

## ACCESS DISPUTE ADJUDICATION

### **Summary of Decisions in respect of Dispute ADA17** *(following a Hearing held at 1 Eversholt Street, London NW1 on Thursday 17 October 2013)*

#### **Present:**

#### **The appointed Adjudication Panel (the "Panel"):**

Hearing Chair: Peter Barber  
Industry Advisors: Michael Robson  
Martin Shrubsole

#### **Dispute Parties:**

##### Network Rail Infrastructure Limited ("Network Rail")

Kevin Newman Senior Commercial Scheme Sponsor  
Clare Dwyer Addleshaw Goddard LLP, solicitors  
Andrew Roberts Operational Planning Project Manager (East Midlands)  
Spencer Gibbens Route Enhancement Manager  
Sian Williams Legal Counsel, Routes

##### DB Schenker Rail (UK) Ltd ("DBS")

Nigel Oatway Access Manager  
Pawel Nowak Rail Network Manager  
Stan Kitching Timetable Strategy Manager

##### GB Railfreight Ltd ("GBRF")

Ian Kapur National Access Manager

##### Freightliner Ltd and Freightliner Heavy Haul Ltd (together, "Freightliner")

Jason Bird Track Access Manager, Freightliner Ltd

#### **Interested parties:**

##### East Midlands Trains Ltd

Simon Taylor Head of Network Development  
Lanita Masi Track Access & Network Change Manager

##### XC Trains Ltd

Bryony Govan Senior Traincrew Diagramming Productivity Manager

##### First Capital Connect Ltd

John Beer Head of Access Contracts

**In attendance:** Tony Skilton (Committee Secretary)

## **1 Basis of Summary of Decisions**

- 1.1 This is a summary of the decisions and conclusions I have reached following the hearing of dispute ADA17 on 17 October 2013 and the subsequent provision by the Dispute Parties of further information, pursuant to my Directions given at the end of that hearing. A full written determination of the dispute, incorporating these decisions and conclusions and including the content required under Rule G49 of the Access Dispute Resolution Rules (the **ADRR** or **Rules**), will be published as soon as practicable.

- 1.2 The reason for publishing this Summary of Decisions is that, whereas normally it would be desirable at the end of a hearing under the ADRR to give an indication of the substance of the decisions and conclusions reached, that was not possible in this case because further information was requested to be provided by the Dispute Parties after the hearing. The Panel has now received and considered that further information and the Dispute Parties' respective responses to the information provided by each other.
- 1.3 Rule G5 requires the Hearing Chair, where appropriate, to adapt the procedures adopted in respect of each dispute to reflect its specific requirements in terms of subject matter, timescales and value. Accordingly, in view of the possible impact of several aspects of the Network Change proposal in dispute (Network Rail Notification of proposed G1 Network Change dated 25 January 2013 to promote Midland Mainline permissible speed changes - the **MML Network Change**) on Network Rail's ability to implement the December 2013 Timetable, and in order generally to enable the Dispute Parties to arrange their businesses efficiently, I consider it necessary and expedient to adapt the dispute procedure for so as to inform the Dispute Parties of the substance of the decisions and conclusions now reached in accordance with Rules G48 and G49(j), in advance of preparation and publication in due course of the full written determination of the dispute which will incorporate such decisions and conclusions.

## **2 Summary of Decisions**

### Clay Cross Loop – Entitlement

- 2.1 Network Rail is not entitled to have implemented, as I find that it has done, that part of the MML Network Change consisting of the Removal of Clay Cross Down Loop (the **Loop**) from the Network, in advance of having duly established that part of the MML Network Change and while there is an unresolved dispute concerning it. I find that Network Rail has so implemented the Removal of the Loop in breach of Network Code Condition G10.3.1, by carrying out in May 2013 what it has referred to as 'Stageworks' comprising the disconnection and removal of the points at either end of the Loop (the **Implementation Stageworks**).
- 2.2 Network Rail is not entitled to and, subject to paragraph 2.5 below, shall not take any further action, beyond the Implementation Stageworks already physically carried out and completed, to dismantle the Loop or render it unusable or otherwise such as to preclude its future reinstatement and reconnection to the Network.

### Clay Cross Loop – Remedy

- 2.3 Network Rail is required, and is permitted specifically pursuant to this decision, to withdraw completely and exclude from the MML Network Change proposal the Removal of the Loop from the Network. Such withdrawal and exclusion shall not prejudice or affect Network Rail's entitlement, subject to and in accordance with the procedures prescribed in Network Code Part G, to maintain the rest of the MML Network Change proposal apart from the Removal of the Loop and at any time to establish and implement the whole or any part of the rest of the MML Network Change.
- 2.4 Subject to paragraph 2.5 below Network Rail is required to reinstate and reconnect to the Network the Loop in its full length (as now made known and confirmed at the hearing) of 649 metres and in a form at least equivalent to the physical form and layout in which it stood immediately prior to the Implementation Stageworks, and otherwise is permitted specifically pursuant to this decision to reinstate the Loop in its modern equivalent form at the time of reinstatement, in either case without being obliged to establish or implement a new Network Change solely in respect of such reinstatement and reconnection.
- 2.5 Any such reinstatement and reconnection shall be commenced and completed prior to the date of commencement of the Timetable coming into effect in December 2014, and Network Rail shall observe all such procedures and take all such actions as are required of or permitted to it under the Network Code and any relevant Track Access Agreement in order reasonably to enable or facilitate such reinstatement and reconnection, unless prior to such



date Network Rail shall have duly established and implemented in accordance with Network Code Part G a new Network Change, distinct from the MML Network Change, consisting solely of or comprising the Removal of the Loop.

Conditional Double Reds – Entitlement

- 2.6 The element of the dispute regarding that part of the MML Network Change consisting of the introduction of Conditional Double Reds at 8 signals has been resolved between the Dispute Parties following the hearing and subsequently has been withdrawn. Accordingly I make no decision as to entitlement in respect of that element of the dispute.

Sectional Running Times – Entitlement

- 2.7 The element of the dispute regarding the alleged inclusion by Network Rail in the MML Network Change of proposals for changes in relation to certain Sectional Running Times was resolved between the Dispute Parties in the course of the hearing and was withdrawn. Accordingly I make no decision as to entitlement in respect of that element of the dispute.

I confirm that, so far as I am aware, these decisions and conclusions and the process by which they have been reached are compliant in form and content with the requirements of the Access Dispute Resolution Rules.

**Peter Barber**

**Hearing Chair**

**15 November 2013**

*T. S. [Signature]*  
*Committee Secretary*