

# Anticipated acquisition by First Trenitalia West Coast Rail Limited of the West Coast Partnership Rail Franchise

## Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/6828-19

### Introduction

1. On 14 August 2019, the Department for Transport (**DfT**) announced that First Trenitalia West Coast Rail Limited (**FTWCRL**) was the successful bidder for the West Coast Partnership Franchise (**Franchise**). FTWCRL is a joint venture between First Rail Holdings Limited and Trenitalia UK Limited (**TUKL**) which are ultimately owned by FirstGroup plc (**First Group**) and FS Group,<sup>1</sup> respectively. FS Group owns TUKL by virtue of its ownership of Trenitalia SpA (**Trenitalia**). In this notice, FirstGroup and Trenitalia are together referred to as the **Parties**. On 28 August 2019, DfT and the Parties entered into a franchise agreement confirming the award of the Franchise to FTWCRL (the **Franchise Award**). The Franchise is due to commence on 8 December 2019.
2. On 7 November 2019, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**). The text of the SLC Decision is available on the CMA webpages.<sup>2</sup>

---

<sup>1</sup> The latter by virtue of FS Group's ownership of Trenitalia SpA which owns TUKL.

<sup>2</sup> See <https://www.gov.uk/cma-cases/first-rail-holdings-trenitalia-uk-west-coast-partnership-rail-franchise>.

3. On 12 November 2019, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
4. On 15 November 2019, the CMA gave notice to FirstGroup and Trenitalia, pursuant to section 73A(2)(b) of the Act, that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the Parties' offer (the **UIL Provisional Acceptance Decision**).

### **The undertakings offered**

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to public transport (rail) services on 21 flows on a continuous stretch of track between Preston and Edinburgh/Glasgow (listed in Annexes 1 and 2 of the SLC Decision).
6. As set out at paragraph 9 of the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA, Parties have offered:
  - (a) an undertaking to ensure that the Parties continue to maintain the same availability of advance fares on each of the 21 flows as are available on a series of comparable flows, in relation to both TransPennine Express (**TPE**) services and the Franchise services; and
  - (b) an undertaking linking the pricing of unregulated fares offered by each of the Franchise and TPE on the 21 flows to the equivalent fares offered on a series of comparable flows.
7. The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).<sup>3</sup>

### **CMA assessment**

8. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the

---

<sup>3</sup> See <https://www.gov.uk/cma-cases/first-rail-holdings-trenitalia-uk-west-coast-partnership-rail-franchise>.

Proposed Undertakings or concerns about their implementation.<sup>4</sup> This is because the Proposed Undertakings will:

- (a) remove any ability or incentive which the Parties may have gained as a result of the Franchise Award, to increase effective prices paid through reducing the number of advance fare tickets available on each of the 21 flows; and
- (b) remove any ability or incentive which the Parties may have gained as a result of the Franchise Award, to raise prices of unregulated fares on each of the 21 flows;

9. The CMA also considers that the Proposed Undertakings would be capable of ready implementation. In particular, the CMA notes the ease of implementation of behavioural remedies in the context of rail franchise awards can be distinguished from the implementation of comparable remedies in mergers in other industries in a number of ways. In the case of rail franchise awards, the parties are subject to existing regulation, there are other restrictions on the operation of rail services provided for in the franchise agreements, and the SLC is time-limited due to the time-limited award of the franchise.

## **Proposed decision and next steps**

10. For the reasons set out above, the CMA currently considers that the Proposed Undertakings are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
11. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Franchise Award for a phase 2 investigation.
12. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material

---

<sup>4</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.<sup>5</sup>

13. Representations should be made in writing to the CMA and be addressed to:

Anastasija Rogozianskaja  
Mergers Group  
Competition and Markets Authority  
The Cabot  
25 Cabot Square  
London  
E14 4QZ

Email: [anastasija.rogozianskaja@cma.gov.uk](mailto:anastasija.rogozianskaja@cma.gov.uk)

Telephone: 020 3738 6173

**Deadline for comments: 2 December 2019.**

---

<sup>5</sup> Under paragraph 2(4) of Schedule 10 to the Act.