the form attached as Appendix 4 to these Undertakings, and promptly provide to the CMA such information as it may reasonably require for the purpose of monitoring or enforcing compliance with these Undertakings. Each Compliance Statement shall confirm compliance with these Undertakings in the relevant calendar year and state instances in the relevant calendar year where a breach of these Undertakings has occurred. The first Compliance Statement shall be delivered by 30 April 2017.

7.5 Arriva, its Subsidiaries and any Related Person undertake that should they at any time become aware of any breach of any provision of these Undertakings they shall inform the CMA of the breach and the circumstances in which it arose in writing within 7 Working Days following the date on which they became aware of the breach. Moreover, should a breach of these Undertakings occur, Arriva, its Subsidiaries and any Related Person undertake to take as soon as possible all reasonable actions required to remedy the breach of and to comply with these Undertakings. In such circumstances, the CMA reserves the right to review whether the Undertakings remain capable of substantial compliance with a view to delivering the remedy set out in the Report.

7.6 Any communication from Arriva, its Subsidiaries and any Related Person to the CMA under these Undertakings shall be addressed to: the Manager, Remedies Monitoring Team, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or by email to RemediesManager@cma.gsi.gov.uk or such other postal or email address as the CMA may direct in writing.

## 8. **PROVISION OF INFORMATION**

8.1 Arriva its Subsidiaries and any Related Person shall furnish promptly to the CMA such information as the CMA considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these Undertakings, including for the avoidance of doubt, any Confidential Information.

## 9. **SERVICE**

9.1 Arriva, its Subsidiaries and any Related Person hereby authorise Herbert Smith Freehills LLP, whose address for service is Exchange House, Primrose Street, London, EC2A 2EG, to accept service on their behalf of all documents connected with these Undertakings (including any document of any kind which falls to be served on or sent to Arriva, or any of its Subsidiaries or Related Person, in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected

with these Undertakings). A copy of any document, order, request, notification or other communication sent to Herbert Smith Freehills LLP or other nominees in connection with these Undertakings will also be sent to Company Secretary, Arriva plc, 1 Admiral Way, Doxford International Business Park, Sunderland, Tyne & Wear, UK, SR3 3XP.

- 9.2 Unless the CMA is informed in writing that Herbert Smith Freehills LLP has ceased to have authority to accept and acknowledge service on Arriva's or any of its Subsidiaries' and Related Person's behalf, any document, order, request, notification or other communication shall be validly served if it is served on Herbert Smith Freehills LLP; and service shall be deemed to have been acknowledged by Arriva, its Subsidiaries and any Related Person if it is acknowledged by Herbert Smith Freehills LLP or such other nominee.
- 9.3 Paragraph 9.2 above has effect irrespective of whether Herbert Smith Freehills LLP or other nominees has or continues to have any authority to accept and acknowledge service on Arriva's or any of its respective Subsidiaries' or Related Person's behalf.
- 9.4 No failure or mistake by Herbert Smith Freehills LLP or other nominees (including a failure to notify Arriva, its Subsidiaries and any Related Person, of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Undertakings including any proceedings or judgment.
- 9.5 Any such communication from Arriva, its Subsidiaries and any Related Person to the CMA under these Undertakings shall be addressed as provided at paragraph 7.6 of these Undertakings.

## 10. **EFFECT OF INVALIDITY**

- 10.1 Should any provision of these Undertakings be contrary to law or invalid for any reason, Arriva, its Subsidiaries and any Related Person undertake to continue to observe the remaining provisions.

## 11. **GOVERNING LAW**

- 11.1 Arriva, its Subsidiaries and any Related Person recognise and acknowledge that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 11.2 In the event that a dispute arises concerning these Undertakings, Arriva, its Subsidiaries and any Related Person undertake to submit to the courts of England and Wales.

## 12. **EXTENSION OF TIME**

- 12.1 Arriva, its Subsidiaries and any Related Person recognise and acknowledge that the CMA may, where it considers appropriate, in response to a written request from them showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Undertakings within which Arriva, its Subsidiaries or any Related Person (or the Trustee in case one were appointed) must take action.

**13. OBLIGATIONS UNDER THE NORTHERN FRANCHISE AGREEMENT, THE AXC AGREEMENT OR THE W&B FRANCHISE AGREEMENT**

13.1 Where the Secretary of State for Transport implements or proposes to implement changes to the Northern Franchise Agreement, the AXC Agreement or the W&B Franchise Agreement, or takes any enforcement measure, including an enforcement order or direction, in relation to the Northern Franchise Agreement, the AXC Agreement or the W&B Franchise Agreement and such action imposes obligations on Arriva, its Subsidiaries or any Related Person that are inconsistent with or requires them to act in a way that would breach these Undertakings:

13.1.1 Arriva, its Subsidiaries and any Related Person undertake to notify the CMA as soon as possible; and

13.1.2 Compliance by Arriva, its Subsidiaries and any Related Person with their obligations under such action shall not be a breach of these Undertakings.

13.2 In the circumstances referred to at paragraph 13.1. the CMA may vary the Undertakings to deliver the remedy set out in the Report.

**14. TERMINATION AND RELEASE**

14.1 Arriva, its Subsidiaries and any Related Person recognise and acknowledge that these Undertakings shall be in force until such time as they are varied, released or superseded under the EA2002, or until such time as they lapse pursuant to paragraph 14.3 or 14.4.

14.2 Arriva, its Subsidiaries and any Related Person recognise and acknowledge that the variation, release, supersession or lapse of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

14.3 The provisions of these Undertakings will only apply in respect of the AXC Flows for so long as both the Operator of the Northern Franchise and the Operator of the AXC Franchise (pursuant to the AXC Agreement) are subject to Control by Arriva.

14.4 The provisions of these Undertakings will only apply in respect of the W&B Flow for so long as both the Operator of the Northern Franchise and the Operator of the W&B Franchise (pursuant to the W&B Franchise Agreement) are subject to Control by Arriva.

**15. VARIATIONS TO THESE UNDERTAKINGS**

15.1 The terms of these Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.

15.2 Where a request for consent is sought pursuant to paragraph 15.1 the CMA will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request.

15.3 The consent of the CMA shall not be unreasonably withheld.



**FOR AND ON BEHALF OF ARRIVA PLC, ARN, ARRIVA UK TRAINS LIMITED and on behalf of their Subsidiaries and any Related Person**

Signature

Name

Title

Date

**APPENDIX 1**

**TEMPLATE MONITORING REPORT FOR THE SPECIFIED UNREGULATED FARES ON THE LEEDS – SHEFFIELD FLOW**

Fare code	Fare Type	Fare Setter	Fare as at 1 April 2016 ( $F_{r,i,j,0}$ )	Maximum Permitted Fare as at [2 January 2017] ( $F_{r,i,j,t}$ )	Fare as at [2 January 2017] (a)	Compliant? (a) $\leq F_{r,i,j,t}$ True / False
			£	£	£	
Standard Day Single Not Doncaster		Northern	10.80			
Short Open Return Not Doncaster		Northern	13.90			
Cheap Day Return Not Doncaster		Northern	11.50			
DG1 Advance Purchase	Advance Fare	Northern	4.50			
DG2 Advance Purchase	Advance Fare	Northern	5.00			
DG3 Advance Purchase	Advance Fare	Northern	5.50			
DG4 Advance Purchase	Advance Fare	Northern	6.00			
DG5 Advance Purchase	Advance Fare	Northern	6.50			
Advance Purchase (Standard) MFS	Advance Fare	Cross Country	10.60			
Advance Purchase (Standard) MGS	Advance Fare	Cross Country	9.60			
Advance Purchase (Standard) MHS	Advance Fare	Cross Country	9.00			

Advance Purchase (Standard) MAS	Advance Fare	Cross Country	8.50			
Advance Purchase (Standard) MBS	Advance Fare	Cross Country	7.00			
Advance Purchase (Standard) MCS	Advance Fare	Cross Country	5.40			
Advance Purchase (Standard) MDS	Advance Fare	Cross Country	4.20			
Advance Purchase (Standard) MES	Advance Fare	Cross Country	3.20			
Advance Purchase (Standard) MIA	Advance Fare	Cross Country	8.90			
Advance Purchase (Standard) MIB	Advance Fare	Cross Country	4.50			
Advance Purchase (Standard) MIS	Advance Fare	Cross Country	10.60			
Advance Purchase (Standard) MJS	Advance Fare	Cross Country	5.40			
Advance Purchase (Standard) MMS	Advance Fare	Cross Country	4.10			

**APPENDIX 2**

**TEMPLATE MONITORING REPORT FOR THE SPECIFIED UNREGULATED FARES ON THE WAKEFIELD – SHEFFIELD FLOW**

<b>Fare code</b>	<b>Fare Type</b>	<b>Fare Setter</b>	<b>Fare as at 1 April 2016 (<math>F_{r,i,j,0}</math>) £</b>	<b>Maximum Permitted Fare as at [2 January 2017] (<math>F_{r,i,j,t}</math>) £</b>	<b>Fare as at [2 January 2017] (a) £</b>	<b>Compliant? (a) <math>\leq F_{r,i,j,t}</math> True / False</b>
Standard Day Single Not Doncaster		Northern	9.70			
Short Open Return Not Doncaster		Northern	12.20			
Cheap Day Return Not Doncaster		Northern	10.20			
Standard Day Single AP		Northern	10.20			
Short Open Return AP		Northern	16.80			
Advance Purchase DG1 AP Northern	Advance Fare	Northern	4.50			
Advance Purchase DG2 AP Northern	Advance Fare	Northern	5.00			
Advance Purchase DG3 AP Northern	Advance Fare	Northern	5.50			
Advance Purchase DG4 AP Northern	Advance Fare	Northern	6.00			
Advance Purchase DG5 AP Northern	Advance Fare	Northern	6.50			
Advance Purchase (Standard) MFS	Advance Fare	Cross Country	9.20			
Advance Purchase (Standard) MGS	Advance Fare	Cross Country	7.50			

Advance Purchase (Standard) MHS	Advance Fare	Cross Country	6.50			
Advance Purchase (Standard) MAS	Advance Fare	Cross Country	4.20			
Advance Purchase (Standard) MBS	Advance Fare	Cross Country	3.20			
Advance Purchase (Standard) MCS	Advance Fare	Cross Country	2.60			
Advance Purchase (Standard) MDS	Advance Fare	Cross Country	2.00			
Advance Purchase (Standard) MES	Advance Fare	Cross Country	1.50			
Advance Purchase (Standard) MIA	Advance Fare	Cross Country	6.90			
Advance Purchase (Standard) MIB	Advance Fare	Cross Country	4.00			
Advance Purchase (Standard) MIS	Advance Fare	Cross Country	9.20			
Advance Purchase (Standard) MJS	Advance Fare	Cross Country	4.60			
Advance Purchase (Standard) MMS	Advance Fare	Cross Country	3.60			

**APPENDIX 3**

**TEMPLATE MONITORING REPORT FOR THE SPECIFIED UNREGULATED FARES ON THE CHESTER – MANCHESTER FLOW**

<b>Fare code</b>	<b>Fare Type</b>	<b>Fare Setter</b>	<b>Fare as at 1 April 2016 (<math>F_{r,j,0}</math>)</b> £	<b>Maximum Permitted Fare as at [2 January 2017] (<math>F_{r,j,t}</math>)</b> £	<b>Fare as at [2 January 2017] (a)</b> £	<b>Compliant? (a) <math>\leq F_{r,j,t}</math> True / False</b>
Standard Day Single Via Altrincham		Northern	13.40			
Short Open Return Via Altrincham		Northern	15.70			
Cheap Day Return Via Altrincham		Northern	12.70			
Cheap Day Single Via Altrincham		Northern	12.60			
Standard Day Single AP		Arriva Trains Wales	16.70			
Standard Day Return AP		Arriva Trains Wales	17.60			

## APPENDIX 4

### Compliance Statement for Arriva PLC, ARN, Arriva UK Trains Limited and their Subsidiaries and any Related Person

1. I [insert name] confirm on behalf of Arriva and its respective Subsidiaries and any Related Person that in the period from [insert date] to [insert date] (the Relevant Period) and subject to any matters reported under paragraph 2 below:

(a) Arriva and its Subsidiaries and any Related Person, have complied during the Relevant Period with these Undertakings offered by them and accepted by the CMA on [date];

(b) Arriva and its Subsidiaries and any Related Person confirm that no breach of any of these Undertakings has occurred during the Relevant Period;

(c) Each of Arriva and its Subsidiaries and any Related Person confirm that they have ensured that:

- i. Each Specified Unregulated Fare on the AXC Flows does not exceed the value set out in paragraph 3.2
- ii. Arriva provided a copy of the confirmation provided to the DfT to the CMA, as set out in paragraph 3.3
- iii. Arriva provided to the DfT and the CMA an update on the Northern Franchise and AXC fares, as set out in paragraph 3.4
- iv. Each Specified Unregulated Fare on the W&B Flow does not exceed the value set out in paragraph 3.6
- v. Arriva provided a copy of the confirmation provided to the DfT to the CMA, as set out in paragraph 3.7
- vi. Arriva provided to the DfT and the CMA an update on the Northern Franchise and W&B fares, as set out in paragraph 3.8
- vii. Arriva, its Subsidiaries and any Related Person maintained the availability of Advance Fares on the AXC Flows, as set out in paragraph 4.1
- viii. Arriva provided the DfT and the CMA with written confirmation that the availability of Advance Fares on the AXC Flows has been maintained, as set out in paragraph 4.2.

(d) Arriva and its Subsidiaries and any Related Person confirm that no action has been taken by them during the Relevant Period that might prejudice compliance with these Undertakings;

(e) Arriva and its respective Subsidiaries and any Related Person remain in full compliance with these Undertakings and will continue to keep the CMA informed of any such information as the CMA may reasonably require for the purpose of monitoring or enforcing compliance with these Undertakings in accordance with paragraph 7.4 of these Undertakings;

#### Non-compliance

2. I confirm that details have been provided to the CMA of:

(a) Any incidences of non-compliance or breaches that have occurred during the Relevant Period, as notified to the CMA pursuant to paragraphs 7.4 and 7.5 of these Undertakings, and of the particular Parts of these Undertakings that have been breached;

(b) Steps taken to deal with the incidences and breaches described in paragraph 2.a above.

Interpretation

3. Terms defined in these Undertakings have the same meaning in this Compliance Statement.

**FOR AND ON BEHALF OF ARRIVA PLC, ARN, ARRIVA UK TRAINS LIMITED and their Subsidiaries and any Related Person**

**Signature .....**

**Name .....**

**Title .....**

**Date .....**