

ANTICIPATED ACQUISITION BY FTWCRL OF THE WEST COAST PARTNERSHIP RAIL FRANCHISE

Undertakings given by FirstGroup plc, Trenitalia SpA, and on behalf of their subsidiaries and any Related Person to the Competition and Markets Authority pursuant to section 73 of the Enterprise Act 2002

Whereas:

- (a) First Trenitalia West Coast Rail Limited (**FTWCRL**), a joint venture between entities ultimately owned by FirstGroup plc (**FirstGroup**) and Trenitalia SpA (**Trenitalia**) was awarded the West Coast Partnership Rail Franchise (the **Franchise**) by the Department for Transport (**DfT**) on 13 August 2019 (the **Award**) such that FTWCRL and the Franchise will cease to be distinct for the purposes of the Enterprise Act 2002 (the **Act**);
- (b) Under section 33(1) of the Act the Competition and Markets Authority (**CMA**) has a duty to refer a relevant merger situation for a Phase 2 investigation where it believes that it is or may be the case that the creation of that merger situation may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (c) Under section 73 of the Act the CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate. In particular, the CMA shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (d) As set out in the CMA's decision of 7 November 2019 (the **Decision**), the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Award for a Phase 2 investigation;

- (e) As set out in the Decision, the CMA concluded, amongst other things, that:
- a. The Award of the Franchise to FTWCRL will create a relevant merger situation; and
 - b. The creation of that situation may be expected to result in an SLC on the rail services on the 21 flows listed in Annexes 1 and 2 of the Decision (the **Identified Flows** listed in Appendix 1 to these Undertakings) on which passenger rail services of the Franchise overlap with passenger rail services of the TransPennine Express Franchise (**TPE**).

The Decision lists 21 flows in total in Annexes 1 and 2, because the CMA has treated Edinburgh Waverley and Edinburgh Haymarket as both serving the same settlement, Edinburgh. To assist with implementation of the Undertakings, the Identified Flows are listed in these Undertakings and in the Appendices on a station to station basis (therefore listing 26 flows in total when Edinburgh Waverley and Edinburgh Haymarket are considered separately).

- (f) The CMA considers that the Undertakings given below by FirstGroup and Trenitalia are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which may be expected to result from the Award, as specified in the Decision;

NOW THEREFORE FirstGroup and Trenitalia hereby give to the CMA the following Undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which may be expected to result from it. For the avoidance of doubt, insofar as the following Undertakings apply to TPE, the Undertakings are provided by FirstGroup alone and insofar as the following Undertakings apply to the Franchise, the Undertakings are provided by FirstGroup and Trenitalia jointly.

1 EFFECTIVE DATE OF THE UNDERTAKINGS

- 1.1 These Undertakings shall take effect from the date that, having been signed by FirstGroup and Trenitalia, they are accepted by the CMA.

2 UNDERTAKINGS WITH REGARD TO THE AVAILABILITY OF ADVANCE FARES

- 2.1 Except with the prior written consent of the CMA, FirstGroup, its Subsidiaries and any Related Person undertake to ensure that they maintain the

availability of Advance Fares offered by TPE on the Advance Fare TPE Identified Flows and described as Advance Fare in Appendix 4A. They further undertake that, at any point in time and in relation to any particular service, Advance Fares for travel on TPE services on the Advance Fare TPE Identified Flows and described as Advance Fare in Appendix 4A shall be available at the same (or lower) Price Point Group and at the same (or higher) Quota Level available within that Price Point Group as Advance Fares for travel on TPE services on TPE Comparator Flows. For the avoidance of doubt, in relation to a particular service, the Quota Level available at any point in time at a particular Price Point Group on the Advance Fare Identified Flows shall be at least equivalent to the Quota Level available at any point in time at a particular Price Point Group on the TPE Comparator Flows;

- 2.2 Except with the prior written consent of the CMA, FirstGroup, Trenitalia, their Subsidiaries and any Related Person undertake to ensure that they maintain the availability of Advance Fares offered by the Franchise on the Advance Fare Franchise Identified Flows and described as Advance Fare in Appendix 4B. They further undertake that, at any point in time and in relation to any particular service, Advance Fares for travel on Franchise services on the Advance Fare Franchise Identified Flows and described as Advance Fare in Appendix 4B shall be available at the same (or lower) Price Point Group and at the same (or higher) Quota Level available within that Price Point Group as Advance Fares for travel on Franchise services on the Franchise Comparator Flows. For the avoidance of doubt, in relation to a particular service, the Quota Level at any point in time at a particular Price Point Group on the Advance Fare Franchise Identified Flows shall be at least equivalent to the Quota Level at any point in time at a particular Price Point Group on the Franchise Comparator Flows;
- 2.3 Within four weeks of the completion of the three fare setting rounds in each Franchise Year (Winter, Easter and Summer), FirstGroup (in respect of TPE) and FirstGroup and Trenitalia (in respect of the Franchise) shall provide to the DfT and the CMA an update on the Quota Level for the Advance Fares on the Advance Fare TPE Identified Flows and Advance Fare Franchise Identified Flows by submitting tables in a form materially similar to the template monitoring reports set out at Appendices 7A and 7B to these Undertakings.

3 UNDERTAKINGS WITH REGARD TO FARE INCREASE CONTROL

- 3.1 Except with the prior written consent of the CMA, FirstGroup, its Subsidiaries and any Related Person shall ensure that Unregulated Fares for travel on TPE services set by TPE (set as at the Effective Date of these Undertakings or that TPE sets in the future) on the Identified Flows shall not in any Fare Year increase by a percentage greater than the Weighted Average Increase (rounded up to the nearest 10 pence) for the corresponding Unregulated Fares for travel set by TPE on the TPE Comparator Flows.
- 3.2 Except with the prior written consent of the CMA, FirstGroup, Trenitalia, their Subsidiaries and any Related Person shall ensure that Unregulated Fares for travel on Franchise services set by the Franchise (set as at the Effective Date of these Undertakings or that the Franchise sets in the future) on the Identified Flows shall not in any Fare Year increase by a percentage greater than the Weighted Average Increase (rounded up to the nearest 10 pence) for the corresponding Unregulated Fares for travel set by the Franchise on the Franchise Comparator Flows.
- 3.3 Within four weeks of the completion of the three fare setting rounds in each Franchise Year (Winter, Easter and Summer), FirstGroup (in respect of TPE) and FirstGroup and Trenitalia (in respect of the Franchise) shall provide to the DfT and the CMA an update on the levels of the Unregulated Fares on the Identified Flows by reference to the TPE Comparator Flows and Franchise Comparator Flows, respectively, by submitting tables in a form materially similar to the template monitoring reports set out at Appendices 7A and 7B to these Undertakings.

4 PROCEDURE FOR CONSENT AND NOTIFICATION

- 4.1 Where the consent or approval of the CMA is required (however that requirement is expressed in these Undertakings), including in relation to the review of the Undertakings as set out at paragraphs 13.1-13.3 below, FirstGroup, Trenitalia, their Subsidiaries and any Related Person will seek the consent or approval in writing, which shall include email.
- 4.2 FirstGroup, Trenitalia, their 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.
- 4.3 FirstGroup, Trenitalia, their 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.

- 4.4 In the event that FirstGroup, Trenitalia, their Subsidiaries and any Related Person discover that an application for consent or approval has been made without full disclosure to the CMA, they undertake to:
- (a) 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
 - (b) 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 4.4(a) above, provide to the CMA an application for consent that includes the missing information.
- 4.5 Unless a different period is expressly provided for in these Undertakings, FirstGroup, Trenitalia, their 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.
- 4.6 FirstGroup, Trenitalia, their 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 4.5 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.

5 COMPLIANCE

- 5.1 FirstGroup and Trenitalia shall comply promptly with such written directions as the CMA may from time to time give:
- (a) 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
 - (b) 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.
- 5.2 FirstGroup and Trenitalia shall co-operate fully with the CMA when the CMA is:

- (a) monitoring compliance with the provisions of these Undertakings; and
 - (b) investigating potential breaches of the provisions of these Undertakings.
- 5.3 FirstGroup and Trenitalia shall procure that any member of the same Group of Interconnected Bodies Corporate as FirstGroup or Trenitalia complies with these Undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as FirstGroup or Trenitalia shall be attributed to FirstGroup or Trenitalia for the purposes of these Undertakings.
- 5.4 Where any Affiliate of FirstGroup or Trenitalia is not a member of the same Group of Interconnected Bodies Corporate as FirstGroup or Trenitalia, FirstGroup and Trenitalia (as the case may be) shall use its best endeavours to procure that any such Affiliate shall comply with these Undertakings as if it had given them.
- 5.5 FirstGroup, Trenitalia, their 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 8 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 31 January 2021.
- 5.6 FirstGroup, Trenitalia, their 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, FirstGroup, Trenitalia, their Subsidiaries and any Related Person undertake to take as soon as possible all reasonable actions required to remedy the breach and comply with these Undertakings.
- 5.7 FirstGroup, Trenitalia, their Subsidiaries and any Related Person shall appoint an Independent Body to conduct an Assurance Audit for the first year of the operation of these Undertakings. FirstGroup, Trenitalia, their Subsidiaries and any Related Person will:

- (a) submit to the CMA for approval a description of the scope of the Assurance Audit (which will form part of the contract with the Independent Body) by [date 10 Working Days from acceptance of the Undertakings];
- (b) confirm the appointment of the Independent Body to the CMA by [date 20 Working Days from acceptance of the Undertakings];
- (c) ensure an Assurance Audit report is completed by the Independent Body no later than the first anniversary of the date of acceptance of these Undertakings;
- (d) submit the Assurance Audit report to the CMA within 30 calendar days of the report being completed. The report must describe in detail the extent of, and any failures in, compliance with these Undertakings between the date of acceptance of these Undertakings and the first anniversary of the date of acceptance of these Undertakings; and
- (e) ensure that the Assurance Audit report is accompanied by a statement of actions that FirstGroup, Trenitalia, their Subsidiaries and any Related Person will carry out with the affected customers and more widely related to findings in the Assurance Audit report. This statement must be signed by the FirstGroup plc Group Legal Director and Divisional Managing Director, First Rail for FirstGroup and the Chief Executive Officer and the General Counsel for Trenitalia.

5.8 In the event that the Assurance Audit identifies significant concerns in relation to compliance with these Undertakings, (whether concerns are significant or not to be determined by the CMA) FirstGroup, Trenitalia, their Subsidiaries and any Related Person commit to procure a further Assurance Audit or Assurance Audits on an annual basis to ensure that the identified concerns have been addressed.

6 OBLIGATIONS UNDER THE FRANCHISE AGREEMENT OR THE TPE FRANCHISE AGREEMENT

6.1 Where the Secretary of State for Transport implements or proposes to implement changes to the Franchise Agreement or the TPE Franchise Agreement or takes any enforcement measure, including an enforcement order or direction, in relation to the Franchise Agreement or the TPE Franchise Agreement and such action imposes obligations on FirstGroup and/or Trenitalia, their Subsidiaries or any Related Person that are

inconsistent with or requires them to act in a way that would breach these Undertakings:

- (a) FirstGroup and/or Trenitalia (as the case may be), their Subsidiaries and any Related Person undertake to notify the CMA as soon as possible; and
- (b) Compliance by FirstGroup and/or Trenitalia (as the case may be), their Subsidiaries and any Related Person with their obligations under such action shall not be a breach of these Undertakings.

6.2 In the circumstances referred to at paragraph 6.1 the CMA may vary the Undertakings to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which may be expected to result from the Award, as specified in the Decision.

7 PROVISION OF INFORMATION

7.1 FirstGroup and Trenitalia 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.

8 EXTENSION OF TIME LIMITS

8.1 The CMA may, in response to a written request from FirstGroup and Trenitalia, or otherwise at its own discretion, grant an extension to any time period referred to in these Undertakings.

9 SERVICE

- 9.1 FirstGroup and Trenitalia hereby authorise Freshfields Bruckhaus Deringer LLP (**Freshfields**) whose address for service is 65 Fleet Street, London, EC4Y 1HS, or such address as may be notified to the CMA from time to time, to accept service on its behalf of all documents connected with these Undertakings (including any document of any kind which falls to be served on or sent to FirstGroup and Trenitalia, or any of their Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these Undertakings).
- 9.2 Unless FirstGroup and Trenitalia jointly inform the CMA in writing that Freshfields has ceased to have authority to accept and acknowledge service on its or any of their Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on FirstGroup and Trenitalia if it is served on Freshfields; and service shall be deemed to have been acknowledged by FirstGroup and Trenitalia if it is acknowledged by Freshfields or such other nominee.
- 9.3 Paragraph 9.2 above has effect irrespective of whether, as between FirstGroup and Trenitalia and Freshfields or other nominees, Freshfields or other nominees has or continues to have any authority to accept and acknowledge service on FirstGroup's and Trenitalia's or any of its respective Subsidiaries' behalf.
- 9.4 No failure or mistake by Freshfields or other nominees (including a failure to notify FirstGroup and Trenitalia 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 communication from FirstGroup and Trenitalia to the CMA under these Undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, The Cabot, 25 Cabot Square, London, E14 4QZ or by email to RemediesMonitoringTeam@cma.gov.uk, or such other postal or email address as the CMA may direct in writing.

10 EFFECT OF INVALIDITY

- 10.1 Should any provision of these Undertakings be contrary to law or invalid for any reason, FirstGroup and Trenitalia undertake to continue to observe the remaining provisions.

11 GOVERNING LAW

- 11.1 FirstGroup and Trenitalia 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, FirstGroup and Trenitalia undertake to submit to the courts of England and Wales.

12 TERMINATION AND RELEASE

- 12.1 FirstGroup and Trenitalia recognise and acknowledge that these Undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 12.2 FirstGroup and Trenitalia recognise and acknowledge that the variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.
- 12.3 The provisions of these Undertakings will only apply in respect of the Identified Flows, Advance Fare Franchise Identified Flows, or Advance Fare TPE Identified Flows, as the case may be, for so long as both the Operator of the Franchise and the Operator of the TPE Franchise are subject to Control by FirstGroup (in respect of TPE) and FirstGroup and Trenitalia (in respect of the Franchise).

13 VARIATIONS TO THESE UNDERTAKINGS

- 13.1 The terms of these Undertakings may be varied with the prior written consent of the CMA in accordance with sections 73(5) and 73(7) of the Act.
- 13.2 Where a request for consent is sought pursuant to paragraph 13.1 the CMA will consider any such request in light of the Decision and will respond in writing as soon as is reasonably practicable having regard to the nature of the request.

- 13.3 The consent of the CMA shall not be unreasonably withheld.
- 13.4 FirstGroup and Trenitalia, in respect of the Franchise, and FirstGroup, in respect of TPE, shall inform the CMA of any change in the identity of the lead operator on any of the Identified Flows as soon as possible after the change (and in any event within 5 Working Days of the change).

14 INTERPRETATION

- 14.1 The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
- 14.2 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.
- 14.3 In these Undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 14.4 For the purposes of these Undertakings:

“the Act” means the Enterprise Act 2002;

“Advance Fare(s)” means single (one-way) train-specific standard class adult 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;

“Advance Fare Franchise Identified Flows” means those Identified Flows on which the Franchise currently offers permanent Advance Fares, being those listed in Appendix 3B;

“Advance Fare TPE Identified Flows” means those Identified Flows on which TPE currently offers permanent Advance Fares, being those listed in Appendix 3A;

“Affiliate” a person is an affiliate of another person if they or their respective enterprises would be regarded as being under common control for the purposes of section 26 of the Act;

“Associated Person” means a person or persons associated with FirstGroup and/or Trenitalia within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

“Assurance Audit” means an assessment carried out by an Independent Body of the processes, procedures and outcomes which constituted and constitute compliance by FirstGroup, Trenitalia, their Subsidiaries and any Related Person with the Undertakings;

“the Award” means the award of the West Coast Partnership rail franchise to FTWCRL on 13 August 2019 by the DfT;

“business” has the meaning given by section 129(1) and (3) of the Act;

“CMA” means the Competition and Markets Authority or any successor body;

“Compliance Statement” has the meaning given by Part 5.5 and is to be in the format set out in Appendix 8;

“Confidential Information” means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

“Control” shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

“Decision” means the CMA’s decision under section 33 of the Act dated 7 November 2019 in connection with the Award;

“DfT” means the UK Department for Transport or any successor body;

“Effective Date” has the meaning given in paragraph 1.1, being the date from which these Undertakings shall take effect;

“enterprise” has the meaning given in section 129(1) of the Act;

“Fare Year” means the period from 1 January in any year to 31 December in the same year;

“FirstGroup” means FirstGroup plc, a public limited company listed on the London Stock Exchange;

“the Franchise” means the West Coast Partnership rail franchise, as awarded to FTWCRL by the DfT;

“Franchise Agreement” means the agreement to award FTWCRL the Franchise from December 2019;

“Franchise Comparator Flows” means the point to point direct flows set out in Appendix 2A;

“Franchise Year” means each calendar year in which the Franchise is operated by FTWCRL;

“Freshfields” means Freshfields Bruckhaus Deringer LLP, located at 65 Fleet Street, London, EC4Y 1HS (or any other address as may be notified to the CMA from time to time) and authorised to accept service on behalf of FirstGroup and Trenitalia;

“FTWCRL” means First Trenitalia West Coast Rail Limited, a private limited company incorporated in England and Wales with registered number 10349442;

“Group of Interconnected Bodies Corporate” 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;

“Identified Flows” means the 21 overlapping flows (26 overlapping flows on a station to station basis) which the CMA identified as giving rise to a realistic prospect of an SLC;

“Independent Body” means a body which is: (i) capable of carrying out an Assurance Audit; (ii) is not part of the same Group of Interconnected Bodies Corporate as FirstGroup or Trenitalia; and (iii) is without conflicts of interest;

“Interest” includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings but does not include a contract to acquire shares in the future; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

“Price Point Group” means: a category of Advance Fares, which contains: (i) a specified number of seats that are available for purchase as Advance Fares on a particular point to point flow or across a collection of point to point flows; and (ii) one or more fare values that apply to seats available within that group;

“Quota Level” means the proportion of seats allocated for sale at each Price Point Group across all services on the relevant point to point flow;

“Related Person” means any Subsidiary, Affiliate, Associated Person or Group of Interconnected Bodies Corporate of FirstGroup and/or Trenitalia from time to time;

“SLC” means substantial lessening of competition pursuant to section 35 of the Act;

“Subsidiary” shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

“TPE” means the TransPennine Express train operating company;

“TPE Comparator Flows” means the point to point direct flows set out in Appendix 2B;

“TPE Franchise” means the TransPennine Express franchise, awarded to First TransPennine Express Limited by the DfT;

“TPE Franchise Agreement” means the agreement to award First TransPennine Express Limited the TPE Franchise from December 2015;

“Trenitalia” means Trenitalia SpA, a private limited company incorporated in Italy;

“UK” means the United Kingdom of Great Britain and Northern Ireland;

“Unregulated Fare[s]” means permanent standard class adult fares valid for travel on TPE or the Franchise as the case may be which are not subject to fare regulation pursuant to Schedule 5 of the TPE Franchise Agreement or Schedule 5 of the Franchise Agreement, respectively, and which are listed in Appendices 4A and 4B;

“Undertakings” means the undertakings given by FirstGroup and Trenitalia to the CMA for the purpose of remedying, mitigating or preventing the SLC and the adverse effects identified in the Decision;

“Weighted Average Increase” shall be calculated separately for each fare group (“Anytime”, “Advance”, “Off-Peak/Other”), across the Comparator flows for either TPE or the Franchise as listed in Appendix 2A and Appendix 2B respectively, using the following formula:

$$\sum_k \left\{ \text{Percentage change in fare}_{ijk} \times \left[\frac{\text{Revenue}_{ik}}{\sum_{i \in j} \text{Revenue}_{ik}} \right] \times \left[\frac{\text{Revenue}_k}{\sum_k \text{Revenue}_k} \right] \right\}$$

Where:

- "i" relates to a ticket type (e.g. Anytime Day Single);
- "j" relates to one of the three unregulated fare groups ("Anytime", "Advance", "Off-Peak/Other") that fares on comparator flows have been grouped into, with each ticket type i belonging to a specific fare group j;
- "k" relates to a Comparator flow for either TPE or the Franchise, as listed in Appendix 2A and Appendix 2B respectively;
- *Percentage change in fare_{ijk}* relates to the percentage change in the price of a given ticket type i (belonging to a fare group j) computed on a given comparator flow k for either TPE or the Franchise and shall be calculated using the price prevailing in the previous Fare Year as the base from which the change is calculated;
- *Revenue_{ik}* is the total Adjusted Earnings taken from the LENNON database for the same period as that used to calculate the *Percentage change in fare_{ijk}*, and is computed for ticket type i (within a group j) on comparator flow k for either TPE or the Franchise;
- $\sum_{i \in j} Revenue_{ik}$ is the sum of the total Adjusted Earnings over all the ticket types within a given fare group (Anytime, Advance, Off-peak/Other) on a comparator flow k for either TPE or the Franchise.
- *Revenue_k* is the total Adjusted Earnings taken from the LENNON database for the same period as that used to calculate the *Percentage change in fare_{ijk}*, and is computed on comparator flow k for either TPE or the Franchise.
- $\sum_k Revenue_k$ is the sum of the total Adjusted Earnings over all k comparator flows for either TPE or the Franchise.
- $\sum_k \{ \}$ is the sum over all comparator flows for either TPE or the Franchise.

"Working Day" means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England and Wales; and

unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF FIRSTGROUP

Signature

Name

Title

Date

FOR AND ON BEHALF OF TRENITALIA

Signature

Name

Title

Date

DATE ACCEPTED BY THE CMA:

APPENDIX 1

IDENTIFIED FLOWS

This appendix sets out the list of 21 overlapping flows (26 flows on a station to station basis) on which the CMA believes the Franchise Award may be expected to result in an SLC.

Identified Flows
Edinburgh Waverley - Carlisle
Carlisle - Haymarket
Lancaster - Haymarket
Edinburgh Waverley - Lancaster
Oxenholme Lake District - Haymarket
Oxenholme Lake District - Edinburgh Waverley
Edinburgh Waverley - Penrith North Lakes
Haymarket - Penrith North Lakes
Haymarket - Preston
Preston - Edinburgh Waverley
Glasgow Central - Carlisle
Lancaster - Glasgow Central
Oxenholme Lake District - Glasgow Central
Glasgow Central - Penrith North Lakes
Preston - Glasgow Central
Lancaster - Oxenholme Lake District
Lancaster - Penrith North Lakes
Penrith North Lakes - Carlisle
Motherwell - Preston
Lancaster - Preston
Preston - Penrith North Lakes
Preston - Oxenholme Lake District
Carlisle - Lancaster
Carlisle - Oxenholme Lake District
Carlisle - Preston
Lockerbie - Glasgow Central

APPENDIX 2A

FRANCHISE COMPARATOR FLOWS

This Appendix sets out the Franchise Comparator Flows for the Identified Flows.

Identified Flows	Franchise Comparator Flows
Edinburgh Waverley - Carlisle	Warrington BQ - Glasgow Central
Carlisle - Haymarket	Warrington BQ - Edinburgh Waverly
Lancaster - Haymarket	Warrington BQ - Haymarket
Edinburgh Waverley - Lancaster	Wigan North Western - Glasgow Central
Oxenholme Lake District - Haymarket	Wigan North Western - Edinburgh Waverly
Oxenholme Lake District - Edinburgh Waverley	Wigan North Western - Haymarket
Edinburgh Waverley - Penrith North Lakes	Birmingham New Street - Glasgow Central
Haymarket - Penrith North Lakes	Birmingham New Street - Preston
Haymarket - Preston	Birmingham Moor Street - Glasgow Central
Preston - Edinburgh Waverley	Birmingham Moor Street - Preston
Glasgow Central - Carlisle	Birmingham Snow Hill - Glasgow Central
Lancaster - Glasgow Central	Birmingham Snow Hill - Preston
Oxenholme Lake District - Glasgow Central	Wolverhampton - Glasgow Central
Glasgow Central - Penrith North Lakes	Sandwell & Dudley - Glasgow Central
Preston - Glasgow Central	Stafford - Crewe
Lancaster - Oxenholme Lake District	
Lancaster - Penrith North Lakes	
Penrith North Lakes - Carlisle	
Motherwell - Preston	
Lancaster - Preston	
Preston - Penrith North Lakes	
Preston - Oxenholme Lake District	
Carlisle - Lancaster	
Carlisle - Oxenholme Lake District	
Carlisle - Preston	
Lockerbie - Glasgow Central	

APPENDIX 2B

TPE COMPARATOR FLOWS

This Appendix sets out the TPE Comparator Flows for the Identified Flows.

Identified Flows	TPE Comparator Flows
Edinburgh Waverley - Carlisle	Manchester Piccadilly - Edinburgh Waverley
Carlisle - Haymarket	Manchester Piccadilly - Haymarket
Lancaster - Haymarket	Manchester Oxford Road - Edinburgh Waverley
Edinburgh Waverley - Lancaster	Manchester Oxford Road - Haymarket
Oxenholme Lake District - Haymarket	Manchester Victoria - Edinburgh Waverley
Oxenholme Lake District - Edinburgh Waverley	Manchester Victoria - Haymarket
Edinburgh Waverley - Penrith North Lakes	Manchester Piccadilly - Preston
Haymarket - Penrith North Lakes	Manchester Piccadilly - Lancaster
Haymarket - Preston	Manchester Piccadilly - Oxenholme Lake District
Preston - Edinburgh Waverley	
Glasgow Central - Carlisle	
Lancaster - Glasgow Central	
Oxenholme Lake District - Glasgow Central	
Glasgow Central - Penrith North Lakes	
Preston - Glasgow Central	
Lancaster - Oxenholme Lake District	
Lancaster - Penrith North Lakes	
Penrith North Lakes - Carlisle	
Motherwell - Preston	
Lancaster - Preston	
Preston - Penrith North Lakes	
Preston - Oxenholme Lake District	
Carlisle - Lancaster	
Carlisle - Oxenholme Lake District	
Carlisle - Preston	
Lockerbie - Glasgow Central	

APPENDIX 3A

ADVANCED FARE TPE IDENTIFIED FLOWS

TPE Identified Flows offering Advance fares
--

Edinburgh Waverley - Carlisle
Carlisle - Haymarket
Lancaster - Haymarket
Edinburgh Waverley - Lancaster
Oxenholme Lake District - Haymarket
Oxenholme Lake District - Edinburgh Waverley
Edinburgh Waverley - Penrith North Lakes
Haymarket - Penrith North Lakes
Haymarket - Preston
Preston - Edinburgh Waverley
Glasgow Central - Carlisle
Lancaster - Glasgow Central
Oxenholme Lake District - Glasgow Central
Glasgow Central - Penrith North Lakes
Preston - Glasgow Central
Lancaster - Penrith North Lakes
Motherwell - Preston
Preston - Penrith North Lakes
Carlisle - Lancaster
Carlisle - Oxenholme Lake District
Carlisle - Preston
Lockerbie - Glasgow Central

APPENDIX 3B

ADVANCED FARE FRANCHISE IDENTIFIED FLOWS

Franchise Identified Flows offering Advance fares
--

Edinburgh Waverley - Carlisle
Carlisle - Haymarket
Lancaster - Haymarket
Edinburgh Waverley - Lancaster
Oxenholme Lake District - Haymarket
Oxenholme Lake District - Edinburgh Waverley
Edinburgh Waverley - Penrith North Lakes
Haymarket - Penrith North Lakes
Haymarket - Preston
Preston - Edinburgh Waverley
Glasgow Central - Carlisle
Lancaster - Glasgow Central
Oxenholme Lake District - Glasgow Central
Glasgow Central - Penrith North Lakes
Preston - Glasgow Central
Lancaster - Oxenholme Lake District
Lancaster - Penrith North Lakes
Penrith North Lakes - Carlisle
Motherwell - Preston
Preston - Penrith North Lakes
Preston - Oxenholme Lake District
Carlisle - Lancaster
Carlisle - Oxenholme Lake District
Carlisle - Preston
Lockerbie - Glasgow Central

APPENDIX 4A

UNREGULATED FARES ON TPE IDENTIFIED FLOWS

Fare category	Fare code	Fare description
QUOTA	2AF	ADVANCE
QUOTA	2BF	ADVANCE
QUOTA	2CF	ADVANCE
QUOTA	2DF	ADVANCE
QUOTA	2EF	ADVANCE
QUOTA	2FF	ADVANCE
QUOTA	2GF	ADVANCE
QUOTA	2HF	ADVANCE
QUOTA	2JF	ADVANCE
QUOTA	2KF	ADVANCE
QUOTA	2NF	ADVANCE
WALKUP	SDR	ANYTIME DAY R
WALKUP	SDS	ANYTIME DAY S
WALKUP	SOS	ANYTIME S
WALKUP	SHR	ANYTIME SHORT R
WALKUP	CDR	OFF-PEAK DAY R
WALKUP	CDS	OFF-PEAK DAY S
WALKUP	SVR	OFF-PEAK R
WALKUP	SVS	OFF-PEAK S

As at the Effective Date, TPE does not set the inter-available fares on the Carlisle-Penrith flow (fare codes SDR, CDR, SDS, and CDS). If TPE becomes the lead operator on the Carlisle – Penrith flow, the list above shall be extended to include the inter-available fares on the Carlisle – Penrith flow (fare codes SDR, CDR, SDS, and CDS). As required under paragraph 13.4, FirstGroup is required to notify the CMA of any change in the identity of the lead operator on any of the Identified Flows.

APPENDIX 4B

UNREGULATED FARES ON FRANCHISE IDENTIFIED FLOWS

Fare category	Fare code	Fare description
QUOTA	V2A	ADVANCE
QUOTA	V2B	ADVANCE
QUOTA	V2C	ADVANCE
QUOTA	V2D	ADVANCE
QUOTA	V2E	ADVANCE
QUOTA	V2F	ADVANCE
QUOTA	V2G	ADVANCE
QUOTA	V2H	ADVANCE
QUOTA	V2I	ADVANCE
QUOTA	V2J	ADVANCE
QUOTA	V2K	ADVANCE
QUOTA	V2L	ADVANCE
QUOTA	V2M	ADVANCE
QUOTA	V2N	ADVANCE
QUOTA	V2O	ADVANCE
QUOTA	V2P	ADVANCE
QUOTA	V2Q	ADVANCE
QUOTA	V2R	ADVANCE
QUOTA	V2S	ADVANCE
QUOTA	V2T	ADVANCE
QUOTA	V2U	ADVANCE
QUOTA	V2V	ADVANCE
QUOTA	V2W	ADVANCE
QUOTA	V2X	ADVANCE
QUOTA	V2Y	ADVANCE
QUOTA	V2Z	ADVANCE
QUOTA	6F2	DISCOUNT FAMILY STD
QUOTA	VZP	SALE STANDARD
WALKUP	SDR	ANYTIME DAY R
WALKUP	SDS	ANYTIME DAY S
WALKUP	SOR	ANYTIME R
WALKUP	SOS	ANYTIME S
WALKUP	CDR	OFF-PEAK DAY R
WALKUP	CDS	OFF-PEAK DAY S
WALKUP	SVR	OFF-PEAK R
WALKUP	SVH	OFF-PEAK S
WALKUP	SVS	OFF-PEAK S

Note: The above list does not include promotional fares, since they are not offered throughout the year. The following 5 promotional fares are offered on the overlap flows:

3YF - VT PROMO Y

3YS - VT PROMO Y STD

3ZF - VT PROMO Z

3ZS - VT PROMO Z STD

VFP - VTWC2 FLAT FARE

As at the Effective Date, the Franchise does not set the inter-available fares on the Carlisle-Penrith flow (fare codes SDR, CDR, SDS, and CDS). If the Franchise becomes the lead operator

on the Carlisle – Penrith flow, the list above shall be extended to include the inter-available fares on the Carlisle – Penrith flow (fare codes SDR, CDR, SDS, and CDS). As required under paragraph 13.4, FirstGroup and Trenitalia are required to notify the CMA of any change in the identity of the lead operator on any of the Identified Flows.

APPENDIX 5

EXPLANATORY REMEDIES IMPLEMENTATION WALKTHROUGH

[Document provided separately]

APPENDIX 6A

WORKED COMPLIANCE EXAMPLE FOR PRICE-SETTING (FRANCHISE)

(Excel document provided separately)

APPENDIX 6B

WORKED COMPLIANCE EXAMPLE FOR ADVANCE FARE AVAILABILITY (TPE)

(Excel document provided separately)

APPENDIX 7A

REMEDIES IMPLEMENTATION TEMPLATE (TPE)

(Excel document provided separately)

APPENDIX 7B

REMEDIES IMPLEMENTATION TEMPLATE (FRANCHISE)

(Excel document provided separately)

APPENDIX 8

COMPLIANCE STATEMENT FOR FIRSTGROUP PLC, TRENITALIA AND THEIR SUBSIDIARIES AND ANY RELATED PERSON

1. We [*insert names*] confirm on behalf of FirstGroup, Trenitalia, their 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. FirstGroup, Trenitalia, their respective 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. FirstGroup, Trenitalia, their respective Subsidiaries and any Related Person confirm that no breach of any of these Undertakings has occurred during the Relevant Period;
 - c. Each of FirstGroup, Trenitalia, their respective Subsidiaries and any Related Person confirm that they have ensured that:
 - i. FirstGroup, Trenitalia, their respective Subsidiaries and any Related Person maintained the availability of Advance Fares on the Advance Fare TPE Identified Flows and Advance Fare Franchise Identified Flows, as set out in paragraph 2.1-2.2;
 - ii. Each Unregulated Fare on the Identified Flows does not exceed the value set out in paragraph 3.1-3.2;
 - iii. FirstGroup, Trenitalia, their respective Subsidiaries and any Related Person have provided a copy of the confirmation provided to the DfT to the CMA, as set out in paragraph 2.3;
 - iv. FirstGroup, Trenitalia, their respective Subsidiaries and any Related Person have provided to the DfT and the CMA an update on the Franchise and the Identified Flow fares, as set out in paragraph 3.3;
 - d. FirstGroup, Trenitalia, their respective 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. FirstGroup, Trenitalia, their 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 5.5 and 5.6 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 paragraph 5.5 and 5.6 of these Undertakings, and of the particular Parts of these Undertakings that have been breached; and
 - 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 FIRSTGROUP PLC, their Subsidiaries and any Related Person

Signature

Name

Title

Date

FOR AND ON BEHALF OF TRENITALIA SPA, their Subsidiaries and any Related Person

Signature

Name

Title

Date