

necessary to achieve compliance with the provisions of Condition D3.4.10(b), in other words, to attempt to put some flesh on the bones of what those provisions require. Those essential elements should include:

- (a) available capacity through the restricted area and over alternative routes;
- (b) proposed allocation to individual operators normally operating through the restricted area or on diversionary routes;
- (c) impact of (a) and (b) on journey times, rolling stock required (for, e.g. performance or passenger capacity), service groups, demand for services catered for where possible and, in the case of a multi-Route operator, impact on other services across the Network;
- (d) impact on the commercial and contractual obligations of a Timetable Participant.

I should stress that the elements which I have listed are indicative and not prescriptive. The approach of Network Rail must remain one of taking into account the provisions of, in particular, Conditions D2.5 and D4.6.

5.6.3 The parties also sought, as an additional outcome:

3.3.3 "that the Panel determine that parties to the Network Code should be compliant with 3.3.1 by the publication of Version 4 of the Engineering Access Statement for 2016, which is due to be issued on Friday 10 July 2015."

Again, Panel members and I were clear that we should not, at this stage, and in advance of any proper consultation, seek to require that other parties to the Network Code, that is, parties other than XC, should follow the Access Impact Matrix in their dealings with Network Rail in respect of Restrictions of Use. That said, Panel members and I agreed we could certainly commend the draft Matrix (amended as suggested in paragraph 4.2 above) as a constructive approach. I further took the view that it was open to me to direct, and I will so direct in my determination, that Network Rail should issue the draft Access Impact Matrix (amended to show need for consideration of Decision Criteria throughout, and to replace CPPP with DPPP) as a draft for consultation, explaining the reasons for that consultation, giving time for comment, (always as envisaged under Condition 8.6) with a view to incorporating the Matrix, as may be suitably amended following such consultation, into the Timetable Planning Rules at the first opportunity.

5.7 No application for Costs was made. It seems unlikely that Costs as defined were incurred by either party. The power to award Costs in a Timetabling Dispute is limited to the circumstances set out in Rule H60 and I make no award.

6 Determination

6.1 Having considered carefully the submissions and evidence, and based on my analysis of the legal and contractual issues,

I determine that the elements of information which Network Rail should provide to a Timetable Participant in order to achieve compliance with Network Code Condition D3.4.10(b) are:

- (a) available capacity through the restricted area and over alternative routes;
- (b) proposed allocation to individual operators normally operating through the restricted area or on diversionary routes;

- (c) impact of (a) and (b) on journey times, rolling stock required (for, e.g. performance or passenger capacity), service groups, demand for services catered for where possible and, in the case of a multi-Route operator, impact on other services across the Network;
- (d) impact on the commercial and contractual obligations of a Timetable Participant.

These elements are indicative and not prescriptive. The approach of Network Rail must remain one of taking into account the provisions of, in particular, Conditions D2.5 and D4.6.

- 6.2 At the hearing, Network Rail gave an undertaking that, interim to any change in the Timetable Planning Rules to incorporate the proposed Access Impact Matrix, it would use the proposed Matrix for all relevant business relating to XC. That undertaking being expressed by XC as fully acceptable -

I hereby direct (by consent) that until introduction of any change in the Timetable Planning Rules to incorporate an Access Impact Matrix, Network Rail shall apply the version of the Access Impact Matrix submitted to the Panel (as may be amended) when proposing any Restrictions of Use which will affect services operated by XC (always having regard to the Decision Criteria as they may affect XC and any other operator).

I further direct that Network Rail shall issue to the industry that draft Access Impact Statement, (amended to show need for consideration throughout of the Decision Criteria and to replace CPPP with DPPP) as a draft for consultation, setting out the reasons for that consultation, giving time for comments as envisaged under Condition D8.6, with a view to incorporating the Matrix, as may be suitably developed and amended following such consultation, into the Timetable Planning Rules at the earliest opportunity.

I confirm that, so far as I am aware, this determination and the process by which it has been reached are compliant in form and content with the requirements of the Access Dispute Resolution Rules.

Suzanne Lloyd Holt
Hearing Chair

16th April 2015

