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## ***TIMETABLING COMMITTEE***

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### **Determination No. 75**

(following a hearing at Kings Cross on 8th June 1999)

***[Note: no determinations were issued in respect of references 68 to 74 inclusive; previous published determination was determination no.67]***

- 1 The Committee was asked by Thameslink Rail Limited (TRL) to find that Railtrack had acted improperly by rejecting, at the second iteration, bids for Southbound Bedford to Brighton services, and that the bids in question were compliant with both Firm Contractual Rights, and with the relevant Rules of the Plan.
- 2 The Committee noted that the matter was one of the interpretation by Railtrack of TRL's bid, in relation to TRL's Firm Contractual Rights in its Track Access Agreement, Railtrack's flexing rights, its interpretation of Rules of the Plan, and conflicting Rights of other Train Operators. The Committee acknowledged that such matters were wholly within the scope of the Committee's remit, and therefore accepted that the matter should be heard. The Committee further noted that the issues before the Committee arose in part because of the decisions of Railtrack in relation to accommodating the rights and requirements of Connex South Central, and that therefore it was appropriate that Connex South Central (CSC) should be represented at the hearing.
- 3 The Committee considered whether, as a matter of principle, Railtrack must, in making an offer, reflect a compliant Bid in all its details. The Committee opined that Railtrack may modify a compliant Bid, but such modifications are constrained by the provisions of Access Conditions D2.5 (Priorities in Considering Bids) and D4 (Decision Criteria).
- 4 The Committee noted that the paths in dispute (described as the xx:12 and the xx:42 departures from Bedford) presented different detail issues, and elected to review them separately, even though the following issues of principle were raised in common:
  - 4.1 both paths had been revised as part of a major collaborative exercise between Railtrack, CSC, TRL and other companies, aimed at achieving major improvements on the London to Brighton corridor, in particular two fast Connex Express services per hour. The Committee applauded the collaborative approach that had been adopted in this instance, but noted that the matters in dispute arose in part because of a failure by the parties properly to document, and follow through, the understandings reached. The Committee considered that this was of particular importance where there was the possibility that one party had agreed to a worsenment of service for the duration of a timetable, against an expectation of a restoration or improvement at a later timetable.
  - 4.2 there is adequate quantum of train slots within TRL's Track Access Agreement for the running of these trains;
  - 4.3 both paths, as bid, reflected choices made by TRL in relation to its Firm Contractual Rights, in fulfilment of its Franchise Obligation; in either case the combination of stops could potentially be varied and still, in combination, permit the fulfilment by TRL of its Franchise Obligation:

- 4.4 both paths, as bid by TRL, were technically compliant with the details of the published Rules of the Plan, and both Firm Contractual Rights and Franchise Obligations in respect of journey times. However, in attempting to incorporate these second iteration bids into the first iteration framework, Railtrack had had to address the following factors:
- 4.4.1 to incorporate stops at Redhill required the use of the Slow to Fast Crossover at Tinsley Green Jct., for which there was no published sectional running time (SRT) other than the normal “through line” SRTs; a recent exercise had revealed that in practice an extra minute is required to effect this manoeuvre.
  - 4.4.2 The Rules of the Plan stipulate that the minimum turn-round time at Brighton for a 4 coach train is 7 minutes, but, in practice that specific allowance does not provide any significant margin for late arrivals.
  - 4.4.3 the contractual obligations to CSC are for one path per hour not exceeding 51 minutes journey time (Victoria to Brighton), and for a second, governed only by the General Approval, for a journey time not exceeding 55 minutes; however the Franchise Obligation is for one train per hour to have a journey time of less than 50 minutes. CSC’s Customer requirement had been translated into two paths at 49 minute journey times; the TRL paths in question conflict in part with these CSC paths.
- 5 Taking account of these common features the Committee noted that, in respect of the xx:42 path, TRL were asking that Railtrack be directed to accept and offer paths against a bid that provided for an arrival from Bedford, the minimum allowance of 7 minutes and then a departure for Bedford as the first of a group of Northbound trains. The Committee noted that Railtrack was refusing to confirm this bid on the grounds that it constituted an undue threat to overall performance, i.e. citing the Decision Criterion “*maintaining & improving the levels of service reliability*” in Condition D4(c) of the Railtrack Track Access Conditions.
- 6 The Committee opined that
- 6.1 the bid for the xx:42 was technically compliant with the published SRTs and Rules of the Plan, and therefore Railtrack were required to provide a path in response;
  - 6.2 the failure, by both parties, to recognise the need for additional time at Tinsley Green Junction, meant that the bid could not be translated, without amendment, into a practical offer;
  - 6.3 Railtrack were entitled to exercise their discretion as to the detail of the offer, provided that
    - 6.3.1 they did not exceed their flexing rights, and
    - 6.3.2 they were prepared to justify their decision against the Decision Criteria (Access Condition D4);
  - 6.4 given the length and complexity of the route travelled by TRL services, and therefore the risk of delay for incoming trains, Railtrack, by not translating the bid into an offer associated with an xx:08 Northbound departure, had exercised its judgement appropriately;
  - 6.5 Whilst noting TRL’s wish to improve journey times and to make station stops at Redhill and Haywards Heath, the Committee reminded TRL that Railtrack’s first obligation, as prescribed in Condition D2.5.1(a), is to fulfil the Firm Contractual Rights of all Bidders. There is a further need for Railtrack to respect the Decision Criterion D4(b) enabling a Train Operator “*to comply with any contract to which it is*

*party ( ... including the franchise agreement ... ) ... to the extent that Railtrack ... has been informed of such contracts”.*

- 7 The Committee noted that TRL believed that Railtrack's counter-proposals thus far did not take sufficient cognizance of Condition D4(f), "*avoiding material deterioration of the service patterns of operators of trains, ..... which those operators possess at the time of the application of these criteria*". Nevertheless, TRL had indicated a preparedness to amend the detail of its bid, in respect either of the Redhill station stop, or by the provision of a turnover set at Brighton.
- 8 The Committee therefore **determined**, in respect of the xx:42 paths, that the parties should embark on further discussion with a view to finding a satisfactory compromise solution that met Railtrack's concerns in respect of robustness, and TRL's aspirations for a service with an accelerated journey time.
- 9 In respect of the xx:12 paths the Committee noted that whilst TRL's bid implied that the TRL service should precede one of the CSC Express services into Brighton, this was not achievable, given the need to provide for the additional minute at Tinsley Green Junction, without flexing the previously accepted CSC Express path. Railtrack therefore proposed to hold the TRL train at Haywards Heath to allow the CSC Express path to overtake, and so permit an appropriate headway for the final journey into Brighton.
- 10 The Committee noted that, were the CSC Express train to be flexed to permit the TRL bid for the xx:12 path to be accepted, the resultant CSC path would still be compliant with CSC Firm Contractual Rights, and would still fulfil CSC's Franchise Obligation. The Committee therefore considered, on the basis of a contention from TRL, whether a change to the order of the two trains would enable the train operators better to fulfil other contractual obligations (i.e. to test whether Railtrack should have applied the Decision Criterion in Condition D4(b): "*enabling a Train Operator to comply with any contract to which it is a party ...*"). The Committee concluded that either order was neutral in this regard; that is that in either order of running both CSC and TRL would be in a position to fulfil all obligations.
- 11 The Committee noted that TRL were prepared to consider other adjustments to stopping patterns on the xx:12 service in order to achieve an adequate headway to permit this service to arrive in Brighton in front of the CSC service. The Committee **directed** that this dialogue should continue until a workable solution is found, but that, on this occasion, for the Winter 1999 timetable, unless CSC specifically agreed otherwise, any offer made to TRL should not be dependent upon an adjustment to either of CSC's accepted Connex Express paths.
- 12 In giving these general directions the Committee noted that this reference had arisen at the tail end of a process where Railtrack and a number of Train Operators had collaborated to achieve an overall service improvement. The Committee was keen to support such collaboration and therefore wished to avoid any implication that the party who, in the period of the transition, had taken the majority of the disadvantage to achieve the change, should continue to be disadvantaged in relation to subsequent timetables.
- 13 For the avoidance of doubt the Committee considered that this ruling, in relation to TRL's Winter 1999 Timetable, should not be construed as having "ratcheted down" the level of service against which the Decision Criterion in Condition D4(f) might be benchmarked at a future Timetable. On the other hand, the fact that, for this Timetable, Railtrack had been able to fulfil CSC's reasonable customer requirements with paths that bettered significantly CSC's Firm Contractual Rights, should not imply that, at future timetables, the application of Decision Criterion D4(f) would give CSC an automatic prior right to those paths at the expense of the aspirations of other Train Operators, and in despite of the other Decision Criteria.

Bryan Driver,

Chairman,  
8th June 1999