

## **ANTICIPATED ACQUISITION BY FIRST MTR SOUTH WESTERN TRAINS LIMITED OF THE SOUTH WESTERN FRANCHISE**

### **Undertakings given by FirstGroup plc, MTR Corporation, 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 MTR South Western Trains Limited (**FMSWTL**), a joint venture between FirstGroup plc (**FirstGroup**) and MTR Corporation (**MTR**) was awarded the South Western Rail Franchise (the **Franchise**) by the Department for Transport (**DfT**) on 27 March 2017 (the **Award**) such that FMSWTL and the Franchise ceased to be distinct for the purposes of the Enterprise Act 2002 (the **Act**);
- (b) Under section 22(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 has resulted or 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 11 July 2017 (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; and
- (e) As set out in the CMA's decision of 11 July 2017 2017 (the **Decision**) the CMA concluded, among others, that:
  - a. The Award of the Franchise to FMSWTL has created a new relevant merger situation;

- b. The creation of that situation has resulted in or may be expected to result in an SLC on the rail service from London to Exeter, being a flow on which passenger rail services of the Franchise overlap with passenger rail services of the GWR Franchise (the **London to Exeter Flow**);
- (f) The CMA considers that the Undertakings given below by FirstGroup and MTR are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from the Award, or may be expected to result from it, as specified in the Decision.

NOW THEREFORE FirstGroup and MTR 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 has or may have resulted from it or may be expected to result from it. For the avoidance of doubt, in so far as the following Undertakings apply to GWR, the Undertakings are provided by FirstGroup alone and in so far as the following Undertakings apply to the Franchise, the Undertakings are provided by FirstGroup and MTR jointly.

## **1 EFFECTIVE DATE OF THE UNDERTAKINGS**

- 1.1 These Undertakings shall take effect from the date that, having been signed by FirstGroup and MTR, 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 GWR on the London to Exeter Flow. They further undertake that, at any point in time and in relation to any particular service, Advance Fares for travel on GWR services on the London to Exeter Flow shall be available at the same (or lower) Price Point Group and at the same (or higher) Quota Level within that Price Point Group as Advance Fares for travel on GWR services on GWR 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 London to Exeter Flow shall be equivalent to the Quota Level available at any point in time at a particular Price Point Group on the GWR Comparator Flows;
- 2.2 Except with the prior written consent of the CMA, FirstGroup, MTR, their Subsidiaries and any Related Person undertake to ensure that they maintain the availability of Advance Fares offered by the Franchise on the London to Exeter Flow. 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 London to Exeter Flow shall be available at the same (or lower) Price Point Group and at the same (or higher) Quota Level 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 London to Exeter Flow shall be 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 GWR) and FirstGroup and MTR (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 London to Exeter flow by submitting tables in a form materially similar to the template monitoring reports set out at Appendices 3A and 3B 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 the London to Exeter Flow on GWR services 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 on the GWR Comparator Flows.
- 3.2 Except with the prior written consent of the CMA, FirstGroup, MTR, their Subsidiaries and any Related Person shall ensure that Unregulated Fares for travel on the London to Exeter Flow on Franchise services 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 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 GWR) and FirstGroup and MTR (in respect of the Franchise) shall provide to the DfT and the CMA an update on the levels of the Unregulated Fares on the London to Exeter Flow by reference to the GWR Comparator Flows and Franchise Comparator Flows, respectively, by submitting tables in a form materially similar to the template monitoring reports set out at Appendices 3A and 3B to these Undertakings.

### **4 PROCEDURE FOR CONSENT AND NOTIFICATION**

- 4.1 Where the consent or approval of the CMA, including in relation to the review of the Undertakings, as set out at paragraphs 13.1-13.3 below (however that requirement is expressed in these Undertakings) is required, FirstGroup, MTR, their Subsidiaries and any Related Person will seek the consent or approval in writing, which shall include email.
- 4.2 FirstGroup, MTR, 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, MTR, 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, MTR, 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, MTR, 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, MTR, 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 MTR 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 MTR 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 MTR shall procure that any member of the same Group of Interconnected Bodies Corporate as FirstGroup or MTR 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 MTR shall be attributed to FirstGroup or MTR (as the case may be) for the purposes of these Undertakings.

- 5.4 Where any Affiliate of FirstGroup or MTR is not a member of the same Group of Interconnected Bodies Corporate as FirstGroup or MTR, FirstGroup or MTR (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, MTR, 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 4 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 [*date*].

## **6 PROVISION OF INFORMATION**

- 6.1 FirstGroup and MTR 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.

## **7 EXTENSION OF TIME LIMITS**

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

## **8 SERVICE**

- 8.1 FirstGroup and MTR 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 their behalf of all documents connected with these Undertakings (including any document of any kind which falls to be served on or sent to FirstGroup or MTR, 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).
- 8.2 Unless FirstGroup and MTR jointly inform the CMA in writing that Freshfields

has ceased to have authority to accept and acknowledge service on their or any of their Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on FirstGroup and MTR if it is served on Freshfields; and service shall be deemed to have been acknowledged by FirstGroup and MTR if it is acknowledged by Freshfields or such other nominee.

8.3 Paragraph 8.2 above has effect irrespective of whether, as between FirstGroup and MTR 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 MTR's (or any of their respective Subsidiaries') behalf.

8.4 No failure or mistake by Freshfields or other nominees (including a failure to notify FirstGroup and MTR 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.

8.5 Any communication from FirstGroup and MTR to the CMA under these Undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CMA may direct in writing.

## **9 EFFECT OF INVALIDITY**

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

## **10 GOVERNING LAW**

10.1 FirstGroup and MTR recognise and acknowledge that these Undertakings shall be governed and construed in all respects in accordance with English law.

10.2 In the event that a dispute arises concerning these Undertakings, FirstGroup and MTR undertake to submit to the courts of England and Wales.

## **11 OBLIGATIONS UNDER THE FRANCHISE AGREEMENT OR THE GWR FRANCHISE AGREEMENT**

11.1 Where the Secretary of State for Transport implements or proposes to implement changes to the Franchise Agreement or the GWR Franchise Agreement or takes any enforcement measure, including an enforcement order or direction, in relation to the Franchise Agreement, or the GWR Franchise Agreement and such action imposes obligations on FirstGroup

and/or MTR, 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 MTR (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 MTR (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.

11.2 In the circumstances referred to at paragraph 11.1. the CMA may vary the Undertakings to deliver the remedy set out in the Decision.

## **12 TERMINATION AND RELEASE**

12.1 FirstGroup and MTR 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 MTR 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 London to Exeter Flow for so long as both the Operator of the Franchise and the Operator of the GWR Franchise are subject to Control by FirstGroup (in respect of GWR) and FirstGroup and MTR (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 82(2) and 82(5) 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.

## **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 and are described as "Advance Fare" in Appendix 1;

**“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 MTR within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

**“the Award”** means the Award of the South Western rail franchise to FMSWTL on 27 March 2017 by the Department for Transport;

**“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 7 and is to be in the format set out in Appendix 4;

**“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;

**“Counted Place”** means a reservation made for a specific train service where a specified seat is not reserved.

**“Decision”** means the CMA's decision under section 22 of the Act dated 11 July 2017 in connection with the Award;

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

**“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;

**“FMSWTL”** means First MTR South Western Trains Limited, incorporated in England and Wales with registered number 07900320;

**“the Franchise”** means the South Western Rail Franchise, as awarded to FMSWTL by the DfT;

**“Franchise Agreement”** means the agreement to award FMSWTL the South Western Franchise from 20 August 2017 to 18 August 2024;

**“Franchise Comparator Flows”** means the point to point direct flows between London Waterloo and each of Axminster, Honiton, Feniton, Whimple, Cranbrook (Devon), and Pinhoe;

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

**“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 MTR;

**“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;

**“GWR”** or **“GWR Franchise”** means the Great Western Railway Franchise, which at time of the signing of these Undertakings is operated by a wholly-owned subsidiary of FirstGroup;

**“GWR Comparator Flows”** means the point to point direct flows between London Paddington and each of Plymouth, Newton Abbot, Tiverton Parkway and Totnes;

**“GWR Franchise Agreement”** means the agreement under which FirstGroup (through one of its wholly-owned subsidiaries) operates the GWR Franchise;

**“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;

**“London to Exeter Flow”** means the point to point direct flow between London and Exeter;

**“MTR”** means MTR Corporation, a company listed on the Hong Kong Stock Exchange;

**“Price Point Group”** means:

- (a) In relation to the GWR Comparator Flows, one of the [x] groups specified in the column headed "Price Point Group" in the tables provided at Appendix 3A to which GWR allocates:
  - 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. in relation to the above, one or more fare values;
- (b) In relation to the Franchise Comparator Flows, one of the [x] groups specified in the column headed "Price Point Group" in the tables provided at Appendix 3B to which FMSWTL allocates:
  - 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. in relation to the above, one or more fare values; or
- (c) In relation to the Franchise Comparator Flows and/or the GWR Comparator Flows described in points (a) and (b) above, any

equivalent grouping of seats and fares comprising part of a successor arrangement for the pricing of Advance Fares.

**“Quota Level”** means the proportion of reservable seats or Counted Places allocated for sale at each Price Point Group across all services on a direct station-to-station flow.

**“Related Person”** means any Subsidiary, Affiliate, Associated Person or Group of Interconnected Bodies Corporate of FirstGroup and/or MTR 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;

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

**“Unregulated Fare[s]”** means standard class adult fares valid for travel on GWR or the Franchise as the case may be which are not subject to fare regulation pursuant to Schedule 5 of the GWR Franchise Agreement or Schedule 5 of the Franchise Agreement, and which are listed in Appendix 1;

**“Undertakings”** means the undertakings given by FirstGroup and MTR 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 ticket type listed in Appendix 1 using the following formula:

$$[\sum (\text{Percentage Change in Fare}_i \times \text{Revenue}_i)] / \sum \text{Revenue}_i,$$

Where:

- “i” relates to a given flow listed in the set of either the GWR Comparator Flows or the Franchise Comparator Flows;
- Percentage Change in Fare<sub>i</sub> relates to the percentage change in the price of a given ticket type listed in Appendix 1 on a given comparator flow for either GWR 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<sub>i</sub> is total Adjusted Earnings taken from the LENNON database for the same period as that used to calculate the Percentage Change in Fare<sub>i</sub> for the respective comparator flow for either GWR or the Franchise; and

- $\Sigma$  represents the sum taken over either the GWR Comparator Flows or the Franchise Comparator Flows.

Where the result of the formula above is negative, the Weighted Average Increase shall be taken to be zero.

**“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 MTR**

Signature

Name

Title

Date

**DATE ACCEPTED BY THE CMA:**

**18 August 2017**

## **APPENDIX 1**

### **Unregulated Fares provided on GWR and Franchise services**

*[Tab 1 in the excel document, provided separately]*

## Appendix 1

### Unregulated Fares provided on GWR and Franchise services

All fares are standard class, adult tickets, valid for travel between London Paddington to Exeter St David's in the case of GWR or valid for travel between London Waterloo and Exeter St David's in the case of the Franchise.

Fare Code	Fare Type	Fare Setter
7DS	SEVEN DAY STD	GWR
SOR	ANYTIME R	GWR
SVR	OFF-PEAK R	GWR
SOS	ANYTIME S	GWR
SVS	OFF-PEAK S	GWR
SSS	SUPER OFFPEAK S	GWR
W2A	ADVANCE	GWR
W2B	ADVANCE	GWR
W2C	ADVANCE	GWR
W2D	ADVANCE	GWR
W2E	ADVANCE	GWR
W2F	ADVANCE	GWR
W2G	ADVANCE	GWR
W2H	ADVANCE	GWR
W2I	ADVANCE	GWR
W2J	ADVANCE	GWR
W2K	ADVANCE	GWR
W2L	ADVANCE	GWR
W2M	ADVANCE	GWR
W2N	ADVANCE	GWR
W2O	ADVANCE	GWR
W2P	ADVANCE	GWR
W2Q	ADVANCE	GWR
W2R	ADVANCE	GWR
W2S	ADVANCE	GWR
W2T	ADVANCE	GWR
SOR	ANYTIME R	SWT
SDR	ANYTIME DAY R	SWT
CDR	OFF-PEAK DAY R	SWT
SOH	W SUP OPK DAY R	SWT
SDS	ANYTIME DAY S	SWT
CDS	OFF-PEAK DAY S	SWT
SOG	W SUP OPK DAY S	SWT
S9A	ADVANCE	SWT
S8A	ADVANCE	SWT
S7A	ADVANCE	SWT
S6A	ADVANCE	SWT
S5A	ADVANCE	SWT
S4A	ADVANCE	SWT
S3A	ADVANCE	SWT
S2A	ADVANCE	SWT
S1A	ADVANCE	SWT

## APPENDIX 2A

### Template UIL monitoring report for the GWR Unregulated Fares for the London to Exeter flow

*[Tab 2 in the excel document, provided separately]*

**Appendix 2A**

Template UIL monitoring report for the **GWR** Unregulated Fares for the London to Exeter flow

All fares are standard class, adult tickets, valid for travel between London Paddington to Exeter St David's.

**Flow Revenue**

All revenue figures for the flows are Adjusted Earnings taken from the LENNON database for the sale of all ticket types on the flow over the course of the last complete fare year. London Paddington shall include London Terminals.

Comparator Flow	Revenue	Weighting
London Paddington to Tiverton Parkway		
London Paddington to Totnes		
London Paddington to Plymouth		
London Paddington to Newton Abbot		

**Fare Changes**

Unregulated Fares			London Paddington to Exeter St David's				Comparator Flows																Compliance of the proposed fare change with the undertakings	
							London Paddington to Tiverton Parkway				London Paddington to Totnes				London Paddington to Plymouth				London Paddington to Newton Abbot					
Fare Code	Fare Type	Fare Setter	Proposed Fare	Prior Year Fare	Percentage Change	Upcoming Fare	Prior Year Fare	Percentage Change	Revenue for Last Fare Year	Upcoming Fare	Prior Year Fare	Percentage Change	Revenue for Last Fare Year	Upcoming Fare	Prior Year Fare	Percentage Change	Revenue for Last Fare Year	Upcoming Fare	Prior Year Fare	Percentage Change	Revenue for Last Fare Year	Weighted Average Increase	Is proposed Increase Compliant?	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	
					n/a			n/a	n/a			n/a	n/a			n/a	n/a			n/a	n/a	n/a	n/a	



## APPENDIX 2B

### Template UIL monitoring report for the Franchise Unregulated Fares for the London to Exeter flow

*[Tab 3 in the excel document, provided separately]*



## APPENDIX 3A

### Template UIL monitoring report for Quota Levels for GWR Advance Fares for the London to Exeter flow

*[Tab 4 in the excel document, provided separately]*



## APPENDIX 3B

### Template UIL monitoring report for Quota Levels for Franchise Advance Fares for the London to Exeter flow

*[Tab 5 in the excel document, provided separately]*

Appendix 3B

Template UIL monitoring report for Quota Levels for Franchise Advance Fares for the London to Exeter flow

London to Exeter

Price Point Group	London Waterloo to Exeter St David's	Comparator Flows					Compliance of the Quota Levels with the Advance Ticketing undertaking		
	Quota Level	London Waterloo to Axminster	London Waterloo to Honiton	London Waterloo to Feniton	London Waterloo to Whimple	London Waterloo to Cranbrook (Devon)	London Waterloo to Pinhoe	Benchmark Quota Level	Is Quota Level Compliant?
								0.0% n/a	

Exeter to London

Price Point Group	Exeter St David's to London Waterloo	Comparator Flows					Compliance of the Quota Levels with the Advance Ticketing undertaking		
	Quota Level	Axminster to London Waterloo	Honiton to London Waterloo	Feniton to London Waterloo	Whimple to London Waterloo	Cranbrook (Devon) to London Waterloo	Pinhoe to London Waterloo	Benchmark Quota Level	Is Quota Level Compliant?
								0.0% n/a	

**APPENDIX 4**  
**COMPLIANCE STATEMENT FOR FIRSTGROUP PLC, MTR AND THEIR**  
**SUBSIDIARIES AND ANY RELATED PERSON**

1. We [*insert names*] confirm on behalf of FirstGroup, MTR, 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, MTR, 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, MTR, 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, MTR, their respective Subsidiaries and any Related Person confirm that they have ensured that:
    - i. FirstGroup, MTR, their respective Subsidiaries and any Related Person maintained the availability of Advance Fares on the London to Exeter Flow, as set out in paragraph 2.1-2.2;
    - ii. Each Unregulated Fare on the London to Exeter Flow does not exceed the value set out in paragraph 3.1-3.2;
    - iii. FirstGroup, MTR, 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 3.3;
    - iv. FirstGroup, MTR, their respective Subsidiaries and any Related Person have provided to the DfT and the CMA an update on the South Western Franchise and the London to Exeter fares, as set out in paragraph 5.5;
  - d. FirstGroup, MTR, 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, MTR, 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 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 of these Undertakings, and of the particular Parts of these Undertakings that have been breached;
  - 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 MTR CORPORATION, their Subsidiaries and any Related Person**

**Signature .....**

**Name .....**

**Title .....**

**Date .....**