

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 5

NR'S RESPONSE TO THE SUBSTANTIVE PARTS OF XCTL's SRD

Introduction

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

Overview of NR'S response to XCTL'S SRD

3. NR denies that XCTL is entitled to the relief it seeks, or to any relief, for the reasons set out in this response to XCTL's SRD and the Response.
4. XCTL does not raise any overarching issue in relation to consultation or the application of the Decision Criteria (although this is nevertheless addressed below in the context of the specific issues raised). It is therefore wrong to say that the dispute with XCTL is one which relates to "*Common issues of principle*". Where XCTL raises an issue of, for example, an alleged failure to have a "*full and proper assessment*" of the accuracy of the impact of the Revisions on the TTPs, NR deals with that specific submission in its detailed response to the matters set out in Section 5. For the avoidance of doubt, the TTP has no jurisdiction to consider any matter in relation to XCTL which is not raised in XCTL's SRD.

5. However, for the avoidance of doubt on the issue of consultation, NR did properly consult with XCTL, for example in the relevant TPR forums and also via specific communication with XCTL.
6. As to consultation overall in relation to the TRIP/ODA process, NR relies on the points set out in Matthew Allen's witness statement at paragraphs **60** to **78**. However, for completeness XCTL also relies on the following summary of the consultation which took place with XCTL:
 - 6.1 Even before NR had any obligations under Part D to consult with XCTL it did so. For example NR held LNE or Western TPR forums on the following dates: 5 May 2015, 9 July 2015, 29 October 2015, 3 December 2015, 14 January 2016, 11 February 2016, 10 March 2016, 6 April 2016, 1 June 2016, 29 June 2016, 27 July 2016, 22 August 2016, 24 August 2016 and 12 September 2016. XCTL attended all of these TPR forums, except the forum on 29 October 2015, where Andy Smith (of XCTL) gave his apologies.
 - 6.2 At the LNE TPR forum in Derby on 3 December 2015 it was agreed, when David Fletcher of XCTL was in attendance, that *"LN600N Morpeth to Berwick will be progressed following conclusion of LN627 sub-group..."* (see item 5 of the minutes at **Annex /Tab 1/ p.9**).
 - 6.3 The minutes of the LNE TPR Forum in York on 11 February 2016, which David Fletcher and Josh Bliszko of XCTL both attended, under the heading *"ODA Methodology Discussion"* record that *"The outputs are being examined for the LN600 north sub-group."*
 - 6.4 Between D-64 to D-60 a further LNE TPR forum was held in Derby on 28 September 2016, at which XCTL was represented at by Josh Bliszko; and on 13 October 2016 Paul Woodcock of NR emailed all the relevant operators with the most up to date ODA reports. Paul Woodcock's email stated *"If you have any queries with any data provided please let me know and I will liaise with the Timetable Rules Improvement Programme for an answer"* (see **Annex / Tab 3/ VTEC / pp. 1746-1747**). NR also held a Western TPR forum on 3 October 2016, to which Josh Bliszko was invited, but did not attend.
 - 6.5 Between D-59 and D-54 NR held a further TPR forum in York on 16 November 2016, at which XCTL was represented by Josh Bliszko.
7. NR sets out below further details of how the consultation process continued after D54 in its response to the LN600 issue and therefore it does not set out anything further above.
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 review the decision. 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 any change being made

Response to Section 4 of XCTL'S SRD

9. The nature of the dispute in Section 4 of XCTL's SRD is noted; namely, in relation to the headways on GW103 and the SRTs on route LN600. It is accepted that these are timetable disputes, but for the reasons set out below and in the Response, it is denied that XCTL is entitled to the relief sought or any relief.

Response to Section 5 OF XCTL'S SRD

Changes to planning headways on Route GW103 (Paddington to Uffington)

10. The real complaint is that XCTL is concerned about the potential impact that the new headways will have on performance. David Fletcher (of XCTL) in his email of 24 March 2017 (**Annex / Tab 3 / XCTL / 1418-1419**) stated:

"The "exam question" that is fundamental to our dispute can be summed up as, "can Network Rail assure CrossCountry that proposed headway reductions will result in no material impact on the performance of either our Southampton/Reading – Newcastle or Bournemouth – Manchester service groups (in both directions)?"

I don't particularly mind what method or exact data are used to provide this assurance, as long as Network Rail can demonstrate that the method and data are reliable and meaningful..."

11. On 21 March 2017 (**Annex / Tab 3 / XCTL / 1421**), following a meeting between NR and XCTL on 20 March 2017, David Fletcher (of XCTL) emailed Tim Woodall (of NR) to try to address XCTL's concerns and said:

"The outstanding issues from my point of view are around performance impact. As you're aware, Jamie Thomas took an action to provide some performance data..."

12. On 22 March 2017 (**Annex / Tab 3 / XCTL / 1420**) David Fletcher emailed Tim Woodall and Jamie Thomas (of NR) asking:

"Do you have timescale for providing the promised performance data please?"

13. On 24 March 2017 (**Annex / Tab 3 / XCTL / 1419**) Jamie Thomas responded to David Fletcher's email saying:

"Hi David – when Will Paterson and Jamie Burn walked you through the rationale for the Headway reductions it was my understanding that answered your concerns about performance risk? If that's not the case we can provide actual train running data which my team have estimated will take about 3 days work. I'm not sure it will show anything different to the Vision modelling. It's all down [to] how we interpret the outputs. Jamie B's view was that the following train will be slowing down anyway so the potential impact of a restrictive signal would be negligible. Actual data would confirm that

They can start this on Monday if this is the agreed next step. Please confirm by close of play to ensure the work can be started on Monday..."

14. It was in response to the email above from Jamie Thomas that David Fletcher sent the email dated 24 March 2017 (set out at **paragraph 10** above) where he made it clear that XCTL's concerns were in relation to potential problems with performance.
15. On 3 April 2017 Laura Freeman (of NR) emailed David Fletcher (see **Annex / Tab 3 / XCTL / 1423-1424**) saying:

"I just wanted to drop you an email regarding the below, to hopefully finalise some of the concerns you may have around the new Headway values on the Reading to Didcot section. My apologies for the delay in responding so far.

I've attached a spreadsheet which I will explain further:

Tab one shows you a chart detailing some examples of Performance uplift on the sections of track between Paddington and Didcot. As we discussed on your visit, the figures being proposed were the modelled figures, plus rounding, so there were some concerns that no performance uplift had been include in the proposed values. I've works with the TRIP team and given an indicative value of the modelling PLUS a 5% performance uplift, and as you will see, the values proposed all fall well above this uplift value.

Tab 2 shows you a few graphs, which I'm sure you are more than familiar with, which just gives you an idea of the current flighting of services, so that you can see that we don't currently plan on minimum headways, and therefore, the introduction of these new values won't have a huge effect on the timetable as it stands.

Lastly, I have taken a look at the changes to the two mentioned services, as detailed in the impact Assessment. When I compared the timings of 1V94 between the freeze and the Dec 16 Timetable, there wasn't any changes to any timings along the way, so I believe the comment on the spreadsheet was just a justification of affecting 1V94 following.

With regards to 1O94, the only amendment was the need to add in 1 minute of pathing approaching Goring and Streatley, and reduce the dwell at Reading from 7 to 6 minutes to bring it back to booked from there on.

I hope that this gives you the information you make need, but should there be anything outstanding which isn't covered off here, please do let me know.

Additionally, if you have any further questions or comments, please do not hesitate to contact me, and I will do my best to resolve them in a timely manner."

16. David Fletcher wrongly refused to accept that this addressed the issue regarding the potential impact on performance and on 6 April 2017 Laura Freeman sent a further email to David Fletcher (**Annex / Tab 3 / XCTL / 1432-1434**), which stated:

"...I've spoken to Jamie Thomas who has confirmed that there is no observed data where services perform these minimum moves as trains aren't currently planned to the minimum values. TRAIL performance modelling also wouldn't highlight performance changes as these changes won't affect train in the current timetable. See the below explanation which should address the performance risk question..."

17. Therefore, as explained above, the real objection by XCTL is one based on a perceived potential issue with future performance, which NR has dealt with. The point is that the changes make no impact on performance and NR has proved that with the analysis which it has provided to XCTL. However, XCTL has wrongly decided not to accept that analysis, and chosen to ignore the further evidence supplied by NR.
18. In short, NR has applied the Decision Criteria in properly analysing GW103 and has properly reduced the headway. XCTL has a fear that there may be a future impact on performance. That is not a basis for validly disputing the change in the headway.
19. Whilst not specifically raised by XCTL, NR considered the Decision Criteria in the context of the proposed changes to headways on GW103. Applying the Decision Criteria NR prioritised the decisions in the following way. Condition: (a)¹ and (c)² was given high weighting. Conditions: (f)³ and (j)⁴ were also material. Conditions: (b)⁵; (e)⁶; (g)⁷ and (i)⁸; were all considered to have a lower priority. Conditions: (d)⁹; (h)¹⁰; (k)¹¹; and (l)¹², were considered as not relevant.

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- ¹ Maintaining, developing and improving the capability of the Network
- ² Maintaining and improving train service performance
- ³ 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
- ⁴ Enabling operators to utilise assets efficiently
- ⁵ The spread of services reflects demand
- ⁶ Maintaining and improving an integrated system of transport for passengers and goods.
- ⁷ Seeking consistency with any relevant Route Utilisation Strategy.
- ⁸ Mitigating the effect on the environment.
- ⁹ Journey times are as short as possible.
- 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.

20. The points above deal, overall, with the dispute regarding GW103, but for the sake of completeness NR deals with the further detailed points below by reference to individual paragraphs of XCTL's SRD.
21. The complaint made by XCTL overstates the actual change and ignores the changes which are actually suggested. As can be seen from page 70 of Version 2 of the Rules the impact of the headway reduction is only for a train following a non-stopping passenger service. This only impacts one of XCTL's services, namely IO94. Otherwise, the proposed headways are either 3½ or 4 minutes.
22. The fact that NR has only made this change which impacts on one service shows that NR has had proper regard to the commercial impact that this change will have on the potential performance of XCTL and therefore this does comply with 4.6.2 of Part D.
23. Paragraph 5.2 is based on the same misunderstanding as Paragraph 5.1, namely that there are multiple headways which are 2½ minutes. As explained above, that is not the case.
24. On 29 September 2016, Will Paterson of NR sent an email to all operators on the Western Route, including to Josh Bliszko of XCTL, detailing the discussions which would be taking place at the TPR forum scheduled for 3 October 2016 (see **Annex / Tab 3 / XCTL / 1444**). The attached report named *"Paddington to Reading to Didcot Parkway headway recommendations 28.09"* (**Annex / Tab 3 / XCTL / 1444A-1444AZ**) states on page 40: *"Note: Proposals 18, 20a and 20b have already been consulted at forum [on 12 September 2016], proposals are only included in to the document to show complete headway proposals"* Proposals 18, 20a and 20b proposed 3½ minute headways following stopping services. Additional proposals were detailed in this document for discussion at the forum on 3 October 2016, namely 17a and b and 19, with proposed values of 2 ½ minutes (see **Annex / Tab 3 / XCTL / 1444AN-1444AX**). As can be seen from this document, these proposals were based upon SPA Reports 323 and 419, which were also contained in the email sent by Will Paterson.
25. Paragraph 5.3 also continues to suggest that the reduction of the headway to 2½ minutes is widespread. As set out above, that is not the case. Further, XCTL's complaint is that the issue was discussed at the forum on 3 October 2016, which XCTL did not attend, and that the minutes of the meeting do not clearly set out the decision to reduce the headway to 2½ minutes (which only impacts on one service). There is no obligation on NR exhaustively to set out in the minutes of the forum meetings every detail of what happened at the meeting (particularly if the matter in question only impacted on one service).
26. Also, it is wrong to say that NR not only has to consult in its forums but also must consult again with TTPs who do not attend the forum. The attachment to Will Paterson's email of 29 September 2016 referred to in paragraph [24] above made clear that there were 2½ minute proposals and these would be discussed in the TPR forum on 3 October 2016, but XCTL still did not attend.

27. As to Paragraph 5.4, proper consultation was entered into in relation to the reduction of the headway, as set out above. Also, by emails dated 3 and 6 April 2017 (see Annexes x and x), the further information requested was provided.
28. Proper consultation was entered into in relation to GW103 and the reduction XCTL now complains about only impacts on one service. Given this, the proposed headways between Reading and Didcot should remain. There is no material performance impact, as shown by NR's analysis.

Changes to Section Running Times on Route LN600 (Shaftholme Junction to Reston GSP)

29. Paragraph 5.5 is agreed. As to Paragraph 5.6, ODA work has been undertaken on LN101, LN3201 and LN860 in addition to LN600 and all four routes were discussed in TPR forums. Based on these discussions, NR decided not to take forward the proposed headway changes on the LNE Route. SRTs were also discussed.
30. Paragraph 5.7 is agreed. Version 2 of the LNE TPRs "*showed no change*" from V1. This is why the commentary letter stated "*LN600 and LN680 being taken forward from V1*". NR fails to see how XCTL can have been confused by this.
31. Also, NR does not understand the request for the "*Planning Geography*" as it is not usual to provide this data and TTPs are able to comment on the TRIP/ODA results without this data. Therefore the matters in paragraph 5.8 are simply irrelevant.
32. XCTL has correctly identified the ODA data used in Paragraph 5.9. This was circulated to XCTL on 13 October 2016, one week prior to publication of Version 1 of the 2018 TPRs.
33. As to Paragraph 5.10, XCTL only provided its data to NR following publication of the Final Rules for 2018, and not during the earlier stages of the consultation period, even though the relevant ODA report was sent to them on 13 October 2016. XCTL now appears to accept that its maximum and mean values are of little value. However, there are also issues with the minimum values on which it now seeks to rely. The minimum value may only have been achieved in unusual circumstances, for example when a train was short formed or carrying fewer passengers than normal and therefore weighed less, or could even result from a driver speeding. XCTL has highlighted one extreme example of where the data is different. However, NR is always careful to properly consider the results of its TRIP/ODA analysis and the data it relies on. The data XCTL has relied has no general application, nor does it call into question the whole basis of the ODA data. Using XCTL's example, based on the ODA data it was appropriate to recommend an increased SRT of 12½ minutes.
34. As to Paragraph 5.11, it is agreed that it is not always clear why XCTL's own data sometimes differs from the ODA data, save that XCTL is relying on its minimum achieved values which, as set out above are not necessarily repeatable. However, the ODA data was the result of a large data analysis exercise (see Mr Allen's witness statement). Further, the data

validated 56 of the existing 70 SRTs on XCTL's service lines and recommended just 14 for change. This shows that the most appropriate data to use is the ODA data and the fact that XCTL questions some of the results of the ODA data does not mean that the whole dataset is wrong.

35. Paragraph 5.12 shows that NR considers the analysis it has produced carefully and will, when appropriate, withdraw or revise the conclusions from that analysis as arrived at on the basis of that data, as set out here. What this shows is that NR does not simply apply a blinkered view to the analysis it has carried out, but considers it carefully. Further, as NR withdrew the conclusions relied on that can no longer be in dispute.
36. XCTL is wrong to maintain the concerns which it does in Paragraph 5.13 regarding the alleged cumulative nature of the SRTs. Consecutive SRTs are interdependent on each other. When certain SRTs are withdrawn, as here, the cumulative rounding would be revised based on the existing figures and therefore there is no flaw. This was further explained in an email sent by David Walgate (of NR) to David Fletcher and Richard Thackwray (of XCTL) on 10 April 2017 (**Annex / Tab 3 / XCTL / 1445-1446**).
37. As to Paragraph 5.14, it is wrong to say that NR has not responded to this point. David Walgate (of NR) spoke to Richard Thackwray (of XCTL) on 24 March 2017 and he explained that NR would not be withdrawing all the SRTs. XCTL has provided no basis on which it could justify all the SRTs being withdrawn.
38. As to Paragraph 5.15, XCTL highlights the fact that NR has a plethora of data which it considers in relation to SRTs, not only the ODA data. The data XCTL now highlights was collected by NR's Route Performance Team. What this actually shows is that NR has not used a blinkered approach to ODA data, but has considered it in the light of other evidence as well.
39. NR agrees with Paragraph 5.16. Uncleansed mean data (which, for the avoidance of doubt, was tabled by XCTL and not by NR) is an inappropriate basis for an SRT.
40. NR does not understand Paragraph 5.17. The data derives from the TRIP process, which NR has explained is a rigorous, detailed process. Decision Criteria (d) is not the only criteria to be considered. NR considered all of the Decision Criteria in the context of the proposed changes to SRTs on LN600. Applying the Decision Criteria NR prioritised the decisions in the following way. Condition (c)¹³ was given high weighting and NR considers this to be the main driving force behind the proposed changes. Conditions (d)¹⁴ and (f)¹⁵ were also

¹³ Maintaining and improving train service performance.

¹⁴ Journey times are as short as reasonably possible.

¹⁵ 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.

material. Condition (i)¹⁶ was considered to have a lower priority. Conditions: (a)¹⁷; (b)¹⁸; (e)¹⁹; (g)²⁰; and (h)²¹; (j)²², (k)²³; and (l)²⁴, were considered as not relevant.

41. Taking the Decision Criteria overall, which is what NR did, resulted in it increasing some SRTs, which in the circumstances, as explained, is correct.
42. As to Paragraph 5.18, NR has properly considered paragraphs 2.2.5 and 2.2.6 of Part D of the Network Code. NR and XCTL consulted extensively in relation to the changes to the SRTs, as set out above (though NR notes no real criticism of that consultation is made). XCTL's response to Version 1 of the TPRs simply requested NR to postpone any change in SRTs until its work alongside LNE Route Performance "*to gain further insight into any deficiencies with our Sectional Running Times*" was complete; no specific concerns with the proposed revised SRTs were raised until 24 February 2016, after the Final Rules were published.
43. NR has conducted rigorous and complete investigations into the SRTs for LN600. The data NR has used is appropriate and NR has considered it carefully in a complete way. On that basis the changes to the SRTs are appropriate and should remain.

¹⁶ Mitigating the effect on the environment.

¹⁷ Maintaining, developing and improving the capability of the Network.

¹⁸ The spread of services reflects demand.

¹⁹ Maintaining and improving an integrated system of transport for passengers and goods.

²⁰ Seeking consistency with any relevant Route Utilisation Strategy.

²¹ As far as possible, International Paths including in the New Working Timetable at D-48 are not subsequently changed.

²² Enabling operators to utilise assets efficiently.

²³ 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.

²⁴ No International Freight Train Slot included in section A of an International Freight Capacity Notice shall be changed.