

# Completed acquisition by Arriva Rail North Limited of the Northern Rail Franchise

## Decision to refer

**ME/6591/16**

The CMA's decision to refer under section 22 of the Enterprise Act 2002 given on 20 May 2016. Full text of the decision published on 24 May 2016.

### Introduction

1. On 9 December 2015, the Department for Transport (**DfT**) announced that the Northern rail franchise (the **Northern Franchise**) had been awarded to Arriva Rail North Limited (**ARN**) (the **Franchise Award**), a wholly-owned subsidiary of Arriva plc (**Arriva**), which itself is a wholly owned subsidiary of Deutsche Bahn AG. ARN's operation of the Northern Franchise commenced on 1 April 2016.
2. On 12 May 2016, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Franchise Award constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).<sup>1</sup>
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to Arriva of the SLC Decision. However, in order to allow Arriva the opportunity to offer undertakings to the CMA for the purposes of section 73(2) of the Act, the CMA did not refer the Franchise Award for a phase 2 investigation pursuant to section 22(3)(b) on the date of the SLC Decision.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. The SLC

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<sup>1</sup> See [Arriva Rail North / Northern Rail franchise merger inquiry case page](#).

Decision stated that if no undertakings for the purposes of section 73(2) of the Act were offered to the CMA by the end of this period, ie by 19 May, or Arriva indicated before this deadline that it did not wish to offer such undertakings, then the CMA would refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

5. Pursuant to section 34ZA(2) of the Act the CMA is not prevented from making a reference under section 22 of the Act in the event that it decides that the duty to refer does not apply because it is considering whether to accept undertakings under section 73 of the Act but no such undertakings are offered or accepted.
6. On 19 May 2016, Arriva informed the CMA that it would not offer such undertakings to the CMA.

## **Decision**

7. Therefore, pursuant to sections 22(1) and 34ZA(2) of the Act, the CMA has decided to refer the Merger to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to conduct a phase 2 investigation.

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**Competition and Markets Authority**  
**20 May 2016**