

**COMPLETED ACQUISITION BY ARRIVA PLC OF THE
WALES & BORDERS RAIL FRANCHISE**

**UNDERTAKINGS GIVEN BY ARRIVA PLC TO THE OFFICE OF
FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002**

WHEREAS:

- (a) On 18 October 2003, Arriva Trains Ltd entered into the Wales & Borders franchise agreement;
- (b) It appears to the OFT that as a consequence of that transaction a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the Competition Commission for further investigation where it believes that it is or may be the case that the merger situation in question has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the UK;
- (d) Under section 73 of the Act the OFT 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 considered appropriate, from such of the parties concerned as it considers appropriate;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the transaction to the Competition Commission;
- (f) The OFT further considers that the undertakings given below by Arriva are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which may be expected to result from it as specified in its decision of 16 March 2004.

THEREFORE Arriva gives to the OFT the following undertakings for the purpose remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which may be expected to result from it.

1. No exclusivity for multi-modal ticketing schemes established by Arriva

- 1.1 The provisions of paragraph 1.3 shall apply whenever Arriva or any of its subsidiaries establishes an Arriva multi-modal ticketing scheme.
- 1.2 An Arriva multi-modal ticketing scheme is a scheme which provides for members of the public to purchase, in a single transaction, an Arriva multi-modal ticket.

- 1.3 Arriva shall ensure that Wales and Borders bus operators are able to participate in a public transport multi-modal ticketing scheme of a like nature to the Arriva multi-modal ticketing scheme in question on terms that are fair, reasonable, and at least no less favourable than the terms on which the Arriva bus operator participates in the equivalent Arriva multi-modal ticketing scheme.

2. Information

Arriva shall furnish promptly to the OFT such information as the OFT considers necessary to monitor these undertakings.

3. Directions and Compliance

- 3.1 Arriva shall comply promptly with such written directions as the OFT may from time to time give:

- i) 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
- ii) to do or refrain from doing anything so specified or described which they might be required by these undertakings to do or to refrain from doing.

- 3.2 Arriva shall procure that any of its subsidiaries shall comply with these undertakings as if it had given them.

- 3.3 Arriva shall cooperate fully with the OFT when:

- i) monitoring compliance with these undertakings; and
- ii) investigating potential breaches of these undertakings.

4. Interpretation

- 4.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

- 4.2 In these undertakings:

'the Act' means the Enterprise Act 2002;

an **'affiliate'** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carried on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

“associated person” means a person associated with Arriva within the meaning of section 127(4) of the Act and includes any subsidiary of such a person;

“Arriva” means Arriva plc;

“Arriva bus operator” means a business supplying an Arriva Wales & Borders bus service;

an **“Arriva multi-modal ticket”** means:

- i) a ticket entitling the holder to make a journey on two or more public transport services (whether in conjunction with each other or as alternatives) and which are operated by Arriva (or any of its subsidiaries) and include at least one Arriva Wales & Borders train service and one Arriva bus service; or
- ii) a ticket entitling the holder to make a journey on an Arriva Wales & Borders train service and which is purchased on terms that are more favourable than the terms on which the equivalent free-standing ticket is sold because the purchaser is also the holder of a ticket entitling him or her to make a journey on an Arriva Wales & Borders bus service;

“Arriva multi-modal ticketing scheme” has the meaning given in paragraph 1.2 of these undertakings;

“Arriva Wales & Borders bus service” means a bus service operated by Arriva, any of its subsidiaries or any associated person or affiliate of Arriva, the route of which falls either wholly or partly within the Wales & Borders franchise area;

“Arriva Wales & Borders train service” means a train service operated by Arriva Trains Ltd or Arriva Trains Wales/Trenau Arriva Cymru Ltd pursuant to the Wales & Borders franchise agreement;

“business” has the meaning given to it in section 129(1) of the Act;

“control” is to 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 has an interest in 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;

“the OFT” means the Office of Fair Trading;

“public transport multi-modal ticketing scheme” means a written agreement between Arriva or any of its subsidiaries and Wales and Borders bus operators to the extent that it provides for members of the public to purchase in a single transaction:

- i) a ticket entitling the holder to make a journey on two or more public transport services (whether in conjunction with each other or as alternatives) which include at least one Arriva Wales & Borders train service; or
- ii) a ticket entitling the holder to make a journey on an Arriva Wales & Borders train service on terms that are more favourable than the terms on which the equivalent free-standing ticket is sold because the purchaser is also the holder of a ticket entitling him or her to make a journey on a Wales and Borders bus service;

“subsidiary” shall be construed in accordance with section 129 of the Act;

“Wales & Borders franchise agreement” means the agreement dated 18 October 2003 between Arriva Trains Ltd and the Strategic Rail Authority to provide train services in the Wales & Borders franchise area;

“Wales & Borders franchise area” means Wales and the Border counties;

“Wales and Borders bus operator” means a business, other than an Arriva bus operator, supplying a Wales and Borders bus service;

“Wales and Borders bus service” means a bus service, supplied by a Wales and Borders bus operator, the route of which falls wholly or partly within the Wales & Borders franchise area;

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