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## ***TIMETABLING COMMITTEE***

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### **Determination No. 91**

(following a hearing at Kings Cross on 12<sup>th</sup> January 2000)

*[Note: previous published determination was determination no.89]*

- 1 The Committee was asked by Great Western Trains (GWT) to rule that Railtrack had been incorrect to reject its Bid for a 1430 SX London Paddington to Worcester service. GWT had bid for the service to operate from 4<sup>th</sup> September 2000 during the Summer 2000 Timetable. This bid is in conflict, between Paddington and Oxford, with a 1436 Paddington to Oxford service bid for by Thames Trains for the duration of the Summer 2000 Timetable. GWT's bid reflected the fact that the proposed service depended on the timely delivery and entry into service of new class 180 rolling stock.
- 2 The Committee noted that the key issue in dispute related to Railtrack's inability to find Train Slots for both trains at the times requested. Furthermore there was agreement between Railtrack and GWT that a right of quantum existed, that had not been exhausted by other bids or offers, for a service in the GWT Cotswold group that could link Paddington and Worcester. That said, the Committee noted that the service in question had not been declared as an aspiration either at the Timetable Conference, or before the Priority Date.
- 3 By contrast, the Paddington to Oxford service bid for by Thames Trains, was not yet the subject of formal rights within an Access Agreement, but had been properly declared at the Timetable Conference, and included within the Draft Timetable. In this last respect the Committee noted that it had already, in its determination no.82, supported Railtrack in its view that the proposed GWT Paddington to Worcester service should not be included within the Draft Timetable.
- 4 The Committee noted that the crux of the matter in dispute related primarily to a difference of interpretation as to the relative priority to be afforded to the respective GWT and Thames Trains Bids, when assessed against the provisions of Access Conditions D2.1.4 and D3.4.1. In addressing the interpretation of these provisions the Committee also took account of the guidance set out in the properly agreed National Rules of the Plan Section 7 "Preparation of Offers", paragraph 7.4.
- 5 Taking account of these provisions and the evidence on comparative rights as presented, the Committee formed a view as follows:
  - 5.1 GWT has a right as to quantum for the service in question, but that, because the right in question was not declared in accordance with Access Condition D2.1.2(a), the status of that right accords with the provisions of Access Condition D3.4.1(a)(i)(B), in that "*only those rights which relate to quantum shall have force*". In respect only of quantum the Committee therefore adjudged GWT's bid to fall into category 2 of paragraph 7.4 of the National Rules of the Plan;

- 5.2 Thames Trains' Bid had been declared in accordance with Access Condition D2.1.2(a), and therefore in respect of both quantum and qualitative details has the status and priority accorded by Access Condition D3.4.1(b)(i)(B); this equates to the category 3 of paragraph 7.4 of the National Rules of the Plan; and
    - 5.3 no evidence had been advanced as to any qualitative rights asserted by GWT in respect of this service, and therefore the Committee concluded that in respect of the qualitative aspects of its bid GWT fell into category 4 of paragraph 7.4 of the National Rules of the Plan.
- 6 In making its determination the Committee:
  - 6.1 reviewed the arguments advanced as to the relative weightings accorded to the Decision Criteria, and whether such considerations should amend their views of the relative priorities to be accorded;
  - 6.2 noted that the GWT Bid was for only the final three weeks of a Timetable, using stock as yet not in service;
  - 6.3 took account of the apparent unwillingness of the Train Operators to engage in real dialogue to resolve such matters;
- 7 In respect of the ruling sought by the parties, the Committee therefore determined that
  - 7.1 Railtrack was obliged to honour in quantum GWT's right to a Paddington to Worcester service;
  - 7.2 In respect of the qualitative aspects (i.e. time of day, timing etc.) of the Train Slot in question Thames Trains had, by its due regard to the provisions of Access Condition D2, established a higher priority of right for an offer compliant with its bid;
  - 7.3 Railtrack had therefore been correct to give priority to Thames Trains' bid in this respect. This however did not relieve Railtrack of the necessity to offer GWT a Train Slot for a Paddington to Worcester service at some other time of the day, in recognition of GWT's right as to quantum.
- 8 Finally the Committee was concerned that, other things being equal, they should uphold the principles of openness, and early commitment, enshrined in the revised Access Condition D Timetable Change process.

Bryan Driver  
Chairman