

XCTL SOLE REFERENCE TTP 987

1 DETAILS OF PARTIES

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

- (a) XC Trains Limited whose Registered Office is at 1 Admiral Way, Doxford International Business Park, Sunderland, SR3 3XP ("XCTL") ("the Claimant");
and
- (b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London, W1 2DN ("Network Rail") ("the Defendant").
- (c) XCTL contact details: Andrew Danson, Possession Strategy Manager, XC Trains Ltd, 5th Floor, Cannon House, 18 The Priory Queensway, Birmingham, B4 6BS

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 D3.4.16 and D5.1 of the Network Code.

3 CONTENTS OF REFERENCE

This Sole Reference includes:-

- (a) The subject matter of the dispute in Section 4;
- (b) A detailed explanation 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

This is a dispute regarding the possession times of a proposed midweek night period block for renewals work between Wolverhampton and Birmingham New Street during Period C. The proposed Restriction of Use (RoU) times of 21.30 to 05.20 mean that the last XCTL service from Manchester to Birmingham, 1G71, is unable to run as booked

and misses its connection at Birmingham New Street with the last service to Bristol Temple Meads, 1V71.

This dispute arises over the application of the Decision Criteria as detailed in Part D Clause 4.6.2 of the Network Code with respect to the timing of this block, as well as Network Rail's failure to comply with Condition D3.4.10(b).

- 4.1 XCTL is the sole provider of direct rail services between Manchester Piccadilly and Birmingham New Street. 1G71 is the last train to run southbound from Manchester to Birmingham New Street and so provides the last journey option for passengers wishing to travel to Birmingham New Street and for further connections in the South West. 1V71 is the last passenger service between Birmingham New Street to Bristol Temple Meads and is deliberately timed to provide a connection for passengers arriving into New Street on 1G71. If Network Rail takes the RoU at the proposed times and duration, then this connection between two major conurbations, will be broken for 24 evenings over a six week period. This will result in less attractive journey opportunities and lengthened journey times for passengers.
- 4.2 It is important to understand the timeline of formal proposals and informal discussions for this access request which are explained in 5.1 below but also summarised in Appendix A.

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

The planning process

- a.) In April 2015 the Timetabling Panel of the Access Disputes Committee issued a determination in respect of dispute TTP773 (See Appendix B). This determination laid down the process for the requesting and issuing of capacity studies for disruptive access, which has now been incorporated into the Rules of the Route. In relation to dispute TTP987 XCTL requested a severity 2 Capacity study (See Appendix C for Access study Matrix) at Version 1 of the EAS for 2017. This was sent to Network Rail on the 27th of November 2015. At a meeting on the 12th of January 2016 between

XCTL and Network Rail, it was agreed that this capacity study would be provided. By the 26th February 2016 XCTL formally disputed the access request as the promised capacity study had still not been delivered. The access was again declined in XCTL's Version 3 response on the 06th May 2016 due to the outstanding capacity study. (see Appendix D. for summary of XCTL 2017 EAS responses). As Network Rail have failed to provide a capacity study as requested by XCTL on three separate occasions then NR are in breach of TTP773 and Condition D3.4.10(b) of the Network Code.

- b.) Network Rail took a similar period block in during Period C in 2015 which also resulted in the connection between 1G71 and 1V71 being broken. XCTL agreed to the possession strategy in good faith as it was committed to delivering as much disruptive access during midweek nights as possible, in line with passengers' wishes. Having received negative feedback from affected passengers XCTL took the decision that it would be unable to accept possessions impacting this connection in the future. XCTL's Train Planning team were given instructions from the company executive that although the business remained supportive of midweek night possessions certain connections had to be maintained.
- c.) Network Rail proposed another midweek campaign between Wolverhampton and Birmingham New Street during the EAS process for 2016. XCTL rejected the requested possessions, proposing alternative times of 21:55 to 05:55. These times would have given Network Rail eight hours and allowed the connection between 1G71 and 1V71 to be maintained. XCTL were clear that they would be unable to accept any possessions proposed by Network Rail that impacted on this connection. (See Appendix E.) Following XCTL's proposal Network Rail removed the access from the plan and didn't re-propose until it Version 1 of the 2017 EAS. XCTL were therefore disappointed that the access requests for 2017 hadn't taken this into account and proposed a possession strategy that XCTL had firmly declined previously. This seems symptomatic of poor internal communication with Network Rail that the Route team had planned a campaign based on access times that would be unacceptable to an operator but also that the route team were seemingly unaware that XCTL had declined the possessions in 2016 and 2017.

- d.) On the 24th May 2016 Network Rail Train Planning informed XCTL's LTP Planning team that the XCTL timetable bid was not compliant as it contained trains bid incorrectly through the proposed possessions. XCTL and Network Rail train planning teams have since undertaken a substantial amount of timetabling work to find a timetabling solution that would mean the times of 21:30 to 05:20 could remain. This piece of work has effectively replaced the capacity study that should have been previously undertaken by Network Rail, in compliance with the Determination of TTP773. Unfortunately this has not been forthcoming and XCTL accept that Network Rail have exhausted all available timetabling options. As a result of this XCTL have been actively attempting to work with Network Rail to provide an access solution. As well proposing amended times for the RoU (21:55 to 05:35, which would involve 1G71 missing its call at Wolverhampton), XCTL have unsuccessfully attempted to encourage Network Rail to consider alternative methods of working (for example, asking Network Rail to consider taking the isolation before the passage of 1G71 and asking what activities can be completed before the passage of the train), an increase in the number of nights the RoU is taken with the reduced access times and splitting the required maintenance yardage over two separate campaigns. (See Appendix G) Despite two meetings between Network Rail and XC and a conference call Network Rail have been unable to offer a compromise on the proposed times of the RoU, the sequencing of activities within the plan or splitting the yardage over more campaigns, even though some of the work could be deferred to the next financial year. (See Appendix F and H)
- e.) It has been clear that Network Rail haven't followed Network Code processes, or supporting train planning 'business as usual' activities, correctly. Three of XCTL's services were offered LTP through the period block. Under the normal course of events this would mean that Network Rail are required to cut the block back around the trains as the LTP offer is a contractual one. This is not something XCTL want to see as we agree that the work needs to go ahead.

Application of the Decision Criteria

- f.) *D4.6.2(b) Spread of services reflect demand* – 1G71 and 1V71 provide a relatively late night connection that serves a regular customer demand. The proposed times of the

RoU mean that this no longer available and customers will have journey times significantly extended, either by departing an hour earlier than they would otherwise, or by a more complicated journey than normal.

- g.) *D4.6.2(d) That journey times are as short as possible* – The proposed RoU means that passenger journey times have been increased and journey options have changed. The current journey option provided by 1G71 and 1V71 is for passengers to leave Manchester at 20.27 and arrive at Bristol at 23.40 a journey time of 3 hours 13 minutes. If the RoU takes place the alternative journey options are to leave Manchester and hour earlier at 19.27 and arrive at Bristol at 22.43 a journey time of 3 hours 16 minutes or leave Manchester at 19.30 and arrive at Bristol at 23.39 a journey time of 4 hour 9 minutes. Both of these options represent an unacceptable level of inconvenience to the traveling public.
- h.) *D4.6.2(e) Maintaining and improving an integrated system of people and goods.* The times of the RoU as published break a connection that XCTL has been at pains to retain.
- i.) *D4.6.2(f) The commercial interests [of Network Rail and the operators]* Network Rail has mentioned several times to XCTL during verbal conversations that it is not possible to change the RoUs at all due to increased costs. It has not articulated precisely what those costs are and has not taken into account our business need to maintain this connection.
- j.) *Mitigating effect on the environment* – If the RoU takes place as proposed and this journey option is removed then the rail service becomes less attractive to the travelling public. Walk up passengers do not generally check their journeys before travelling, therefore there will be passengers who will be unaware that their journey has been impacted by the RoU. There is a balance to be struck between enabling engineering access to go ahead and supporting a thriving transport network. Given the amount of work XCTL believes could be undertaken on the possession structure and timings, XCTL do not believe this criterion has been properly applied in this instance.

k.) D4.6.2(j) *enabling operators of trains to utilise their assets efficiently* – a disproportionate amount of train planning management and planner time has been taken up dealing with this issue, for the sake of five minutes and a pragmatic approach to the structure of a block. This has included time spent chasing the production of a capacity study, running various iterations of a timetable when no capacity study was forthcoming and three sessions trying to engage with Route Planners to understand why, precisely, it is not possible to achieve five more minutes within the possession to enable 1G71 through on its booked route. XCTL also notes that we are likely going to have to find additional paths for the three headcodes currently booked through the engineering access and there is one Empty Coaching Stock path (5D99) which was rejected with no alternative offered despite both of the other routes (via Tamworth or Lichfield) remaining open. XCTL expects that our LTP team will have to propose an alternative path to Network Rail for 5D99, despite expecting under D4.2.2 that Network Rail should have found a path for this service.

6 DECISION SOUGHT FROM THE PANEL

6.1 XCTL accepts that the renewals work planned by the LNW South route is essential and will deliver performance benefits to the rail industry as a whole. XCTL do not seek that the access is removed altogether as has been demonstrated through the repeated, XCTL led, attempts to resolve the issues surrounding the access. XCTL seek a decision from the panel to amend the access times to start at 21:55 and finish at 05:35. This will allow a vital connection to be made and provide Network Rail with 7 hours 40 minutes to carry out their work and is no more disruptive to other operators than the published times.

7 APPENDICES

The Claimant confirms that it has complied with Access Dispute Resolution Rule H21

Extracts of Access Conditions/ the Network Code are included where the dispute relates to previous (i.e. no longer current) versions of these documents.

All appendices and annexes 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 XC Trains Limited

Signed



Print Name
Andrew Danson

Position
Possession Strategy Manager
