



EUROPEAN COMMISSION

DG Competition

***Case M.7897 - ARRIVA  
RAIL NORTH /  
NORTHERN FRANCHISE***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 4(4)  
Date: 27.01.2016



Brussels, 27.01.2016  
C(2016) 532 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE- Article 4(4)

**To the notifying party:**

**To the Competition and Markets Authority**

Dear Sirs,

**Subject: Case M.7897 – ARRIVA RAIL NORTH / NORTHERN FRANCHISE  
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004<sup>1</sup> for referral of the case to the United Kingdom and Article 57 of the Agreement on the European Economic Area<sup>2</sup>.**

**Date of filing: 18 December 2015**

**Legal deadline for response of Member States: 19 January 2016**

**Legal deadline for the Commission decision under Article 4(4): 02 February 2016**

**I. INTRODUCTION**

1. On 18 December 2015, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the transaction to be examined in its entirety by the competent authorities of the United Kingdom.

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 ("the EEA Agreement").

2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 18 December 2015.
4. By email of 15.01.2016, the Competition and Markets Authority ("CMA") as the competent authority of the United Kingdom informed the Commission that the United Kingdom agrees with the proposed referral.

## **II. THE PARTIES**

5. Arriva Rail North Limited is a wholly-owned subsidiary of Arriva plc ("**Arriva**"). Arriva is an operator of passenger transport services in the United Kingdom and other countries in Europe. In the United Kingdom, Arriva provides rail services, bus services, non-emergency patient transport services and specialist education transport services. Arriva is ultimately wholly owned by Deutsche Bahn AG ("DB").
6. DB is the state-owned German holding company of a multinational mobility and logistics group. DB is engaged in, inter alia, passenger transport by rail and bus (throughout Europe), the operation of railway infrastructure and stations (in Germany), freight forwarding and logistics, including freight transport (worldwide) and ancillary services.
7. The Northern rail passenger franchise (the "**Northern Franchise**") is a passenger rail franchise which provides passenger rail services across North West England, East Midlands, Yorkshire, North East England and Cumbria. In the framework of the Northern Franchise, over 5 000 employees provide more than 2 500 services every day and carry 96 million passengers each year. They serve a network of 15 million people with trains calling at over 500 stations (approximately 20% of all UK stations) of which 464 are managed under the Northern Franchise. The Northern Franchise is a business with a market presence to which a turnover can be clearly attributed in accordance with point 24 of the Commission Consolidated Jurisdictional Notice<sup>3</sup>.
8. The Northern Franchise is currently operated by Northern Rail Limited, a subsidiary of Northern Rail Holdings Limited, a joint venture company owned by Serco group plc and Abellio Transport Holdings BV.
9. DB and the Northern Franchise are together referred to as the "Parties".

## **III. THE OPERATION AND CONCENTRATION**

10. Following a competitive bidding procedure, the UK Department for Transport (the "DfT") announced on 9 December 2015 that Arriva Rail North Limited had been awarded the Northern Franchise to commence operations on 1 April 2016.

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<sup>3</sup> Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.04.2008, P.1).

11. The transaction in question (the "Operation") therefore involves the acquisition of sole control by DB, indirectly through Arriva Rail North Limited and Arriva, over the Northern Franchise pursuant to Article 3(1)(b) of the Merger Regulation.

#### **IV. EU DIMENSION**

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (DB (including Arriva): EUR 39 718 million; Northern Franchise: EUR 782 million). Each of them has an EU-wide turnover in excess of EUR 250 million (DB (including Arriva): EUR 34 347 million; Northern Franchise: EUR 782 million). Each of them achieves more than two-thirds of its aggregate EU-wide turnover within one Member State, but the Member State in question is not the same for DB (Germany) and the Northern Franchise (the United Kingdom).
13. The Operation therefore has an EU dimension within Article 1(2) of the Merger Regulation.

#### **V. ASSESSMENT**

14. On the basis of the information submitted in the Reasoned Submission, the Parties both provide passenger transportation services.

##### **A Relevant product market**

15. The relevant product market could be as wide as all passenger transport services or as narrow as solely rail services. Arriva submits that the relevant product market should not be confined to the provision of only one particular mode of transportation, i.e. include all modes of transportation, but that the question of the exact market definition can be left open.
16. In the previous cases, the Commission considered that the relevant product market in relation to the award of a franchise of a railway service was the supply of public passenger transport services by rail<sup>4</sup>. The Commission also indicated that competitive pressure might be exerted on a railway franchise by other types of public transport, including buses<sup>5</sup>.
17. In more recent cases, the Commission considered that in countries where the provision of passenger rail services is tendered or franchised by the relevant state authorities, as in the United Kingdom, it may be appropriate to make a distinction between competition to be awarded a franchise or concession to operate passenger railway services ("*competition for the market*") and competition within the market for the supply of public passenger transport services by rail ("*competition in the market*")<sup>6</sup>. In the present case, only the market for the supply of public passenger transport services is relevant.

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<sup>4</sup> See Commission Decision of 7 October 1996 in Case M.816 - *CGEA/South Eastern Train Company Limited*, paragraph 13; and Commission Decision of 20 September 2007 in Case M.4797 – *Govia/West Midlands Passenger Rail Franchise*, paragraph 12.

<sup>5</sup> See Commission Decision of 7 October 1996 in Case M.816 - *CGEA/South Eastern Train Company Limited*, paragraph 15; and Commission Decision of 20 September 2007 in Case M.4797 – *Govia/West Midlands Passenger Rail Franchise*, paragraph 12.

<sup>6</sup> See Commission Decision of 11 August 2010 in Case M.5855 - *DB/Arriva*, paragraph 64; and Commission Decision of 20 September 2007 in Case M.4797 – *Govia/West Midlands Passenger Rail Franchise*, paragraph 13.

18. The exact product market definition can however be left open as the outcome of the assessment of the referral request would not be different under any plausible market definition.

## **B Relevant geographic market**

19. On the basis of the information contained in the Reasoned Submission, the geographic focus of the market for the supply of public passenger transport services by rail would not be larger than the United Kingdom.
20. In previous cases, the Commission defined the relevant geographic market by reference to the extent of the network comprising the railway routes, stations and depots, the operation of which is the subject of the franchise agreement<sup>7</sup>.
21. However, in *Govia/Connex South Central*<sup>8</sup>, the Commission considered that the relevant geographic market may be defined as an individual point-to-point route, since rail travellers, especially business travellers and commuters do not regard an indirect journey between their point of departure and their intended destination as an acceptable substitute for the direct route.
22. Arriva submits that the scope of the relevant geographic market is confined, at the widest, to the United Kingdom and that it probably comprises at its largest the area served by the Northern Franchise. It adds that competition is to be assessed at the flow level (i.e. point-to-point routes where the Parties both provide public passenger transport services).
23. Considering that there are indications that the relevant geographic markets may be limited to individual point-to-point routes, the Commission will assess the potential competitive effects stemming from the Operation on that basis.

## **C Assessment**

24. On the basis of the information provided in the Reasoned Submission, the Operation would likely lead to several affected markets for the supply of public passenger transport services by rail and for the supply of public passenger transport services (including all modes of transportation, specifically rail and bus) on point-to-point routes where there are overlaps between DB's existing public passenger transport services (through Arriva) and services to be operated under the Northern Franchise.
25. For instance, when focusing on the market for the supply of public passenger transport services (including all modes of transportation) between Widdrington and Manors or Newcastle, between Pegswood and Morpeth, between Morpeth and Manors or Newcastle, the combined market share of DB (through Arriva bus services) and of the Northern Franchise would be around [90-100]%.
26. In view of the foregoing, the Commission considers that the Operation may significantly affect competition in the United Kingdom with regard to the markets for the supply of public passenger transport services on point-to-point routes.

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<sup>7</sup> See Commission Decision of 8 December 2003 in Case M.3273 - *First/Keolis/TPE JV*, paragraph 7; and Commission Decision of 11 August 2010 in Case M.5855 - *DB/Arriva*, paragraph 73.

<sup>8</sup> See Commission Decision of 20 July 2001 in Case M.2446 - *Govia/Connex South Central*, paragraph 14. See also Commission Decision of 11 August 2010 in Case M.5855 - *DB/Arriva* of 11 August 2010, paragraph 74.

27. Further, the markets for the supply of public passenger transport services on point-to-point routes, where the Parties' activities overlap, present all the characteristics of distinct markets and they are likely to be narrower than national. Each of the Northern routes begins and ends in the UK, not passing through other Member States. As regards the Northern Franchise, Arriva's activities shall be confined to the UK. Therefore, the effects of the Operation are most likely restricted to the United Kingdom.

*Additional factors*

28. Given that the focus of the Operation is confined in the United Kingdom, the CMA is best placed to examine the case.
29. The UK competition authorities have substantial experience in examining the market for the provision of passenger transport services. In addition, in previous cases<sup>9</sup> concerning the aforementioned market in the United Kingdom, the Commission took the step of referring the matter to the UK competition authorities.
30. Finally, the requested referral would preserve the principle of "one-stop-shop" to the extent that the case will be referred to a single competition authority, which is an important factor of administrative efficiency.

**VI. REFERRAL**

31. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market.
32. The Commission notice on case referral in respect of concentrations<sup>10</sup> (point 17) indicates that, in seeking a referral under Article 4(4), *“the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny”, and that “such indications may be no more than preliminary in nature...”*.
33. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in the United Kingdom, and that the requested referral would be consistent with point 20 of the Commission notice on case referral in respect of concentrations.

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<sup>9</sup> See Case M.7146 – *Govia/Thameslink, Southern and Great Northern Passenger Rail Franchise*; Case M.4797 - *Govia/West Midlands Passenger Rail Franchise*, Case M.4070 - *London South Eastern Railway/The integrated Kent Rail Franchise*.

<sup>10</sup> OJ C 56, 5.3.2005, p. 2.

## VII. CONCLUSION

34. For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the Operation in its entirety to be examined by the United Kingdom. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(signed)*

*Johannes LAITENBERGER*

*Director-General*