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## ***TIMETABLING COMMITTEE***

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### **Determination No. 161B**

(following a hearing at Kings Cross on 20<sup>th</sup> September 2002)

*[Note: the previous published determinations are no.144 of 24<sup>th</sup> May 2002  
and no.161A of 20<sup>th</sup> September 2002]*

1. The Committee was asked by Arriva Trains Northern (ATN) to determine that Railtrack were not entitled to include, in the National Rules of the Plan, a table of specific services for the National Logistics Unit (NLU).
2. The Committee noted that both parties recognised the importance of the services operated on behalf of the NLU, but differed as to whether their specification within the Rules of the Plan was either appropriate or legitimate.
3. The Committee noted that the function of the Rules of the Plan was to provide “*rules regulating ...the standard times and other matters necessary to enable trains to be scheduled into the Working Timetable ...*” (Track Access Condition A “Definitions”). In practical effect this means they are the rules which define how much, and subject to what constraints, capacity on any section of route can be made available to the holders of Access Rights
4. The Committee noted that the ruling principle with the Rules of the Plan is that they are subject to annual consultation (including the hearing of any appeals against aspects of any proposals) but that, once finalised, they then had to be taken into account by any Train Operator asserting Firm Contractual Rights if the Bid is not to be deemed Non-Compliant.
5. Railtrack, in both the form of the table of Proposed NLU services, and in the covering notice (National Rules of the Plan, Section 4) suggested that the consequence of such inclusion in the Rules of the Plan would be that that “the NLU requirements will enjoy the same priority in the Draft Timetable...as Train Operators’ aspirations supported by Firm Contractual Rights”.
6. The Committee considered ATN’s argument that, were such service proposals to be included in such a form, then the effect would be rather that such services would, by their inclusion in “the applicable Rules of the Plan”, have a higher priority than Train Operators’ Firm Contractual Rights. The Committee concluded that this argument had merit, in that each individual Train Operator would require to bid in compliance with the applicable Rules of the Plan.
7. The Committee noted Railtrack’s arguments as to other provisions that are included in Rules of the Plan, e.g. headways, maximum number of services per hour, and specific requirements to reserve a certain proportion of each hour as “white space”, and concluded that all these examples are the means by which reasonable bounds are put on the aspirations of any one operator, in the interests of the smooth operation of the Network.

8. The Committee was satisfied that an efficient service of NLU trains was also essential to the smooth operation of the Network. However, Railtrack were not entitled within the Rules of the Plan to prescribe in detail what form that efficient service should take, because to do so could place unreasonable restrictions upon Train Operators in the assertion of their Firm Contractual Rights.
9. That said, the Committee considered that Railtrack was entitled to set out in the Rules of the Plan, as a factor informing its allocation of capacity to all Train Operators, a broad pattern of NLU services, which, were they not to be included in the final Working Timetable, would imply that Railtrack was not properly discharging its responsibilities as Network Operator.
10. The Committee therefore determined that:
  - 10.1. there is no reason why Railtrack should not include in the Rules of the Plan a statement that the provision of an efficient network of NLU services is a factor of direct relevance to the drafting of the Working Timetable. However,
  - 10.2. Railtrack should avoid specifying such services in respect of details of timing etc., and should confined itself to directions which specify the result to be achieved but not the means by which it shall be achieved.
  - 10.3. Such “general directions” should be subject to full consultation, including the hearing of any appeals, in accordance with Track Access Conditions D2.4, and
  - 10.4. such directions shall, along with all other elements of Rules of the Plan, be taken into account by Railtrack in its development of the timetable to meet the aspirations of Train Operators; and
  - 10.5. such directions shall inform any deliberations, including by this Committee, in respect of choices in relation to the allocation of track capacity, and the due application of the Decision Criteria (Track Access Condition D4).

Tony Crabtree  
Deputy Chairman of the Committee