

Hearing of Timetabling Dispute HAL/TTP002 - Rule H18(c) Note

1 message

Tamzin Cloke 9 November 2020 at 11:41 To: Kush Desai, Jonathan James Cc: Mark Eaton, Mike Bagshaw

ACCESS DISPUTES COMMITTEE

Please see below, sent on behalf of the Hearing Chair. If you have any questions, please let me know. This email will shortly appear on the Committee's website.

The Hearing Chair has reviewed the sole reference documents provided by the Claimant and the Defendant and has had regards to paragraph 18(c) of Chapter H of the HAL ADRR. The Hearing Chair considers that for the most part the issues to be determined by the Panel concern the factual application of the Decision Criteria to the Claimant's applications for firm rights to Heathrow Terminal 5 in the December 2020 and May 2021 WTT's.

However, two potential points of law have emerged. These are:

1. *Whether the Defendant has made a final decision (within the meaning of HAL ADRR Part D paragraph 4.7) in respect of the Claimant's bid to exercise firm rights to run two trains per service hour to Heathrow Terminal 5 and its further request to run two additional trains per service hour to Heathrow Terminal 5 in the May 2021 WTT. This issue concerns proper interpretation of the correspondence issued on this subject and proper legal construction of paragraph 4.7. It goes also to the jurisdiction of the panel to determine the appeal made on this timetable.*
2. *In the ultimate paragraph of its sole reference document the Claimant asserts that in addition to its assertions that the Defendant has failed to apply the Decision Criteria correctly, the Defendant has abused a dominant position in contravention of competition law. The Claimant does not appear to have provided any evidence to support that assertion and has not identified any statutory or common law provisions relied upon. Whether there has or has not been a breach of competition law and if there has, whether it is material to the matters the panel has to determine, is potentially a point of law. If the Claimant proposes to pursue this assertion at the hearing, then it shall by 16:00 Tuesday 10 November 2020 file with the Committee a supplemental statement of case setting out all facts and matters relied upon and identify the statutory or common law provisions relied upon. There shall be attached to the supplemental statement of case written statements of witnesses of fact relied upon in support of the assertion together with copies of statutory provisions and authorities relied upon.*

Kind regards

Tamzin

Tamzin Cloke
Secretary
Access Disputes Committee

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