

ADA 17: Note on Modelling by Network Rail

Network Rail (**NR**) has noted that DB Schenker has objected to NR carrying out further modelling following the hearing on 17 October. It is also understood that GB Railfreight has made a similar objection, although NR has not been provided with a copy of this.

It was entirely appropriate for NR to carry out such modelling, in order to deal with the evidence provided by the Defendants at the hearing on 17 October, to which NR had not previously been referred, although NR had followed both the spirit and the letter of the requirements for Network Change under Part G. This included lengthy consultation in advance of the formal issue of the Notice of Network Change on 25 January 2013, and correspondence and meetings following both the issue of the Notice, and the Defendants' responses to it. The Hearing Chair had also directed on 4 October 2013 that the Defendants provide at the hearing evidence of their expectations of future use of the relevant part of the Network. This illustrated, as noted in paragraph 4.9 of NR's Reply, that no such evidence had previously been produced to NR.

The obligations under Part G include for NR to issue the Notice, and for any Access Beneficiaries to respond, giving reasons for their objection to the network Change. As the correspondence shows, the Defendants did not provide any evidence of their reasonable expectations of future use of the relevant Part of the Network. This was why the Hearing Chair gave the Defendants a further opportunity to do so following the hearing, and why he had directed on 4 October 2013 that the Defendants bring such evidence to the hearing. It is self-evident that NR cannot model for what it has not previously been directed to by the Defendants. At the hearing the Defendants produced further evidence, including reference to input into the Freight Market Study (which had not at that time been agreed and issued). It was therefore entirely appropriate for NR to be given the opportunity to model to take this material into account. The Hearing Chair made it clear at the hearing that he was giving the Defendants the opportunity to put in further evidence, and that (in accordance with the requirements of a fair hearing and natural justice) NR would be treated in same way. Both the Defendants and NR then had an opportunity to respond to one another's further submissions.