

28. In respect of these other disputed possessions arising out of NAUM-30, the Panel considers that, as a general principle, Network Rail has not set out to provide the Train Operators, or this Panel, with sufficient information, including how it had due regard to the Decision Criteria in making its decisions in each case, to enable either the Train Operators, or this Panel, to make appropriate balanced judgements as to whether or not the proposed amendments to the Rules of the Route should reasonably be made under the provisions of PARTP.
29. The Panel reminds Network Rail that, when invoking the provisions of PARTP, it is upon Network Rail that falls the burden of demonstrating the good and sound reasons as to why Train Operators should acquiesce in changes, potentially to their detriment, to Rules of the Route or Rules of the Plan that have previously been agreed. Although, for reasons of convenience, there may be some procedural overlap in the ways in which agreement is sought for changes to the Rules of the Route, as compared with the procedures used to operate the Supplemental Timetable Revision process (Condition D4.8), the fundamental difference is that Condition D4.8 relates to the execution of agreed possessions, whereas PARTP is an "upstream" process in which Network Rail has more the status of suppliant, seeking to introduce changes, for example, new or extended possessions. In particular, if Network Rail does not convince either the Train Operators, or a subsequent dispute Panel, of the case for proposed changes to the Rules of the Route, Network Rail is not entitled to implement those changes or to introduce them into the Condition D4.8 Supplemental Timetable Revision process.
30. The Panel was told that the programme of proposed amendments to the Rules of the Route was so interdependent that a determination, by the Panel, that one proposal should not be adopted, might pose such problems with executing works that relied on other related proposals, that the overall intention of NAUM-30, that the VHFT be implemented in December 2008, would be rendered unachievable (This proposition was referred to at the hearing as the "house of cards" argument). That said, no arguments were presented on behalf of Network Rail to support any contention that PARTP entitled Network Rail to propose, and/or implement changes to the Rules of the Route that could not be justified to the individual Train Operator, at the level of the individual amendment. The Panel therefore decided that the discharge of its own terms of reference to "*reach its determination on the basis of the legal entitlements of the dispute parties and upon no other basis*" (Rule A1.18), meant that it could give credence to such strategic considerations only to the extent that they are argued (and accepted by Train Operators) in fulfilment of PARTP 3.5.1 and 3.5.2, in relation to the individual proposals.
31. In relation to all the disputed elements of NAUM-30, the common theme for all the disputing Train Operators is that each Network Rail proposal unduly disrupts the short term ability of the Train Operator to meet its customers' needs (passengers or freight) and that the Train Operators have not been given adequate assurance in relation to the measures proposed to mitigate that disruption, in both the short and medium term. The Panel considers that, for it to be able to make balanced judgements about the acceptability of proposed changes to the Rules of the Route, it needs confirmation that Network Rail and the affected Train Operator have shared information on the following:
 - 31.1. the extent of the contractual commitments between Train Operators and their contracting customers, and an appreciation of the acceptable limits of potential disruption;
 - 31.2. the opportunities to pass during a disruption, traffic with special requirements (e.g. requiring access to specific terminals, loading gauge or length);
 - 31.3. the measures Network Rail proposes to preserve key requirements, including, but not limited to (and taking into account the terms of the Provisional Order referred to in 2.2,2)
 - 31.3.1. safe journey opportunities to/from school for school-children in term-time;
 - 31.3.2. access to maintenance depots;

- 31.3.3. alternative through routes for electric traction;
 - 31.3.4. alternative through routes for W10 gauge intermodal traffic; and
 - 31.3.5. access to freight customer terminals;
 - 31.4. an indication of the scale of the available capacity for diverted traffic on alternative routes, together with the extent, if at all, to which Network Rail depends for the delivery of that alternative capacity upon modifications to the Train Slots of other Train Operators not otherwise affected by the amendments to the Rules of the Route.
32. In setting these guidelines for its consideration of other elements within NAUM-30 the Panel is not adopting a stance that implies that nothing can or should be determined in relation to the acceptance of a proposed amendment to Rules of the Route unless the consequences of that proposed amendment have been translated into a fully timed and validated timetable draft. Indeed the Panel considers that such a proposition would have unwarranted resource implications, and would in many instances be disproportionate to the changes proposed. However the Panel does consider that, to be able to respond to proposals made by Network Rail under PARTP
- 32.1. Train Operators do need to be advised in at least broad terms, of the numbers, for example, of proposed available train slots per hour and the allocation of those train slots as between each passenger and freight operator,
 - 32.2. in many instances a professional train-planning judgement will give a reasonable degree of assurance upon which decisions could be based and considered by Train Operators; but that
 - 32.3. where Network Rail gives comfort on the basis of such professional judgements, it should understand that it is thereby committing itself in due course to produce a practicable train plan which delivers the substance of those judgements.
33. In broader terms, evidence of mitigation proposals, is a material part of any explanation as to why, having due regard to the Decision Criteria, Network Rail should have concluded that some of the Decision Criteria should have been judged more persuasive than others.

The Panel's findings in relation to possessions other than in Week 9: specific considerations

34. The Panel has identified the following proposals as having elements in common, in the remainder of NAUM-30:
- 34.1. Weeks 15 to 19 Preston Fylde Junction to Lancaster South Junction All Blocked for Line Speed enhancement works including re-railing and renewals of crossings;
 - 34.2. Weeks 18 to 21 Oxenholme to Penrith, All Blocked for Line Speed enhancement works
 - 34.3. Week 21; Denbigh Hall North Junction to Hanslope Junction: All Blocked for installing switched and crossings as part of the Milton Keynes re-modelling;
 - 34.4. Weeks 10 to 24: weekend All lines blocked in the Rugby Station area, commencing 10:00 Sat to 0935 Sun; of these
 - 34.5. Week 22: (August Bank Holiday) All Lines Blocked at Rugby from 01:30 Sat to 05:30 Wednesday 27th for OHLE and critical signalling commissioning work; this interacts with
 - 34.6. Weeks 22 to 24: 16 day blockade of Nuneaton and Trent Valley lines for purposes of replacement of S&C, signals, and OHLE, and for the commissioning of Trent Valley signalling (re-scheduled from an earlier date);