

Submission to Timetabling Panel

18th September 2015

1 DETAILS OF PARTIES

1.1 The name and address of the parties to the reference are as follows:-

- a) Arriva Trains Wales 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 1 Eversholt Street, London, NW1 2DN ("Network Rail") ("the Respondent").
- c) ATW's contact details are Chris Dellard, Engineering & Access Planning Manager, [REDACTED]

2 THE CLAIMANT'S RIGHT TO BRING THIS REFERENCE

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Conditions D2.7.2 and D5.1.1 of the Network Code.

3 CONTENTS OF REFERENCE

This Sole Reference includes:-

- (a) The subject matter of the dispute in Section 4;
- (b) A summary of the issues in dispute in Section 5;
- (c) In Section 6, the Decisions sought from the Panel in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
- (d) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

4.1 A dispute regarding Decisions arising in the publication of the New Working Timetable which commences on 13th December 2015. This dispute arises from Network Rail's decision to not to

include in the Timetable Train Slots between Manchester Piccadilly and Manchester Airport in both directions on Weekdays and Saturdays as set out in ATW's Access Proposal.

- 4.2 The Part or Condition that the dispute relates to is Condition D2 of the Network Code, Bi-Annual Timetable Revision Process.
- 4.3 On the Priority Date for the May 2015 Timetable on 8th August 2014, ATW included in its Access Proposal a request to extend its daytime North Wales/Chester-Manchester Piccadilly services to Manchester Airport and return. It bid for the Train Slots with the expectation of securing track access rights.
- 4.4 The Train Slots were published by Network Rail in the May 2015 New Working Timetable on 14th November 2014. They were fully compliant with Train Planning Rules ("TPRs"). On 10th February 2015 Network Rail removed the paths from the May 2015 Timetable. On 13th February 2015 ATW consulted the industry on its proposed track access application for rights to/from Manchester Airport. On 12th March 2015 Network Rail replied to ATW's consultation declining to support ATW's proposed track access application.
- 4.5 The day before the Priority Date for the December 2015 Timetable on 6th March 2015, ATW included in its Access Proposal a request to extend its daytime North Wales/Chester-Manchester Piccadilly services to Manchester Airport and return. It bid for the Train Slots with the expectation of securing track access rights.
- 4.6 Network Rail declined to include the requested Train Slots in the December 2015 New Working Timetable. ATW served a Notice of Dispute on Network Rail.

5 EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT'S ARGUMENTS TO SUPPORT ITS CASE

- 5.1 ATW disputes Network Rail's decision to not include Train Slots to and from Manchester Airport in the December 2015 New Working Timetable. In this Section ATW sets out the wider context; correspondence with Network Rail to date; and explanation of each issue in dispute.

5.2 Wider context of ATW's Access Proposal

- 5.2.1 ATW has long held an aspiration to extend services to/from Manchester Airport in response to customer feedback. The connectivity that this would provide between North Wales/Chester and Manchester Airport has many economic and societal benefits for these areas. ATW has written support for its proposals from Welsh Government, Railfuture Wales and the North Wales Economic Ambition Board representing the six North Wales Local Authorities, as well as individual Welsh Assembly Members and Members of Parliament.
- 5.2.2 ATW already has 3 services to/from the Airport on Weekdays and 2 on Saturdays. These run early in the morning or in the late evening providing good journey opportunities at those times, but the lack of a regular service for the larger part of the day has suppressed this market for journeys to/from North Wales and Chester.
- 5.2.3 There is a strong business case for extending more of these services. Currently the units and traincrew lay over at Manchester Piccadilly for 50 minutes each hour. This allows time for the trains to be extended to Manchester Airport at minimal operational cost, while creating new journey opportunities and generating additional revenue to the industry.
- 5.2.4 The benefits of extending North Wales/Chester-Manchester Piccadilly services to/from Manchester Airport are explained by ATW in detail in **Appendix E**: ATW's Form P, on which the industry was consulted in February 2015.
- 5.2.4 After some internal timetabling work to satisfy itself of the feasibility of its plans, ATW decided to include its long-held aspirations in its Access Proposal for the May 2015 Timetable. The Train Slots were fully validated by Network Rail in full accordance with TPRs and included in the New Working Timetable published on 14th November 2014. The Timetable contained some flexing of other operators' services in accordance with Schedule 5 of their Track Access Contracts. Network Rail's Offer Commentary referred to the Saturday Manchester Airport trains in relation to a Period Block in Period E, which required some amendments but did not note any other issues or concerns with the included Train Slots.
- 5.2.5 The Train Slots that were requested by ATW, and provided by Network Rail, were to extend the following existing trains between the morning and evening peaks.

Monday to Friday:

1H83 07.45 Llandudno. Forms 1D35 10.35 Manchester Airport (10.52 Manchester Piccadilly)
1H84 08.54 Llandudno Jn. Forms 1D36 11.35 Manchester Airport (11.52 Manchester Piccadilly)
1H85 09.45 Llandudno. Forms 1D37 12.35 Manchester Airport (12.52 Manchester Piccadilly)
1H86 10.44 Llandudno. Forms 1D38 13.35 Manchester Airport (13.52 Manchester Piccadilly)
1H87 11.44 Llandudno. Forms 1D39 14.35 Manchester Airport (14.52 Manchester Piccadilly)
1H88 12.53 Llandudno Jn. Forms 1D30 15.35 Manchester Airport (15.52 Manchester Piccadilly)

Saturdays:-

1H82 06.34 Llandudno. Forms 1D34 09.35 Manchester Airport (09.52 Manchester Piccadilly)
1H83 07.45 Llandudno. Forms 1D35 10.35 Manchester Airport (10.52 Manchester Piccadilly)
1H84 08.45 Llandudno. Forms 1D36 11.35 Manchester Airport (11.52 Manchester Piccadilly)
1H85 09.45 Llandudno. Forms 1D37 12.35 Manchester Airport (12.52 Manchester Piccadilly)
1H86 10.44 Llandudno. Forms 1D38 13.35 Manchester Airport (13.52 Manchester Piccadilly)
1H87 11.44 Llandudno. Forms 1D39 14.35 Manchester Airport (14.52 Manchester Piccadilly)
1H88 12.44 Llandudno. Forms 1D30 15.35 Manchester Airport (15.52 Manchester Piccadilly)
1H89 13.31 Bangor. Forms 1D31 16.35 Manchester Airport (16.52 Manchester Piccadilly)
1H90 14.42 Llandudno. Forms 1D32 17.35 Manchester Airport (17.52 Manchester Piccadilly)
1H91 15.44 Llandudno. Forms 1D33 18.35 Manchester Airport (18.52 Manchester Piccadilly)

5.2.6 Northern Rail and First Transpennine Express ("TPE") separately served Notices of Dispute on Network Rail in relation to the May 2015 New Working Timetable, specifically access offered to ATW for extending certain services to serve Manchester Airport. These were registered as TTP765 and TTP764 respectively.

5.2.7 On 10th February 2015 Network Rail removed ATW's extensions to the Airport from the May 2015 timetable (**Appendix B**: email from Network Rail). ATW is unsure if this was an official withdrawal of the Train Slots. On 10th February 2015 both Northern and TPE withdrew their disputes with Network Rail. On 13th February 2015 ATW consulted the industry on its proposed track access application for rights to/from Manchester Airport.

5.2.8 Before the Priority Date on 6th March 2015 ATW included identical requests in its Access Proposal for the December 2015 Timetable. On 17th March 2015 Network Rail wrote to ATW to decline to include the Train Slots in the December 2015 New Working Timetable.

5.3 Correspondence with Network Rail to date

5.3.1 Because Network Rail had previously included ATW's aspirations in the May 2015 New Working Timetable (subsequently removed by Network Rail on 10th February 2015), ATW consulted the industry on its proposed track access application on 13th February 2015. Network Rail declined to support ATW's proposed application in its reply of 12th March 2015.

5.3.2 On publication of the December 2015 New Working Timetable Network Rail sent ATW an email entitled 'Rejection of train slots Dec'15 – extensions to Manchester Airport'. This is included in **Appendix D1** and its two attachments are included in **Appendices D2** (letter) and **D3** (table of rejections).

5.3.3 In the rejection letter Network Rail states that ATW's Access Proposal does not meet the minimum requirements stipulated in Condition D2.5.1 and that ATW has therefore submitted an incomplete Access Proposal under Condition D2.4.6 (c) in that ATW has 'no expectation of rights for the extensions based on the current stage of ATW's application for track access rights, which is not supported by Network Rail through the reasons already set out by Network Rail during the consultation'.

5.3.5 In its rejection letter Network Rail referred to its reply to ATW's industry consultation on its proposed track access application for rights to/from Manchester Airport. Network Rail cited this as the reason why it had concluded that ATW no longer had an expectation of track access rights and so Network Rail was not obliged to include the Train Slots. No further commentary was given. The following documents are relevant to this correspondence:

Appendix E: ATW's Form P;

Appendix F: ATW's draft Supplemental Agreement;

Appendix G: Network Rail's reply; and

Appendix H: ATW's response to Network Rail.

5.3.6 Specifically, Network Rail raises the following reasons for declining to support ATW's proposed track access application: performance risk; service recovery; and reputation.

5.3.7 ATW's response to Network Rail's reply is at **Appendix H**. These issues are discussed further in Section 5.

5.3.8 Since the communications associated with ATW's track access consultation during March 2015 there has been no further correspondence.

5.3.9 A chronology of correspondence is included at **Appendix A**.

5.4 Explanation of each issue in dispute

5.4.1 In the letter rejecting ATW's Access Proposal for the December 2015 Timetable Network Rail argues that ATW has no expectation of rights because of Network Rail's unwillingness to support its proposed track access application on grounds of performance, service recovery and industry reputation.

5.4.2 ATW refutes Network Rail's assertion that ATW has no expectation of rights. ATW argues that Network Rail dismissed its proposals hastily and with no inclination to explore options or to engage with ATW in order to attempt to establish both areas of common ground and areas of disagreement.

5.4.3 Network Rail argues that the extended trains would pose an increased performance risk which in its opinion is disproportionate compared to the likely benefit to passengers.

5.4.4 ATW does not know why Network Rail is concerned about performance for the December 2015 Working Timetable when it had not raised any such concerns when it had earlier included the same Train Slots in the May 2015 New Working Timetable. In February 2015 ATW's MAA PPM for arrivals at Manchester Piccadilly from North Wales/Chester was 94.9%: it is currently 93.7%.

5.4.5 In its response to Network Rail's comments, ATW challenged its claims that the Train Slots 'would present a disproportionate level of increased risk to the network compared to the likely

benefit that would be realised by passengers'. Network Rail's assertion is predicated on the shorter turnaround times at Manchester Airport that would be needed for some trains, which nevertheless would all still be fully TPR-compliant. Network Rail also cited performance concerns with the recently introduced TPE '5th path', relating its problems with this train to ATW's proposals. Network Rail did not provide any further evidence to explain any relevant similarities between that and ATW's proposals and so ATW believes that it is not relevant.

5.4.6 ATW requested that Network Rail carry out performance modelling to demonstrate its performance concerns, which otherwise appeared to be without any meaningful quantitative analysis. Since then Network Rail has not presented any further evidence to ATW.

5.4.7 Network Rail also raised concerns with a possible knock-on effect onto other operators which would affect service recovery. Again Network Rail referred to concerns with turnaround times at Manchester Airport, using the PPM MAA at the time to suggest that shorter turnarounds would cause a further 7.4% of TPE services to start late from Manchester Airport compared to the current number.

5.4.8 In its response to Network Rail's comments, ATW argued that its own PPM target, as set out in its franchise agreement, applies to all services including those that are operating outside the Passenger Service Requirement which acts as a significant incentive to ATW to ensure that its timetables are robust. It is not in ATW's interest to jeopardise its PPM target or to perpetuate knock-on delays. Again ATW asked Network Rail exactly what options it had considered during the production period before including the Train Slots in the May 2015 New Working Timetable. Network Rail has not provided any further information to ATW.

5.4.9 Reputation. Network Rail states that the increased capacity created at Manchester Airport through the building of a 4th platform, and the ongoing wider Northern Hub capacity improvements, are to allow a service to run between the Calder Valley and Manchester Airport. Network Rail believes that this would preclude ORR's approval of track access rights to ATW beyond December 2016 (now December 2017, due to slippage of the planned works). Network Rail argues that the reputation of the industry would be damaged should the proposed rights sought by ATW be end-dated to coincide with the date on which Network Rail expects a new service to operate to the Airport from the Calder Valley.

5.4.10 ATW is not aware of such an argument having previously been used by Network Rail when any other operator has sought to introduce new or extended services. ATW responded that the reputation risk would be with ATW, not Network Rail or the wider industry. Network Rail is distanced from train operations in the minds of the public and rail users and so ATW does not believe that there is any logical reason to think that Network Rail's reputation would in any way be worsened should the rights be end-dated. Indeed it would be patronising to rail passengers to deprive them of a new service on the basis that they might be confused and disappointed should a timetable change alter their journey opportunities in the future.

5.4.11 Fundamentally, ATW believes that its arguments are flawed and not a sound legal basis for Network Rail to decline Train Slots. Network Rail has not produced any evidence to quantify its performance concerns. Nor does Network Rail have any role in making decisions based on what it perceives to be political expectations for track access rights.

6 DECISION SOUGHT FROM THE PANEL

6.1 The Panel is asked to determine that Network Rail has not demonstrated any technical reasons for claiming that ATW has no expectation of rights and so it should validate the requested Train Slots and include them in the December 2015 New Working Timetable, the track access rights for which will be subject to approval by ORR.

7 APPENDICES

ATW confirms that it has complied with Access Dispute Resolution Rule H21. All appendices are bound into the submission, and consecutively page numbered. To assist the Panel, 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 the Panel will be consecutively numbered, so as to follow on at the conclusion of the previous submission.

8 SIGNATURE

For and on behalf of Arriva Trains Wales Limited
Signed

Chris Millar

Name: Chris Millar

Position: Head of Train Planning

THE APPENDICES

		PAGE
A	Chronology of correspondence	12
B	Network Rail email removing ATW's Train Slots from May 2015 New Working Timetable	13
C1	ATW Access Proposal for December 2015 Timetable: email	14
C2	ATW Access Proposal for December 2015 Timetable: spreadsheet	15
D1	Network Rail rejection of ATW's Access Proposal for December 2015: email	18
D2	Network Rail rejection of ATW's Access Proposal for December 2015: letter	19
D3	Network Rail rejection of ATW's Access Proposal for December 2015: table of rejections	20
E	ATW Form P application form for track access rights	21
F	ATW Draft Supplemental Agreement for track access rights	32
G	Network Rail reply to ATW's industry consultation on proposed track access application for rights to/from Manchester Airport	36
H	ATW response to Network Rail's reply to ATW's industry consultation on proposed track access application for rights to/from Manchester Airport	39