

JOINT SUBMISSION TO TIMETABLING PANEL

BY

ARRIVA TRAINS WALES LIMITED

AND

NETWORK RAIL INFRASTRUCTURE LIMITED

TTP REFERENCE 376

21 SEPTEMBER 2010

1 DETAILS OF PARTIES

1.1 The names and addresses of the parties to the reference are as follows:-

- a) Arriva Trains Wales Limited whose Registered Office is at St Mary's House, 47 Penarth Road, Cardiff, CF10 5DJ ("ATW") ("the Claimant") and
- b) Network Rail Infrastructure Limited whose Registered Office is at Kings Place, 90 York Way, London N1 9AG ("Network Rail") ("the Respondent").
- c) ATW's contact details are Chris Dellard, Engineering & Access Planning Manager, [REDACTED]
- d) Network Rail's contact details are Matt Allen, Engineering Access Manager, [REDACTED]

1.2 Third parties that may be affected by the Panel finding in any of the ways sought in Section 8 are as follows:

- (a) West Coast Trains Limited (Trade as Virgin Trains)
- (b) Northern Rail
- (c) First Keolis (Trans Pennine Express)
- (d) DB Schenker
- (e) Freightliner Intermodel
- (f) Freightliner Heavy Haul
- (g) Direct Rail Services
- (h) Colas Rail
- (i) First Scotrail

2 THE PARTIES' RIGHT TO BRING THIS REFERENCE

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Conditions D2.1.7 and D5.1.1 of the Network Code.

3 CONTENTS OF REFERENCE

The Parties have together produced this joint reference and it includes:-

- (a) The subject matter of the dispute in Section 4;
- (b) A summary of the issues in dispute in Section 5;
- (c) A detailed explanation of the issues in dispute prepared by the Claimant with a paragraph by paragraph response from the Respondent in Section 6;
- (d) Any further issues raised by the respondent in Section 7;
- (e) In Section 8, the decisions of principle sought from the Panel in respect of
 - (i) legal entitlement and
 - (ii) remedies;
- (f) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

- 4.1 A dispute regarding possessions in the Warrington Bank Quay area.
- 4.2 This dispute arises over a possession in the Warrington Bank Quay area as published in the Period 12 Confirmed Period Possession Plan (CPPP) which covers Weeks 44 to 48 of the December 2010 timetable, and which affects ATW's Chester-Manchester services in Week 47; and over possessions in the Warrington Bank Quay area as published by Network Rail in a confirmation email in accordance with the procedure for altering Rules of the Route and which affect ATW's Chester-Manchester services in Weeks 49 and 50.
- 4.3 ATW disputes the timing of these possessions, which are 25.5 hours in duration and start at 1335 Saturday and finish at 1500 Sunday.
- 4.4 Details of the disputed possessions are outlined in Annex A. ATW and Network Rail agree that the possessions have been correctly consulted in accordance with the Network Code condition D2.1.10 and the National Rules of the Plan section 3.

- 4.5 An extract from Schedule 5 of Arriva Trains Wales' track access contract, detailing its rights to operate services between Chester and Manchester, is attached at Annex B.

5 SUMMARY OF DISPUTE

- 5.1 ATW operates an hourly service in each direction between Chester and Manchester Piccadilly. The service level is specified in the Passenger Service Requirement (PSR) of ATW's franchise agreement with DfT (attached at Annex C). ATW has track access rights with Network Rail to support this requirement. The service traverses a section of the West Coast Main Line (WCML) between Acton Grange Junction and Winwick Junction via Warrington Bank Quay (hereafter referred to as 'WCML'). The service calls at stations between Chester and Manchester: these are Helsby, Frodsham, Runcorn East, Warrington Bank Quay, Earlestown, Newton-le-Willows and Manchester Oxford Road. On Saturdays, most services are through services between Llandudno and Manchester. The PSR states that at least 50% of the services on Mondays to Saturdays will run direct from either Llandudno or Bangor. The services are operated primarily by Class 175 DMUs which are either 2-car or 3-car. The service carries mainly local passengers but also some longer-distance passengers.
- 5.2 Network Rail has planned a series of possessions in the Winwick Junction area in order to carry out S&C renewals. Other maintenance and renewal work is planned to piggyback on the core work. The workbank was originally proposed differently, but was re-evaluated by Network Rail during the course of the 2011 Rules of the Route process. Network Rail made its decision on what form the possessions should take after the publication of Version 4 (Final) Rules of the Route. Week 47 was proposed in time for publication in the Draft Period Possession Plan (DPPP). ATW objected to this proposal due to the Saturday lunchtime start time. Network Rail published the possession unchanged in the Confirmed Period Possession Plan (CPPP) and ATW referred this decision to ADC. Weeks 49 and 50 were proposed through the procedure for altering Rules of the Route as the timetable weeks were in advance of the publication of the DPPP. ATW objected to the proposals due to the Saturday lunchtime start times. Network Rail published the possessions unchanged and ATW referred these decisions to ADC.

- 5.3 Documents showing the chronology of the processes that have been followed are attached at Appendix D.

6 EXPLANATION OF EACH ISSUE IN DISPUTE WITH RESPONSE

Issue 1 – Passenger and revenue impacts on ATW

- 6.1.1. Passenger numbers are sustained at a reasonably high level throughout the core part of the day, including on Saturdays. Passenger flows are slightly heavier in the Chester-Manchester direction in the morning and vice-versa in the afternoon and evenings, but the difference is marginal.
- 6.1.2. These possessions prevent ATW's services from operating on their normal route and serving the intermediate stations between Chester and Manchester Piccadilly. This requires ATW to provide a rail replacement bus service.
- 6.1.3. In November 2009, Network Rail took three weekends of possessions affecting the WCML with similar start and finish times. As far as ATW is aware, this was the first time that possessions affecting ATW's services on this route were taken in this manner. It proved more difficult to manage the customers on buses than on a Sunday, and it affected ATW's revenues much more than expected. ATW's experiences of those possessions have informed its views on the possessions now in dispute.
- 6.1.4. It is now clear to ATW that the only way to sensibly take possessions on this route is for possessions to affect the Sunday only or, where necessary, the whole weekend. This provides a clear message to ATW's passengers. Where possessions of 30 hours or less are required, ATW believes that it is most appropriate on a local route to confine the possessions to Sundays only, in order to keep the Saturdays free for shopping and other day-trips.
- 6.1.5. An all day Sunday possession would affect 30 of ATW's services. The times as proposed would affect 11 Sunday services but also 21 Saturday services which are busier.
- 6.1.6. It should be noted that many passengers on this route on weekends are making day trips and will not travel at all if the line is shut in either the

morning or afternoon. Disrupting the train service on both days will strongly discourage people from travelling at all on the weekend, which is unacceptable for a 25.5hr possession.

- 6.1.7. The standard bus journey time between intermediate stations is typically twice as long by bus as by train. This will further discourage people from making day trips. The total all-stations journey time is as follows:

Train 1h04

Bus 2h10

- 6.1.8. A lunchtime Saturday start will severely disrupt many passengers on this route who will be making day-trips, for shopping, sporting events and socialising. Many people who use the train regularly – whether weekly or every few weeks – are unlikely to know that the route will be blocked as they will not be looking out for it, and will face the inconveniences of a bus journey home. While passengers may make this mistake once, ATW does not believe that they will make it again. Unlike passengers on inter-urban services, who are strongly encouraged to book tickets in advance and who will be more prepared for changes to the service, passengers on more local urban routes will expect to turn up and find a train, especially on a Saturday. Between Chester and Manchester, no advance purchase fares exist as the market does not warrant it.

- 6.1.9. The industry often talks of suppressed demand on Sunday afternoons, but these possessions are likely to suppress demand on this route not just on Saturdays but on the entire weekend, as it will not be possible to make a morning outward and an afternoon return journey on either day without use of rail replacement buses.

- 6.1.10. Schedule 4 revenue compensation payments for the similar possessions in the Autumn of 2009 were £~~3~~ each. ATW's actual revenue loss was £~~3~~ each. (This compares to £~~3~~ for a possession of the same duration but confined to a Sunday only.) The difference between the Schedule 4 compensation and the actual revenue loss is because Schedule 4 will compensate for the trains directly affected by the possessions but does not acknowledge that passenger numbers will be suppressed all weekend due

to the timing of the possessions. While unlikely to compare in real terms to Virgin Trains' revenue loss, it does represent a significant and unfair burden on ATW.

Response by Network Rail to Issue 1

6.1.11. Network Rails plans to renew the S&C at Winwick Jn were first formally presented to the industry in our 2011 version 1 preliminary ROTR. The strategy originally proposed to deliver these works was 6 x 25.5hr all lines BLOCKED possessions between Weaver Jn and Springs Branch Jn dated in weeks 47 to 52. The times for these possessions were proposed as 1335 Sat to 1500 Sun and it was Network Rails intention that this disruption would be planned within the working timetable which was being developed as part timetabling draft for the Dec 2010 principle timetable period.

6.1.12. The comments that we received to our 2011 version 1 preliminary ROTR proposals from Operators were:

- ATW: S&C renewals Acton Grange Jn-Winwick Jn: we do not accept both the volume and the proposed start/finish times of these possessions. We would like to understand why each possession prevents any access at all through this corridor. Period B, Eccles-Earlestown: These are not taken in conjunction with a Period Block Acton Grange S&C renewals. Why not? Overall there are 22 weekends where the Chester-Manchesters would be affected. This is unacceptable.
- Northern Rail: As a result of limited capacity on diversionary routes, we require these possessions to be confined to Sunday.
- Virgin Trains: Pending paths via Man

6.1.13. This possession strategy for works at Winwick Jn was not altered in our version 2 final ROTR document for the principle timetable period.

6.1.14. The possession strategies to deliver these works remain unchanged until version 4 ROTR. Throughout the process there was pressure from all impacted operators to reduce the disruptive impact of the possessions.

Virgin Trains sought a reduction in the number of 25.5hrs, Northern Rail sought to reduce the impact of diversions of WC services via Manchester and ATW have sought the times of the possessions to impact Sundays only.

6.1.15. During June 2010 we reviewed the customer's version 3 responses and worked with the S&C renewals team to deliver an amended proposal for the works at Winwick Jn. The amended proposal reduced the number of 25.5hr possessions and increased the number of 16hr possessions required to deliver the works at Winwick Jn. At this stage in the process we also had the view that the determination from dispute TTP271 (dispute between Virgin Trains and NR in connection with possession times between Carstairs and Law) set a preference in favour of the supporting the requirements of local passenger services when planning the possession times. In Version 4 ROTR was amended to include the reduced number of 25.5hrs and the possession times moved to all day Sunday. At version 4 ROTR we also altered our timetabling intention for the WTT so that 6x16hr possessions became the base timetable plan in weeks 47 to 52, overlaid with 3x25.5 hrs possessions which would be catered for timetabling wise by the supplemental timetable revision process.

6.1.16. Following further responses to this amendment in version 4 ROTR we reviewed again the impact of these possessions on the timetable and decided that moving the possession times to all day Sunday was the wrong application of the decision criteria.

6.1.17. With the exception of the local intermediate stations of Helsby, Frodsham and Runcorn East and local passenger journeys between Warrington BQ and Earlestown or Newton-le-Willows an alternative rail service is available to passengers operated by Northern Rail or Trans Pennine Express for passengers to access Manchester. A diversionary route is available to ATW for services between Manchester and Chester with little impact on journey times between these two key locations. Network Rail accepts that capacity is at a premium between Stockport and Manchester however believes that an hourly slot for a diverted ATW service is available. It is Network Rail's view that the best alternative arrangements for passengers would divert Chester to Manchester services via Northwich and Stockport, bussing local

passengers to Warrington Central and transferring passengers to other operator's services.

- 6.1.18. In terms of suppressing the local ATW weekend passenger market if the times for these possessions were not altered to impact all day Sunday the long distance passenger operator will equally argue that passengers not having an opportunity for reasonable train services home on Sunday will not take or plan a weekend trip and therefore the long distance passenger market is suppressed with passengers choosing not to travel out on the Friday evening or Saturday morning.
- 6.1.19. Since the compliance with West Coast Route Modernisation the weekend the West Coast Anglo Scottish market has seen a 55% growth in passenger numbers. Sunday afternoon is one of the busiest periods for passenger's travelling on the West Coast route. For Virgin Trains to timetable and divert Anglo Scottish services using diesel traction via Manchester would see them have to rewrite their timetables for the Chester and North Wales services, a route not directly impacted by the works taking place at Winwick Jn.
- 6.1.20. In July 2010 prior to the period possession plan process Network Rail formally requested the possession times to revert back to the times 1335 Sat to 1500 Sun which we originally proposed.
- 6.1.21. The work planned at Winwick Jn is the complete S&C renewal of 679, 680a/b, 681a/b, 682, 683a/b points (8 point ends in total) in a difficult location to access and is a job that is not possible to deliver using the modular S&C renewal techniques.
- 6.1.22. The job is planned in a series of 16 hour weekend possessions in weeks 45-52, with the extensions in weeks 47, 49 and 50 to 25.5hr possessions.
- 6.1.23. There will be a significant performance impact if the renewal is not completed, the local maintenance delivery team are having problems preventing further deterioration with voiding occurring around the points. As such we have had a number of repeated S&T failures which are down to the track shaking the S&T assets apart. We are struggling to resolve this despite tamping and kango packing regimes. There is significant

performance risk whenever these fail and it prevents traffic movement on both the Main line and Earlestown lines.

6.1.24. Additionally, the voiding issues bring risk to the IBJ's which, even though they have been recently installed, struggle due to the geometry and ballast memory, bringing increased risk of a severe defect.

6.1.25. Engineers in the local maintenance delivery unit are suggesting that a TSR is likely within the next 12-18 months depending on deterioration rated and this would be in the region of 50-60mph.

6.2. Issue 2 – Alternative courses of action available to ATW

6.2.1. There are several ways for ATW to seek to reduce the impact of possessions on the WCML. These are:

- Terminate trains at Runcorn East; bus to Manchester.
- Terminate trains at Runcorn East; bus to Warrington Central via Warrington Bank Quay, Earlestown and Newton-le-Willows; passengers transfer to other operators' services to Manchester.
- Divert trains via Mickle Trafford Junction, Northwich, Edgeley Junction and Stockport ('Northwich'); bus all stations.
- Divert trains via Crewe (reverse) and Wilmslow ('Crewe'); bus all stations.

6.2.2. Terminating trains at Runcorn East is no longer an option to ATW due to the difficulties with using Runcorn East as an interchange between train and bus. There is very little room to manoeuvre in the station car park and buses in the past have got stuck on the grass verges. It is also unstaffed and there are no customer facilities.

6.2.3. Diversions allow passengers from Chester to Manchester to remain on a train, although all intermediate stations are missed. Of the diversionary routes available to ATW, Northwich is the preferred option. Both diversionary options necessitate the use of the line from Slade Lane Jn to Piccadilly which is particularly busy. Paths over the diversionary route via

Northwich have generally been available to ATW on Sundays. On Saturdays paths were found between Edgeley Jn and Manchester when similar possessions took place in November 2009, but ATW was told by Network Rail's Train Planners that this was not something that could be relied upon in the future. ATW has little confidence that Network Rail will be able to path its services between Slade Lane Jn and Piccadilly on the Saturdays during these possessions, or during similar possessions in the future.

6.2.4. One option that is not available to ATW on a Saturday afternoon is to run trains beyond Chester to Runcorn East, in addition to diverting trains to Manchester via Mouldsworth or Crewe. ATW operates a standard pattern timetable Mondays to Saturdays and the necessary utilisation of units on other routes on a Saturday precludes this. In order to minimise disruption as best as possible, ATW would expect to divert to Manchester and to bus the intermediate stations.

6.2.5. It should be noted that, if most of ATW's passengers were through passengers, diverting the trains to Manchester would suffice and the possessions would not be in dispute. ATW has disputed the possessions because the majority of its passengers on this route are making local journeys.

Response by Network Rail to Issue 2

6.2.6. Network Rail's application of Network Code Part D, 6 Decision Criteria in determining the access pattern for the Winwick Jn S&C renewal in Period C 2011:

Decision Criterion	Evidence	NR Opinion	Weighting
(a) sharing the capacity, and securing the development, of the Network for the carriage of passengers and goods in the most efficient and economical manner in the interests of all users of railway services having regard, in particular, to safety, the effect on the environment of the provision of railway services and the proper maintenance, improvement and enlargement of the Network;	<ul style="list-style-type: none"> NR has substantially revised access plan to minimise impact on operators (originally 6 x 25.5 hrs Sat-Sun, now 5 x 16 hrs Sun plus 3 x 25.5 hrs Sat-Sun) Planned to carry out renewal in expensive manner in order to reduce access pattern and impact of infrastructure out of use Asset condition driving timely delivery of work A rail route is available between Manchester and Chester via 	<ul style="list-style-type: none"> Where 25.5 hrs is essential, prioritised Virgin Trains' Anglo-Scottish Sun pm services due to volume of passengers and distance travelled over impact on ATW services to Chester and beyond on Sat pm as main impact is on local passengers and a diversionary route is available to serve Chester. Impact on Northern and TPE services caused by Manchester diversions and 2 track railway/safety speed at 	NR found in favour of the proposal for the possession times between 1335 Sat and 1500 Sun

Decision Criterion	Evidence	NR Opinion	Weighting
	<p>Northwich and Mickle Trafford</p> <ul style="list-style-type: none"> An alternative Northern Rail/TPE service is available between Warrington Central and Manchester and for the local Chat Moss stations In week 47 Sat and Sat/Sun of weeks 49 and 50 a route is available between Chester and Runcom East allowing ATW to serve Helsby, Frodsham and Runcom East from Chester with a bus operation from Runcom East onwards. It is difficult to find paths for diverted WCML services through Manchester Piccadilly on a Saturday afternoon due to the frequency of the TPE and Northern services Between 1335 Saturday and close of service on Saturday ATW have 21 class 1 passenger services impacted (VT friendly times) Between 1500 Sunday and close of service on Sunday VT have 30 impacted class 1 services (ATW friendly times) 	<p>Farington is considered to be flexing only.</p> <ul style="list-style-type: none"> Network Rail believes that the impacted passenger numbers at the local stations Helsby, Frodsham and Runcom East on the Saturday afternoon is far fewer than the number of passengers impacted by the VT Anglo Scottish services 	
(b) seeking consistency with any current Route Utilisation Strategy which is either (i) published by the Strategic Rail Authority or the Department for Transport before 31 May 2006, or (ii) established by Network Rail in accordance with its Network Licence	No evidence	N/A	N/A
(c) enabling a Bidder to comply with any contract to which it is party (including any contracts with their customers and, in the case of a Bidder who is a franchisee or franchise operator, including the franchise agreement to which it is a party), in each case to the extent that Network Rail is aware or has been informed of such contracts	<ul style="list-style-type: none"> This Rules of the Route change has been correctly consulted in accordance with clause D2.1.10 of the Network Code. NR accepts that its decision on the access to be taken in the Warrington area and its application of the decision criteria can be tested at appeal. In overall terms NR has balanced its application of the Decision Criteria to impact on the lowest number of services. 	<ul style="list-style-type: none"> The correct contractual process has been used to consult the ROTR change NR worked to balance impact on ATW and other Operators on Saturday pm of weeks 47, 49, 50 v impact on Virgin Trains long-distance services on Sunday pm. That the correct application of the Decision Criteria is to take this possession between 1335 Sat and 1500 Sun 	NR found in favour of the proposal for the possession times between 1335 Sat and 1500 Sun
(d) maintaining and improving the levels of service reliability	N/A	N/A	N/A
(e) maintaining, renewing and carrying out other necessary work on or in relation to the Network	<ul style="list-style-type: none"> S&C renewal at Winwick Jn replaces life-expired asset S&C renewal prevents the imposition of a TSR and increased failure of the points at Winwick Jn 	<ul style="list-style-type: none"> The completion of the planned renewal of the junction at Winwick safeguards the route against loss of reliability infrastructure. 	In favour of Network Rail.
(f) maintaining and improving connections between railway passenger services	N/A	N/A	N/A
(g) avoiding material deterioration of the service patterns of operators of trains (namely the train departure and arrival frequencies, stopping patterns, intervals between departures and journey times) which those operators possess at the time of the application of these criteria	<ul style="list-style-type: none"> NR has chosen to divert 21 ATW services on 3 Saturday afternoons. 	<ul style="list-style-type: none"> When possible a consistent pattern of possessions has been planned. NR try to keep the 25.5 and 16 hr possessions aligned so a consist message about the disruption can be advertised to passengers 	In favour of Network Rail
(h) ensuring that, where the demand	<ul style="list-style-type: none"> This restriction of use impacts 	<ul style="list-style-type: none"> With the expectation of 	In favour of Network

Decision Criterion	Evidence	NR Opinion	Weighting
of passengers to travel between two points is evenly spread over a given period, the overall pattern of rail services should be similarly spread over that period	<p>passengers' abilities to travel between local stations between Chester and Warrington.</p> <ul style="list-style-type: none"> Sunday afternoons is one of the busiest days of the week in terms of Anglo-Scottish passenger numbers on the WCML. 	<p>passengers wishing to travel from Helsby, Frodsham and Runcorn East, all other passengers have an alternative rail service. Unfortunately it is impossible to deliver the works without impacting local passenger journeys.</p>	Rail
(i) ensuring that where practicable appropriate provision is made for reservation of capacity to meet the needs of Bidders whose businesses require short term flexibility where there is a reasonable likelihood that this capacity will be utilised during the currency of the timetable in question	<ul style="list-style-type: none"> A disruptive restriction of use taken by Network Rail will always constrain timetable capacity 	<ul style="list-style-type: none"> Irrelevant in this case. 	N/A
(j) enabling operators of trains to utilise their railway assets efficiently and avoiding having to increase the numbers of railway assets which the operators require to maintain their service patterns	<ul style="list-style-type: none"> Network Rail recognises that the restrictions of use that we take to maintain, renew or enhance the infrastructure more often than not prevent an operator from fully utilising their railway assets. 	<ul style="list-style-type: none"> ATW will be compensated through the schedule 4 mechanism to help support them with some of the additional cost they might incur as a consequence of NR taking this restriction of use. 	In favour of ATW.
(k) facilitating new commercial opportunities, including promoting competition in final markets and ensuring reasonable access to the Network by new operators of trains	Irrelevant in this case.		
(l) avoiding wherever practicable frequent timetable changes, in particular for railway passenger services	<ul style="list-style-type: none"> NR has planned the majority of the access in a 16 hr WTT period block. NR has standardised start and finish times for weeks 47, 49 & 50. The number of non-standard weekends has been kept to a minimum 	<ul style="list-style-type: none"> The grouping of the 25.5 and 16hrs permits a consistent TT plan to be adopted of each of the weekends disruptive works are planned in the Warrington area. 	In favour of Network Rail
(m) encouraging the efficient use of capacity by considering a Bidder's previous level of utilisation of Train Slots	Irrelevant in this case.	N/A	N/A
(n) avoiding, unless absolutely necessary, changes to provisional International Paths following issue of the applicable Rules of the Plan	Irrelevant in this case.	N/A	N/A
(o) taking into account the commercial interests of Network Rail and existing and potential operators of trains in a manner compatible with the foregoing	<ul style="list-style-type: none"> NR has balanced its commercial interests with those of Operators by reducing the disruptive footprint of this work. It has prioritised the commercial interests of Virgin Trains over ATW on the basis that it is of a greater and wider benefit to the railway to transport large numbers of long-distance passengers efficiently and conveniently on Sunday afternoon. 	<ul style="list-style-type: none"> The planning of the possession between 1335 Sat and 1500 Sun has the least damaging financial impact in passenger revenue. 	In favour of Network Rail

6.3. Issue 3 – ATW comments on Network Rail's application of the Decision Criteria

6.3.1. Network Rail has applied the Decision Criteria to its decision and has shared this with ATW in table format. ATW has explained its position fully in this paper and believes that its arguments together demonstrate that Network Rail has not applied the relevant Decision Criteria correctly. ATW

wishes to comment on several of Network Rail's arguments in the table in order to further clarify its position.

- 6.3.2. At criterion (a), in support of the planned possession times Network Rail argues that a diversionary route is available for ATW's services and that ATW's passengers are travelling a shorter distance, and also that there are less of them than Virgin Trains passengers. ATW argues that this does not address the issue that the effect of a Saturday afternoon possession start is to suppress demand over the entire weekend, and that the diversionary route does not in any way benefit the majority of passengers travelling from intermediate stations.
- 6.3.3. At criterion (h), in support of an even spread of services, Network Rail argues that only passengers at Helsby, Frodsham and Runcorn East do not have an alternative train service. ATW argues that it is also the main operator linking Warrington Bank Quay and Newton-le-Willows with Manchester and that, additionally, the possessions prevent local journeys being made by train (e.g. Runcorn East to Warrington Bank Quay).
- 6.3.4. At criterion (j), in acknowledging that possessions can prevent operators from fully utilising their railway assets, Network Rail argues that the Schedule 4 revenue compensation mechanism will compensate ATW to an extent, and regards this as in ATW's favour. It is true that ATW will be compensated to an extent but ATW does not believe that this has the same weight as Network Rail gives it. This is because Schedule 4 compensates for affected trains only and does not recognise the impact on the whole weekend's revenue, as explained by ATW in Section 6.1.12.
- 6.3.5. At criterion (l), in support of avoiding wherever practicable frequent timetable changes, Network Rail argues that in grouping the possessions into Weeks 47, 49 and 50 it has allowed for a consistent timetable plan to be adopted. ATW would argue that non-consecutive weekends do not constitute a consistent timetable plan.

At criterion (o), Network Rail argues that it has prioritised the commercial interests of Virgin Trains because this happens to give the least damaging financial impact in passenger revenue. ATW argues that the impact on ATW's passengers, and the

effect on ATW's business, is disproportionately large. It is, therefore, an issue of reasonableness.

Response by Network Rail to Issue 3.

- 6.3.6. Network Rail recognises the impact on the intermediate passenger traffic and would be willing to work with ATW to try and reduce the impact on local passenger services, by offering access to operate services between Chester and Runcorn East.
- 6.3.7. Network Rail remains fixed on the view that Warrington Bank Quay passengers travelling towards Manchester will migrate towards Warrington Central and use Northern Rail/Trans Pennine Express services. Passengers travelling between Newton-le-Willows and Manchester will have an alternative rail service available to them operated by Northern Rail to/from local stations towards Manchester.
- 6.3.8. Network Rail accepts that the restrictions of use at Warrington Bank Quay prevent ATW and other operators from fully utilising their railway assets, however any disruptive restriction of use planned on the network has a similar impact on all affected operators.
- 6.3.9. Related issues, but not necessarily anything that would weight the application of the decision criteria any further in Network Rail's favour are:
- Any possessions in the Warrington area would need to finish by 2345 Sun to allow for the passage of the first down direction sleeper. This could make it difficult to secure a 25.5 hr possession as a normal ROTR start for a Saturday night possession would only allow for a 24.25 hr possession.
 - The maximum gauged freight service which can be diverted via Manchester is SB1C gauge (W9) and electric hauled trains would need to be diesel hauled and journey times extended. Currently on Sunday pm there is time sensitive freight service (containers/retail goods) from Mossend to Rugby.

6.4. Issue 4 – Principle

- 6.4.1. ATW wishes to make clear that it believes that Network Rail's approach to the planning of these possessions raises an important issue of principle, not just for ATW but for all operators that provide urban services.
- 6.4.2. In 2011, ATW's Chester-Manchester service is affected on 24 weekends, all due to possessions on the WCML. Of these, 4 are all-weekend and 5 start at 1335 Saturday. If possessions on this route routinely become 1335 Saturday start it will fundamentally alter ATW's business on this route. There is a serious threat in Network Rail's decision not just to ATW and its passengers but to any operator providing local and often lower-fare-per-passenger services into and out of urban centres on Saturday afternoons.
- 6.4.3. ATW believes that, if it had not raised these issues now, it would have lost its only chance to prevent routine possessions disrupting a disproportionate number of its services and its customers on weekends for the foreseeable future.

Response by Network Rail to Issue 4

- 6.4.4. Network Rail confirms that it is our intention when engineering activities require restrictions of use to planned for works greater than can be delivered in a 16hr possession in the Warrington Bank Quay area that the times 1335 Sat to 1500 Sun are used for these possessions.
- 6.4.5. During the 2011 timetable year ATW's Chester to Manchester service is affected on 24 weekends. There are 5 all-weekend possessions planned on Bank Holiday weekends (weeks 39 (Christmas weekend), 4, 5, 9 and 22), 6 weekend possessions between 1335 Saturday and 1500 Sunday (planned in weeks 47, 49, 50, 10, 11, 12). All other possessions on the route 16hrs (planned in weeks 45, 46, 48, 51, 52, 23, 24, 25, 26, 27, 28, 29 and 30), totalling 24 weekends of disruption.
- 6.4.6. Our planning principles when delivering access plans in the Warrington area are:

- 25.5 hr all lines BLOCKED possessions are proposed when there is no alternative. Works are to be planned largely in 16hr possessions between 2300 Sat to 1500 Sun
- If possessions greater than 16hrs are required and it is safe and efficient to do so they are to be planned with windows of ALO or SLW to allow local passenger of services to pass the site of work
- All lines BLOCKED 25.5hr possessions between Acton Grange Jn and Winwick Jn and between Springs Branch Jn and Balshaw Lane Jn are to be taken between 0001 Sun and 0030 Mon (1S25 sleeper to be retimed by moving 30 min engineering recovery allowance from north of Preston to south Preston and restricting the availability of SLW north of Preston).

7 ANY FURTHER ISSUES RAISED

7.1 None.

8 DECISION SOUGHT FROM THE PANEL

8.1. ATW seeks the following outcomes from the Panel's Determination:

8.1.1. That the possessions in question be amended to be 0001 Sunday to 0100 Monday (or something very comparable).

8.1.2. That future possessions of 25 hours' (or comparable) duration affecting ATW's services on the WCML are planned on Sundays only, including but not limited to those in Period E of 2011 that ATW has separately referred to ADC (reference TTP 360, hearing pending).

8.2. Network Rail seeks the following outcomes from the Panel's Determination:

8.2.1. That Network Rail has correctly applied the Decision Criteria in regard to the decisions that were made in the CPPP for week 47 and the Rules of the Routes changes published by email on the 27th July 2010 and that ATW are asked to accept the 1335 Sat to 1500 Sun possession times at Warrington Bank Quay in weeks 47, 49 and 50.

8.3. There are no other remedies or issues to be determined.

9 APPENDICES AND ANNEXES

The parties confirm that they have complied with **Rule H.21** of the Access Dispute Resolution Rules, which requires that

“Copies of the following documents shall also be annexed and cross referenced to the reference:

- (a) the relevant extracts of contractual Documents containing the provision(s) under which the referral to the Timetabling Panel arises and/or provisions associated provision(s) associated with the substance of the dispute; and***
- (b) [the relevant extracts of] any other Documents referred to in the reference”.***
(Rule H.21)

All appendices, and annexes are bound into the submission, and consecutively page numbered. To assist the Panel, in each Appendix or Annexe

- the heading states which Dispute Party has requested that the particular appendix be placed before the Panel; and
- Quotations, or references, that are cited in the formal submission are highlighted (or side-lined) so that the context of the quotation or reference is apparent.

Any information only made available after the main submission has been submitted to Panel Members, will be consecutively numbered, so as to follow on at the conclusion of the previous submission.

10 SIGNATURES

The Claimant	The Defendant
For and on behalf of <i>Arriva Trains Wales Limited</i>	For and on behalf of <i>Network Rail Infrastructure Ltd</i>
Signed	Signed
Print Name Chris Dellard	Print Name Matt Allen

Position Engineering & Access Planning Manager	Position Engineering Access Manager
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The Annexes and Appendices

- A Extracts showing disputed possessions
- B Extract from Schedule 5 of ATW's track access contract with Network Rail
- C PSR extract from ATW's franchise agreement with DfT/WAG
- D Extracts showing chronology of possession planning processes followed

