

IN THE MATTER OF PART D OF THE NETWORK CODE

AND IN THE MATTER OF THE ACCESS DISPUTE RESOLUTION RULES

AND IN THE MATTER OF TIMETABLING DISPUTES: TTP 1064; 1065; 1066; 1069; 1071; 1073; 1075

BETWEEN:

**(1) ABELLIO SCOTRAIL LIMITED ("ASR")
(2) DB CARGO (UK) LIMITED ("DBC")
(3) FIRST GREATER WESTERN LIMITED ("GWR")
(4) XC TRAINS LIMITED ("XCTL")
(5) GB RAILFREIGHT LIMITED ("GBRf")
(6) ARRIVA RAIL NORTH LIMITED ("ARN")
(7) EAST COAST MAIN LINE COMPANY LIMITED ("VTEC")**

Claimants

v

NETWORK RAIL INFRASTRUCTURE LIMITED ("NR")

Defendant

**NR's RESPONSE TO HEADS A AND B ISSUES
APPENDIX 2:
NR'S RESPONSE TO THE SUBSTANTIVE PARTS OF THE ASR SRD**

Introduction

1. This document should be read in conjunction with NR's Defence to Heads A and B Issues dated 12 April 2017 (the "*Response*").
2. Abbreviations as used in ASR's SRD are adopted in this Response. References to Paragraphs are to Paragraphs in ASR's SRD.

Overview of NR's response to ASR's SRD

3. NR denies that ASR is entitled to the relief it seeks, or to any relief, for the reasons set out in this response to ASR's SRD and the Response.

Relevant chronology

4. The chronology set out below is relevant to the consultation with ASR and the application of the Decision Criteria.
5. The consultation undertaken in relation to ASR is set out below in two parts: (i) the general process which was put in place and which is applicable to all the Claimants; and (ii) further consultation which is specific to ASR.

TPR Forums

6. The Network Code obliges NR to consult on the TPRs. The TPR forums are the main way NR does that. TPR forums are convened to discuss any proposed TPR changes, not just those resulting from TRIP. For Scotland, all operators on the Route are invited.
7. NR held TPR forums in June 2016, July 2016, August 2016, October 2016 and January 2017. They were held in different Network Rail offices, for example Milton Keynes, Manchester, Glasgow and Edinburgh, as a number of the operators on the Route are national operators and not necessarily based in Scotland. Depending on what needed to be discussed with operators, the TPR forums lasted between two hours and a full day. In relation to TRIP, the ODA reports were initially discussed in the forums and feedback on the ODA values obtained. NR then translated the ODA reports into TPR proposals, and these were then discussed in subsequent TPR forums. There were no complaints from any operators during the consultation proposal for the 2018 TPRs that the consultation provided was insufficient.
8. To the extent that comments on a proposed change to the TPRs are properly presented to NR, for example supported by reasons and evidence, NR carefully considers these. If a TOC provides evidence that what NR proposes is incorrect or is not in line with the Decision Criteria, NR will change it. However, when a TOC simply states that it does not agree, or it inconveniences the specific TOC, NR is less likely to be able to justify changing the decision made.
9. The TPR forums were not usually minuted as these TPR forums were relatively informal, which NR and the TOCs found was the best way to proceed. Operator feedback in the TPR forums was then used to change the TPRs, as is shown in the emails of 10 March 2016, 20 July 2016 and 21 October 2016.

Impact Assessment

10. Throughout the TPR consultations (mainly the TPR forums but also correspondence with individual operators) the TOCs, including ASR, stated that they needed to understand the impact of the proposed changes in detail. NR agreed to provide this detail (at considerable expense). The scope was agreed with all TOCs (subject to a request from Neil Sutton of ASR to look at 3 x 2hour periods – see the reference relating to 25 October 2016 at paragraph 46 below). A consultant was engaged. Work started at the end of October 2016 and v.1 of the Impact Assessment was published on 30 December 2016, in advance of the 5 January 2017 TPR forum.

Prior to Consultation Obligations in Part D

11. On 22 September 2015 there was a Timetable Performance Meeting. The TRIP team attended the meeting with NR Scotland Route and ASR to 'launch' the TRIP programme. At the meeting it was explained (see the attached slides, ASR Annex 196-214) that TRIP

would be based on ODA/historic data. At the meeting the use of the 25th percentile was explained.

12. On 27 October 2015 a Timetable Performance Meeting was held in Glasgow. Ewan Tait, David Heeney, Andy Miller and Dan Blake of ASR attended, along with representatives from NR. Mark Foster (Senior Analyst, TRIP) was invited to attend by John Kerr of ASR. The scope of the first ODA *"sprint"* analysis was discussed.
13. Taking on board the comments made in the meeting on 27 October 2015, on 28 October 2015 Mark Foster drafted a *"scope"* for the Carstairs-Glasgow Central analysis and sent this to John Kerr saying *"I hope this covers everything we discussed on the conference call, but it would be worthwhile reviewing the geographic scope particularly..."*. This shows that there were ongoing conversations with ASR, that their comments were carefully considered and this resulted in changes to the scope of the analysis.
14. This consultation continued and on 4 November 2015 John Kerr provided NR with further comments on the scope of the Carstairs-Glasgow analysis and on 13 November 2015 Mark Foster sent an email to John Kerr which said *"I have amended the route boundaries to reflect your comments...The system only has capability of looking at SRTs, Dwell times and Headways currently. We cannot yet analyse Junction Margins or Turnaround times and hence these were specifically excluded"*. NR were therefore open about the extent of the analysis which was undertaken.
15. On 17 November 2015 there was a further Timetable Performance Group meeting attended by the same people who attended the 27 October 2015 meeting. The draft remit for the Carstairs-Glasgow analysis was discussed and comments were received from John Kerr of ASR and then acted on by NR.
16. On 18 November 2015 John Kerr emailed Mark Foster. In his email John Kerr provided further comments on the scope of the analysis following the discussion in the timetable performance group meeting, including a request to *"add in the Wishaw to Holytown part and Motherwell to Whifflet North Jn and Whifflet North Jn to Rutherglen East Jn as well. If this makes the modelled area to large please let me know."* He also invited Mark Foster to the next meeting on 21 December 2015 to present the results to the group (which he did). Mark Forster replied on the same day to say that John Kerr's comments had been added into the analysis.
17. On 18 December 2015 Mark Foster emailed the first release of the Glasgow to Carstairs ODA report to John Kerr and others. The covering email stated that *"This document contains a number of proposed revisions to headways and SRTs on the route. Further commentary is contained in the Executive Summary on Page 4, with full details on the changes within the document.... This report will be presented at the timetable performance meeting in Glasgow on 21 December 2015"*.

18. On 21 December 2015 there was a timetable performance meeting in Glasgow between ASR and NR. Mark Foster presented the Glasgow to Carstairs ODA report to ASR.
19. On 26 January 2016 Charlotte Heron (Operational Planning Specialist, TRIP) sent an updated Glasgow to Carstairs ODA report to John Kerr of ASR and explained that amendments had been made based on feedback already received.
20. On 27 January 2016 there was a TPR forum. This was attended by NR and ASR as well as other operators on the Route. Andy Bray introduced a very high level review of the ODA scope for the benefit of the non-ASR attendees.
21. Following the publication of the Glasgow to Carstairs ODA report, there were discussions between ASR and NR regarding further ODA work in Scotland, as evidenced by an email from Anne-Marie Harmon of NR to Mark Foster on 12 February 2016 which stated: *"Having discussed with John Kerr the areas we would like to run are the following in priority order: 1) Glasgow Central to Balloch/Milngavie and Helensburgh 2) Motherwell to Cumbernauld and Whifflet to Rutherglen East Junction 3) Finnieston to New Bridge 4) Carstairs to Haymarket East"*.
22. There were then a number of discussions between NR and ASR which led on 25 February 2016 to email exchanges between NR and ASR which refer to three further meetings where the parties were to discuss the ODA and the results.
23. On 26 February 2016 Neil Sutton of ASR emailed ASR's comments on the Glasgow – Carstairs ODA report (v.201) explaining that this would be discussed at the meeting that afternoon.
24. On 2 March 2016 Neil Sutton sent an email concerned that *"the main issue with the TRIP work I see is getting buy in from the other TOC's as they will regard a change for Dec 16 as being too late. If NR choose to impose this they could dispute it but the TOCs would win"*. Therefore, as at March 2016, ASR was pushing for the results of the TRIP methodology to be implemented and it was actually NR who decided to delay the implementation of it at this stage to ensure it was compliant with the procedure set out in D2.2.
25. A further updated Glasgow-Carstairs ODA report (v.301) was circulated on 2 and 3 March 2016 by Charlotte Heron (Operational Planning Specialist, TRIP). This version was updated with amendments based on feedback received from TPR forums (see email from Andy Bray to Charlotte Heron of 10 February 2016) and ASR. Anne Marie Harmon (NR) then forwarded the report onto others from ASR and mentioned that the report would be reviewed again on Friday [4 March] saying *"In terms of actions from last Friday [26 February] prelim – the performance team have been in touch and clarifies where berthing offsets exist...the way ahead in terms of SRTs has been reviewed with the TRIP team, and the alternative method which we discussed on Friday will be used"*. There was a challenge

from ASR that without availability of data for all SRTs used in a service group, it would not be possible to understand the overall impact of a changed SRT in isolation. To mitigate this, in the meeting on 26 February 2016 ASR and TRIP agreed to use the planned dwell times and assumed berth offsets where published berth offsets (the time delay between a train actually leaving the station and it passing the first signal) were not available. ASR is responsible for confirming that the berth offset data is accurate.

26. On 4 March 2016 a further meeting was held with ASR (Neil Sutton, Ewan Tait, John Kerr, Andy Miller, Perry Ramsey and Dan Blake) to discuss the updated Glasgow-Carstairs ODA report based on the feedback already received by ASR and the other TOCs (see above).
27. This all led to an email on 7 March 2016 from Andy Miller saying: *"thank you for your input to Friday's meeting, and agreeing the way forward for the outputs of this report"*.
28. On 10 March 2016 Andy Bray circulated to Neil Sutton, Ewan Tait and John Kerr the first draft 2018 TPR proposal, limited to headway amendments at that stage, based on the discussions in Glasgow the previous week (referenced at paragraph 25 above). Neil Sutton (ASR) responded on the same day requesting (i) 2.5min headway from Uddingston Jn to Glasgow Central instead of Newton West Jn (ii) 2min headway from Rutherglen to GLC; and (iii) "cunning rules" around Newton.
29. A day later Andy Bray circulated a revised draft TPR incorporating the first change requested by Neil Sutton, as this was supported by the ODA data, and suggesting an alternative proposal in relation to Rutherglen to GLC. There were not any changes in relation to "cunning rules" around Newton as ODA did not provide the relevant data.
30. Also on 11 March 2016 Charlotte Heron circulated Glasgow-Carstairs (v.401) and Carstairs-Haymarket (v.001) ODA reports to ASR and NR inviting feedback on them.
31. This caused Neil Sutton to respond on 14 March 2016 with observations on Carstairs-Haymarket ODA. Charlotte Heron replied to these the same day.
32. On 15 March 2016 Andy Miller (ASR) circulated an action list from a conference call held that day between NR and ASR.
33. On 22 March 2016 Charlotte Heron circulated ODA reports for: Glasgow-Haymarket (v.101)(Glasgow- Carstairs and Carstairs-Haymarket East Jn have been combined to allow for analysis of services between Glasgow and Edinburgh); Argyle & North Clyde Lines (v.2); and Cumbernauld to Motherwell and Springburn (v.2), and invited feedback.
34. On 13 April 2016 Andy Bray email sent an update email to Andy Miller (ASR), David Dickson (NR) and Paul Scott (NR). The email set out a number of issues which were being consulted on:
 - 34.1 *"SRTs for long distance journeys reviewed internally with journey time impacts identified"*;

- 34.2 *"Dialogue ongoing with passenger operators, with meetings set up with heads of train planning over next four weeks to review in detail the proposal"; and*
- 34.3 *"Dialogue so far suggests agreeing these revisions for Dec 16 is not going to be achieved across all operators, mainly due to impact on journey times" and "Dec16 opportunities to amend the plan are likely to be limited to ScotRail only lines of route (assuming ScotRail will agree the revised values)".*
35. On 20 July 2016 Andy Bray circulated ODA reports (Glasgow-Carstairs v.201 and Cumbernauld v.2) to ASR and others in advance of the "TRIP/Edinburgh Sub group" session on 21 July 2016, a sub-group of the TPR forum. Andy Bray explained that these were the raw reports from the ODA team and where he had had discussions with TOCs about specific values, these values would be progressed in accordance with the discussions. The intention was to use the meeting on 21 July 2016 to agree the collective approach to progressing this analysis into TPR values.
36. Andy Bray also attached the first draft of Scotland TPR DRAFT wip 2018 v1 which was a first attempt at translating some of the headway analysis into revised TPRs and was also provided for discussion at the meeting on 21 July 2016: *"We'll also take you through what the plan is to take the values and assess the impact they have on the base plan. I would then envisage at least one, but most likely two further sessions prior to D-59 in October. It is my intention to consult and publish the outputs from these sessions as revisions for 2018 v1.0 TPRs."*
37. The TRIP/Edinburgh Sub group meeting on 21 July 2016 was the meeting where NR went into the detail of the ODA reports with all TOCs. The ODA reports were considered in detail, page by page, and the TOCs had the opportunity to comment on them. The meeting also discussed the draft TPR proposal, and this fed into v.1, published in October 2016.
38. To continue the consultation in relation to the TPRs, on 12 August 2016 Andy Bray emailed ASR attaching a spreadsheet saying: *"As discussed earlier, I've now gone through the ODA data for CRS-EDB [Carstairs to Edinburgh]. You're best looking at the tab 'SRT Tables' for the values I am proposing to amend... Let me know your thoughts please... As discussed at the TPR forum, it is our intention to formally consult these for inclusion in 2018 v.1.0 TPRs (applicable from Dec 17 WTT)".*
39. On 16 August 2016 Neil Sutton commented on the timing values relating to the Edinburgh-Carstairs section saying: *"It goes without saying I'd like to understand what this might do to our timetable"*. Andy Bray then discussed Neil Sutton's concerns by telephone.
40. On 19 August 2016 Paul Scott emailed Neil Sutton attaching *"observed data"*. This was carried out in response to Neil Sutton's email of 16 August 2016. This was an example of when NR did not simply accept the ODA, but also checked it against other data. Whilst Paul Scott requested a response to this email, there was no reply from ASR.

41. On 23 August 2016 there was a TPR Forum with ASR plus other operators on the Route. An update on the ODA work was provided by NR at this Forum and feedback was also provided to the wider forum on the TRIP/Edinburgh sub-group.

D-64 (16/09/16) To D-60 (14/10/16): NR shall consult with timetable participants in respect of any proposed changes to the rules

42. On 4 October 2016 there was a TPR forum in Manchester. All operators on the Route were invited. The focus was on TRIP and any other items to be considered for the v1 TPRs. Operators were given the opportunity to provide their feedback on these. In the discussion on TRIP, it was agreed, for example, that the TRIP team would review the headways between Motherwell and Greenhill Lower Jn. On account of these discussions, and following this review, NR removed the related proposed amendment to headways in this area. David Cartey of NR normally chaired the TPR forums but he was on leave for this meeting. It was therefore chaired by Paul Scott of NR and, although David Cartey did not normally circulate notes following the TPR forums, for this one Paul Scott did. There are just three items under the heading "*SR responses*": (i) PS to supply SR with findings on EDB simulator for headways on Stepps line; (ii) PS to inform SR of what changes are made into v1 of 2018 as completed; and (iii) invite Andy Miller SR performance to next meeting. All of these were subsequently actioned by NR.
43. On 11 October 2016 ScotRail Alliance sent a letter to ORR regarding a decline in performance. Appendix B of the letter is their response to current performance issues and stated on page 10: "*Full introduction of TRIP outcomes for both ScotRail and Long Haul operators to be in place for December 2017*". ASR must therefore have had confidence in the TPR values generated using ODA methodology to be relying on it as a solution to their performance issues in a letter to the regulator.
44. Then on 12 October 2016, as agreed with ASR in the 4 October TPR forum, Andy Bray sent an email to all operators on the Route with regard to the SRT changes in Scotland saying "*as discussed over the course of the past few TPR forums, we are proposing a large number of amendments to SRTs in Scotland for the Dec17 WTT, supported by the analysis provided by the ODA tool. I have attached a document containing all the values which were reviewed and contained within this are the values we are proposing to amend... I'd like to invite feedback... We will provide a list of all SRT changes at D-59 on 21/10/16, but I wanted to share these values in advance of this date*".

D-59 (21/10/16) – NR shall provide to all timetable participants a draft of the revised rules

45. On 21 October 2016 the Scotland 2018 v1.0 TPR was published.

D-59 to D-54 (25/11/16) NR shall consult with timetable participants; timetable participants may make representations in respect of any changes they propose or objections they may have to the draft rules

46. On 25 October 2016 Andy Bray emailed Neil Sutton of ASR regarding the remit for the Impact Assessment and asked if any amendments were required. Neil Sutton replied agreeing with the geographical area but stating that the hour segments should be 2 hours so a greater selection of trains on the West Coast mainline were picked up. It had been agreed with TOCs that an Impact Assessment would be carried out and circulated by the end of December 2016, so that TOCs could consider it in advance of the TPR forum on 5 January 2017, as v.2 of the TPR was required to be published by 3 February 2017. NR therefore considered that it would be too much additional work in the time available to extend the time slots of the Impact Assessment to this extent, but the lunchtime time slot was extended from 1 hour to 2 hours in response to this suggestion to capture the fact that there is a Cross Country train every 2 hours and a Transpennine Express train every other hour, so a 1 x 2 hour time slot was necessary to be confident that both service groups could be accommodated.
47. On 26 October 2016 a timetable performance meeting was held between NR and ASR. The remit for the Impact Assessment was discussed. V1 of the TPRs was also discussed. Andy Bray of NR provided an update on engagement with the other operators on the TPRs and what the expected outcome would be. Then on 31 October 2016 Neil Sutton emailed Andy Bray to say *"We are currently reviewing your SRT proposals, and have a number of counter proposals.... Would hope to get these to you by the end of the week/early next week"*. In fact no counter proposals were received from ASR.
48. On 11 November 2016 Neil Sutton emailed Andy Bray explaining that *"We will be providing a formal response to the TPR next week.... However I can advise that we will not be able to accept the proposed SRTs and revised headways which have come out of the TRIP works until we have seen Network Rail's Timetable impact study and have a full understanding of what this will do to the ScotRail franchise"*. This is in conflict with the current complaint which is regarding the accuracy of the TRIP data.

D-54 (25/11/16) to D-44 (03/02/17) – NR shall consider representations and objections

49. On 25 November 2016 ASR provided its response to TPR v1. The majority of ASR's questions and comments were not related to TRIP related changes.
50. On 30 December 2016 Andy Bray provided the Impact Assessment, which was foreshadowed in Neil Sutton's email of 11 November 2016, saying *"We made a commitment to undertake an impact assessment on the ODA generated TPR changes and this email is to communicate that this assessment has now been completed"*. The email attached an Impact Assessment report and spreadsheet and referred to the TPR forum in Preston on 5 January 2017 at which the contents of the report and next steps were discussed.

51. On 4 and 5 January 2017 Neil Sutton sent emails to Andy Bray raising issues with the Impact Assessment.
52. On 5 January 2017 there was a TPR Forum in Preston for all operators on the Route. Neil Sutton and Ewan Tait attended for ASR. The Impact Assessment was discussed and NR agreed to produce a revised version taking feedback on board.
53. On 11 January 2017 Andy Bray asked Neil Sutton to resend any counter proposal for SRTs based on GPS data; Neil Sutton replied on 11 January 2017 explaining that ASR was not proposing any changes .
54. Also on 11 January 2017 Andy Bray emailed all operators on the Route, including ASR, with a reworked SRT analysis from the TRIP ODA team which dealt with values queried by TransPennine Express and Cross Country Trains in their v1 response. (Had SR been specific in their challenge to the accuracy of values at this stage, then NR would have done the same for them.)
55. Given ASR's sudden reluctance to implement the new TPRs, on 18 January 2017 Nicholas Prag (Customer Relationship Executive, NR) sent a letter to Dave Smith, Head of Service Planning at ASR explaining that *"Recently NR and ASR jointly agreed to undertake a review of Timetable resilience with a view to identifying and implementing improvements to the Timetable Planning Rules (TPRs) which in turn would improve performance on the network... We believe that these changes will have a positive impact on performance... Network Rail believe that only by making the TPR changes published in the Version 1 Rules, can we achieve a step change in the reliability of the base timetable and improve performance for passengers and that this is 'right thing' to do for the industry"*. The letter also invited ASR to meet to discuss the issues.
56. On 20 January 2017 Sam Price, Head of Legal at ASR, wrote to Andy Bray of NR and set out some of the concerns they now had with the TPRs. This was not a response to the correspondence which had been ongoing between NR and ASR.
57. It was only on 25 January 2017 that Sam Price of ASR responded to Nicholas Prag's letter of 18 January 2017. It referenced discussions and said that 2 February 2017 would be too late for a meeting. However, this was the first date that both parties were available.
58. Given the concerns around TRIP raised in Sam Price's letter of 20 January 2017, in an effort to continue the consultation on 1 February 2017 NR emailed ASR attaching slides explaining the TRIP ODA methodology, even though this had been discussed with SR as early as 22 September 2015 and ASR had had multiple opportunities to obtain any further clarity they wanted on the ODA methodology.
59. On 2 February 2017 NR and ASR held an *"avoidance of dispute"* meeting in Glasgow.

60. Also on 2 February 2017 Neil Sutton provided ASR's comments on ODA values setting out the ones they had data to support and the ones ASR's data did not support. This is the first time this data was provided, despite Andy Bray's frequent earlier requests. SR commented on 241 ODA SRT values (not all were proposing changes): they agreed with 158 and did not agree with 83. Of those 93 where NR was proposing changes, SR agreed with 24; disagreed with 38; and did not comment on 31. Despite what was said in the comments on 2 February 2017, as set out below, in a subsequent email on 17 February 2017 however, Dave Smith of ASR claimed that even the previously agreed values were no longer agreed.

D-44 (3/2/17) – NR shall issue the final revised rules (v2)

61. On 3 February 2017 Scotland 2018 v2.0 TPRs were published.
62. Also on 3 February 2017 Andy Bray sent an email to operators on the Route attaching a spreadsheet showing SRTs which had changed between v1.0 and v2.0 TPRs. There were 13 changes since v.1; 2 of which affected SR. NR also provided a specific response to points ASR had raised on v1.0 TPRs.
63. On 10 February 2017 Andy Bray circulated an updated impact assessment following feedback he had received *"Based on the discussions we've had with individual operators, in TPR forums and following the findings of this assessment, Network Rail's decision for Scotland 2018 v2.0 TPRs was to include the ODA generated TPR changes, subject to some minor amendments which have been discussed on a case by case basis"*.
64. On 14 February 2017 there was an email exchange between Andy Bray and Neil Sutton regarding the work on ODA values on the Argyle Line.
65. On 16 February 2017 ASR issued their Notice of Dispute.
66. On 17 February 2017 Andy Bray emailed Dave Smith of Scot Rail asking if ODA SRT values previously marked up by Neil Sutton as "agreed/OK" in the spreadsheet attached to 2 February 2017 email were not subject to the dispute and values as published in v2.0 accepted. Dave Smith replied on 17 February 2017 that the intention was now to ratify values with independent analysis so none of the values were agreed.

D-41 (24/02/17) – End of appeal period

67. In emails on 2 March 2017 Andy Bray explained that NR had reviewed the data in the spreadsheet provided by ASR on 2 February 2017 and had some specific values and would like to discuss. This invitation was not accepted. Also in an email exchange between Andy Bray and Neil Sutton regarding data follow-up Andy Bray suggested that it would be helpful to meet the following week in Glasgow to review the data; no response was provided to this suggestion.

Response to Section 4 of ASR's SRD

68. The nature of the dispute in Section 4 of ASR's SRD is noted. It is accepted that this is a timetable dispute, but for the reasons set out below and in the Defence, it is denied that ASR is entitled to the relief sought or any relief.

Response to Section 5 of ASR's SRD

69. As to Paragraph 5.1, it is admitted that NR are to consult with ASR and consider any representations and objections. The history of the extensive consultations and consideration of ASR's points and issues is set out above. For the avoidance of doubt it is denied that NR has failed to consult and/or properly consider ASR's responses. The reality is that ASR was consulted all the way through the TRIP process and it simply does not agree with a limited part of the outcome of the process as opposed.
70. Paragraph 5.2 alleges that: i) the background to the Revision is set out in Appendix 1; ii) this background allegedly shows that NR was principally motivated by applying TRIP rather than applying the Decision Criteria; and iii) making a decision on that basis amounts to a failure to consult. Accordingly, ASR's case is based on an allegation that applying the TRIP methodology amounts to a failure to consult. This is wrong and in any event the consultation was sufficient for the reasons set out above.
71. First, the TRIP methodology is plainly in accordance with the Decision Criteria as set out in the Defence and in Mr Allen's witness statement. NR would not invest approximately £11.6m and the TOCs and FOCs would not heavily engage with a two year process if the TRIP methodology and the overall aims of TRIP did not comply with the Decision Criteria.
72. Secondly, as set out at in paragraphs 14 to 41 above, ASR actively entered into the TRIP process and NR and ASR consulted in detail on both the input and results of the TRIP process. For example, ASR was invited to comment on the scope of the TRIP 'sprints' and the ODA reports, before these were translated by NR into TPRs.
73. ASR relies on Appendix 1 (to its SRD) as the basis for its allegation that applying TRIP was a failure to consult. The true position on consultation is set out above. NR sets out brief responses to the principal allegations made in Appendix 1 in ARS Annex 1 hereto.
74. Paragraph 5.3 is denied. NR has to deal with the competing interests of all users of the Network and by considering the ODA data in the way which it did, including in relation to the consultation NR carried out with ASR (as detailed above), not only did NR satisfy the Decision Criteria, but ASR were properly consulted in the way the conclusions were reached.
75. NR considered both the Objective and the Decision Criteria in the context of the proposed changes to the TPRs. As set out further below, ASR is taking a myopic view of the situation, whereas NR has to take a view of the Network as a whole, in accordance with the Objective

and the Decision Criteria. NR prioritised the criteria in the following way. Conditions: (a)¹ and (c)² were given high weighting and NR considers these to be the main driving force behind the proposed changes. Conditions: (d)³, (f)⁴ and (j)⁵ were also material. Conditions: (b)⁶, (g)⁷ and (i)⁸ were all considered to have a lower priority. Conditions: (e)⁹, (h)¹⁰, (k)¹¹ and (l)¹² were considered as not relevant.

76. As to Paragraph 5.4, the TRIP programme did consider the High and Low level stations between Glasgow and Edinburgh but its scope was wider than this and covered Glasgow Central to Haymarket East, Argyle Line, North Clyde and Motherwell to Cumbernauld. It is admitted that ODA was used.
77. As to Paragraph 5.5. (a), the allegation regarding the data which was used is wrong, as set out at paragraph 2 of Annex 1 below.
78. NR does not understand the criticism made by ASR at paragraph 5.5 (b) in relation to the data used and the signal berth occupation as ASR knew from the outset that berth offset data was not always available (see email from Charlotte Heron to ASR of 2 March 2016 which stated amendments were still to be made to the Glasgow-Carstairs ODA report in relation to "*Review of SRTs where berth offsets are not available*") and the approach to be taken was discussed and agreed with ASR, as evidenced by an email from Anne-Marie Harmon of NR to ASR on 3 March 2016. It is correct that actual berth offset data was not always available; ASR knew this and this is why it was agreed to use assumed values.
79. The complaint made by ASR at Paragraph 5.5 (c) is not only unfounded, but it is surprising given that it was explained to John Kerr in an email dated 13 November 2015 (Annex x) and it appears that until now ASR was content with that explanation. As was explained to John Kerr, the data used in TRIP does not consider junction margins. On 2 February 2017

¹ Maintaining, developing and improving the capability of the Network.

² Maintaining and improving train service performance.

³ Journey times are as short as possible.

⁴ The commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant by Network Rail) or any Timetable Participant of which Network Rail is aware.

⁵ Enabling operators to utilise assets efficiently.

⁶ the spread of services reflects demand.

⁷ Seeking consistency with any relevant Route Utilisation Strategy.

⁸ Mitigating the effect on the environment.

⁹ Maintaining and improving an integrated system of transport for passengers and goods.

¹⁰ As far as possible, International Paths including in the New Working Timetable at D-48 are not subsequently changed.

¹¹ Avoiding changes, as far as possible, to a Strategic Train Slot other than changes which are consistent with the intended purpose of the Strategic Path to which the Strategic Train Slot relates.

¹² No International Freight Train Slot included in section A of an International Freight Capacity Notice shall be changed.

however, ASR indicated that they agreed with 24 proposed changes to SRTs, as has been explained above.

80. The data used in TRIP is not cleansed as stated in Paragraph 5.5 (d). However, that makes it more robust as it provides for all types of trains which pass along the relevant tracks. The way in which the data is used, so that it is appropriate, is that the 25% percentile is used (as explained at paragraphs 45 to 49 in Mr Allen's statement) to avoid skew from outlying datasets and represents an ordinary well performing train. The key issue is that the SRTs are not biased in favour of underperforming trains.
81. As to Paragraph 5.5 (e) it is correct that the data would not differentiate between times from different platforms; however, both NR and ASR knew that was a potential issue and considered it. ASR have sought confirmation of what the routing was based on, and NR have provided feedback, for example, in Andy Bray's email of 2 December 2016 to Ewan Tait of ASR. It is therefore difficult to understand why ASR can now reasonably complain about this issue.
82. As to Paragraph 5.5(f) ASR was responsible for confirming that the berth offset data is accurate. This is addressed further in the witness statement of Mr Allen at paragraph 33.3.2.
83. As to Paragraph 5.5 (g), NR agrees that in certain limited circumstances simply using the ODA data without some specific modifications to take account of the characteristics of that line is not appropriate. In fact NR relies on the points which are raised by ASR as they highlight the considered and careful way in which the TRIP/ODA process was carried out. No changes have been proposed on the routes used by ASR as examples in Paragraph 5.5 (g) as the current TRIP/ODA analysis may well not produce appropriate results (without some modification) given the characteristics of that specific stretch of line. Therefore the criticism made by ASR is not only invalid in this case, but illustrates that ASR has a flawed understanding of the ODA methodology it is challenging and also shows that NR is careful to apply TRIP/ODA data correctly.
84. For the avoidance of doubt the only proposed changes to headways based on the ODA data were on the West Coast Mainline (WCML), where the ODA outputs were useful.
85. Paragraph 5.5 (h) is not the complete story as the National TPRs (page [206] of the 2018 v2 National TPRs) also define Planning Headway as "*The minimum planned time interval between two successive train schedules at a specific timing point on the same line in the same direction, such that the second train can meet its SRT. This is expressed in multiples of half minutes and is derived from the technical headway rounded to at least the next half minute or above by agreement*"; and Technical Headway as "*The minimum permissible time interval between two successive trains at a specific timing point on the same line in the same direction, such that the second train can meet its SRT. This is expressed in seconds.*"

86. Further, the ODA headway graphs show both the signal reset time and the signal reset time plus the additional signalling section. However, it should be remembered that the graphs are not the decision; they are just used as a tool to inform NR's decision on headways.
87. The points raised at Paragraph 5.5 (i) show a lack of understanding of the ODA data and what it is used for. In short, the ODA data is not used to inform platform reoccupation changes at the locations relied on by ASR – this is therefore irrelevant. This again shows that the ODA data is not necessarily used automatically, but it is carefully considered. Further, to illustrate the way in which platform reoccupation changes are made, for v2 2018 TPRs, in the geographical area studied by TRIP, there have only been changes to platform reoccupation at Motherwell, Uddingston and Cambuslang. These changes were discussed in TPR forums, and the values were derived from visits to West Scotland Signalling Centre (WSSC) and Motherwell Signalling Centre and from reviewing signalling diagrams. This shows that whilst ASR seems to rely on a blanket criticism of ODA to support its complaints, that is not appropriate in these circumstances.
88. The example relied on by ASR at Paragraph 5.5 (j) is a good example of ASR failing to assist NR. The example relied upon by ASR was raised in Neil Sutton's email of 2 February 2017 (see paragraph 60 above). SR invited ASR to discuss this alleged discrepancy with NR, but ASR has declined to do so. ASR cannot simply assert an inconsistency then decline to discuss NR's views on the issue.
89. Paragraph 5.5 (k) is wrong as when NR rounds the SRTs up or down they ensure that over the whole train journey, the cumulative value accommodates a 5% uplift for engineering allowance.
90. As to Paragraph 5.5 (l) and the use of the 25th percentile, ASR relies on the explanation given at paragraphs 45 to 49 of Mr Allen's witness statement. In short, using the 25th percentile is appropriate.
91. The criticism made at Paragraph 5.5 (m) is not correct. The ODA SRT data is based on the actual time taken between signals and is independent of when a signal turned green or not. Further, as an aside, no changes to SRTs were proposed between Partick and Hyndland based on ODA data. Again, this shows NR uses ODA data appropriately.
92. Paragraph 5.7 is a late and unjustified criticism that modelling should take place. First, there is no standard modelling technique which could be employed. Second, modelling is expensive and time-consuming. Third, there is no guarantee that modelling is free from errors: it certainly is not. It is not appropriate that ASR demands that modelling also has to be undertaken when: (i) there has been a full and complete study already, which ASR fed into the scope of as set out above, including requesting that the geographical scope be extended (see paragraph 21 above); and (ii) ASR has been aware at all times of the proposed approach.

93. Paragraph 5.8 makes the sweeping statement that the Revision is not based on reliable or accurate data or modelling and diverges from ASR's data. However, whilst there are some examples where ASR's data diverges from the ODA data – and there could be a number of reasons for this – in a number of cases their data actually supports the ODA data. ASR has however declined to discuss its data with NR. In short there is nothing material in the criticisms made by ASR.
94. As to Paragraph 5.9, it is correct that no specific response was sent to ASR's 25 January 2017 letter, however that letter was sent by ASR's legal team and as can be seen from the chronology set out above, the fact of the matter is that ASR and NR were still consulting on the Revision at that point in time. Therefore there was no need for NR to respond to this letter. Alternatively, the fact that this one letter was not responded to is irrelevant.
95. Paragraph 5.10 alleges that NR wishes to apply TRIP across the whole Network and alleges that this is not in compliance with the Decision Criteria. That is patently wrong for two reasons. First, the specific examples provided by ASR in its SRD highlight that the TRIP analysis was not behind all proposed changes to the TPRs. Therefore, even on ASR's own case, it is clear that TRIP/ODA was not used in place of established approaches. In v1, only 174 changes were proposed to the Scotland TPRs based on TRIP/ODA work, as compared to over 2,000 other changes based on operator feedback and discussions in TPR forums. Secondly, as is set out above and in Mr Allen's witness statement, ASR (along with the other TOCs and FOCs) were fully involved in the development of the TRIP/ODA data and analysis and helped to hone it. It is only once the results of the analysis were known that certain TOCs and FOCs have complained about the system. Therefore it is the results which are in truth ASR's only real complaint, but as they are the result of analysis ASR agreed to, it is difficult to see how that criticism could be valid.
96. As to Paragraph 5.11 and the application of the Decision Criteria, NR relies on the points made in the Defence and in the witness statement of Mr Allen, which shows that TRIP/ODA is clearly in accordance with the Decision Criteria. To summarise the position, the largest single cause of delays on the Network is caused by inaccurate timetabling. TRIP/ODA deals with that issue and the implementation of the TRIP/ODA is very likely to result in a large improvement to PPM. That large improvement in PPM will more than outweigh the limited issues relied on by ASR in appendix 2 to its SRD. ASR is taking a myopic view of the situation, whereas NR has to take a view of the Network as a whole, in accordance with the Objective and the Decision Criteria. See also paragraph 74 above.
97. The assertions made at Paragraph 5.12 regarding the alleged significant impact to ASR's resources are unsubstantiated and go, once more, to demonstrate ASR's myopic view in relation to the Network overall. It is very unlikely that any substantial overall improvement in PPM can be made without it having some impact on individual TOC/FOCs. However, the vast majority of the TOC/FOCs consider that the changes arising from the TRIP/ODA are worth implementing.

98. As to Paragraph 5.13, ASR asserts that the dwell time at Bathgate is reduced so that a crew change cannot take place. That is incorrect as no stops at Bathgate which currently have a dwell time of more than 90 seconds have that dwell time reduced to less than 90 seconds. Therefore ASR's complaint is unfounded. In relation to Airdrie only one service in the morning and one in the evening has a dwelltime of 90 seconds which is reduced to 60 seconds. NR is not aware of whether any crew change was to take place during these periods and so it cannot assess what impact, if any, this would have on ASR's operation.
99. As to Paragraph 5.14, there is no need for NR to carry out the modelling suggested or to develop the timetable. The TRIP analysis is a robust way of making the changes which are suggested. This is particularly so since, as has been shown by the detail of the submissions made by ASR, the Revision does not make changes to the parts of the Network ASR particularly relies on to try and show the alleged failings of TRIP. In short, TRIP/ODA is a robust method of calculating changes to the Rules.
100. Finally, ASR asserts at Paragraph 5.15 that the TRIP data is unreliable, either because it does not match historical data or because it relies on the 25th percentile. For the reasons explained above and for the reasons explained in the Defence and in Mr Allen's witness statement, that is simply wrong.

Conclusion

101. NR has widely consulted with ASR on the issue of TRIP and ODA and the way the data was to be used. ASR agreed with the changes on 20 September 2016 at the most senior level, but then decided to oppose those changes and no explanation for this change has been provided. ASR has relied on certain problems its claims the changes in the rules will cause. These problems appear to be more theoretical than real. In any event, even if all the problems were real, that would not outweigh the benefits to be achieved by the changes in the Rules.

IN THE MATTER OF PART D OF THE NETWORK CODE

AND IN THE MATTER OF THE ACCESS DISPUTE RESOLUTION RULES

AND IN THE MATTER OF TIMETABLING DISPUTES TTP 1064; 1065; 1066; 1069; 1071; 1073; 1075

BETWEEN:

**(1) ABELLIO SCOTRAIL LIMITED ("ASR")
(2) DB CARGO (UK) LIMITED ("DBC")
(3) FIRST GREATER WESTERN LIMITED ("GWR")
(4) XC TRAINS LIMITED ("XCTL")
(5) GB RAILFREIGHT LIMITED ("GBRf")
(6) ARRIVA RAIL NORTH LIMITED ("ARN")
(7) EAST COAST MAIN LINE COMPANY LIMITED ("VTEC")**

Claimants

v

NETWORK RAIL INFRASTRUCTURE LIMITED ("NR")

Defendant

**NR's DEFENCE TO HEADS A AND B ISSUES
APPENDIX 2:
ANNEX 1: NR'S RESPONSE TO ANNEX 1 OF ASR'S SRD**

1. The headings from Appendix 1 are adopted below (with no admissions made) and NR provides its response to the points raised in each section in accordance with the headings.

Changes to operation since data relied upon by Network Rail

- 1.1 The data which was used in the analysis actually was:
- 1.2 Glasgow to Haymarket East: December 2014 to January 2016;
- 1.3 Argyle to North Clyde: May 2015 to December 2015; and
- 1.4 Cumbernauld geography: May 2015 to December 2015.
2. Therefore the 20 week closure of Glasgow Queen Street High Level Station from March to August 2016 is entirely irrelevant to the matters in issue.
3. The timetable before and after the 20 week closure of Queen Street are entirely different and, in fact, the routes which are used have changed. However, there is no reason to think that the current timetable is not recovering from perturbation as well as it was in the past.
4. ASR relies on Phil Verster's emails of 20 September 2016, which Dave Smith of ASR replied to (see appendix 19 of ASR's SRD). Dave Smith is the Head of Service Planning at ASR and Phil Verster is the Managing Director of ScotRail Alliance. What ASR have failed to set out from that exchange is that Dave Smith of ASR suggests implementing the WCML TRIP items and also increasing the headways, which Phil Verster's last email thanks Dave Smith for. However now ASR are disputing exactly those changes. Therefore, on the eve of the

formal publication of version 1 of the TRPs, ASR is, at the highest level, agreeing the points made by NR. ASR has never explained why its position has changed from 20 September 2016.

5. ASR also relies on Train Operator Variation Requests ("TOVRs") (which it refers to as Spotbids) which have been made to the December 2016 timetable. NR agrees that these TOVRs could have supported improvements to performance, but they are simply changes to an individual timetable. What NR seeks to do is to make the changes which are incorporated by the TOVRs reflected in the TPRs, so that they become permanent improvements and not just ad hoc changes arising from TOVRs.
6. ASR expressly says that despite the fact that the change in August 2016 was TPR compliant, this has not assisted in the efficient running of the Network. Assuming that to be true, on ASR's own case the TPRs need to be changed, which is precisely what NR is seeking to do. Furthermore, NR is seeking to change the TPRs in line with what was suggested in September 2016, which Dave Smith of ASR and Phil Verster of ScotRail Alliance agreed at the time was a good idea. Finally, the issues ASR has raised about the data used in the TRIP analysis are simply not right.
7. All in all, the points raised in Appendix 1 under the heading "*Changes to operation since data relied upon by Network Rail*" are simply not accurate, or instead support NR's case that the TPRs need to be changed.

Network Rail develop the Revision without reference to current operations or impact on ASR

8. NR has to optimise the Network for the use of all operators. NR has engaged in the TRIP analysis to help in optimising the Network and that has resulted in changes to the Rules. Those Rules will have some negative impacts on TTPs, but it will also have positive impacts, for example in reduced payments of compensation. Therefore the issues which ASR rely on should not stop the implementation of changes which will result in an overall improvement.
9. ASR asserts that the dwell time at Bathgate is reduced so that a crew change cannot take place. That is incorrect as no stops at Bathgate which currently have a dwell time of more than 90 seconds have that dwell time reduced to less than 90 seconds. Therefore ASR's complaint is unfounded. In relation to Airdrie, only one service in the morning and one in the evening has a dwelltime of 90 seconds which is reduced to 60 seconds. NR is not aware of whether any crew change was to take place during these periods and so it cannot assess what impact, if any, this would have on ASR's operation.
10. Considering the changes to the Rules, actually the true position is that the changes do not decrease the turnaround times at Milngavie and so there is actually no impact.

11. For example, the opportunity to attach and detach units at Lanark may be lost, but there is an opportunity for that attaching and detaching to take place at Glasgow Central.
12. Further, and more importantly, it seems that the points raised by ASR are either wrong or there are obvious solutions to the issues raised which mean that they are no longer an issue.
13. NR notes that ASR has not provided its impact assessment which would demonstrate the points made in relation to the North Electric network and so NR cannot comment on this.
14. Overall, ASR may suffer some impact from the changes, but those changes have not been properly identified or quantified. In fact it appears from the evidence available that ASR may actually not be right in the assertions it makes regarding the changes. In any event, even if ASR was correct in its assessment of the changes, those changes would not be significant enough to outweigh the benefits of the changes. Therefore, applying the Decision Criteria and the balance NR has to undertake, the changes should remain.

Proposed Revision cannot deliver contracted services

15. NR accepts that there is the potential risk that changes to the TPR will potentially cause additional costs to the TOCs. However, that additional cost has to be considered against the lower Schedule 8 compensation costs which would be paid if the Network was running more efficiently. Therefore, it is wrong to simply consider the potential additional costs to the TOCs in isolation and, in any event, even if additional costs were incurred, that would not necessarily mean that the Decision Criteria had not been considered.

Network Rail does not adequately consider ASR's input

16. ASR relies on correspondence which was provided from D-59 and later. In the chronology which is set out above in the Appendix (see particularly paragraph 46 to 48) it can be seen that there was consideration of the points raised by ASR and in fact that NR responded to ASR's points. It is noteworthy that in Appendix 1 ASR has failed to set out the full chronology, which shows the consultation. In fact, as can be seen above, ASR actually agreed on a number of matters on 2 February 2017, but then reneged on that agreement.
17. There is no reasonable way that, given the correspondence set out above, there can be any finding that NR failed to consult on ASR's concerns. NR properly consulted and then applied the Decision Criteria to the Network as a whole. What that means is that, in a very small number of the TPRs there are matters which do not wholly suit ASR. However, that will always be the way when the limited resources of the Network have to be properly allocated between competing interests.