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## **TIMETABLING COMMITTEE**

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### **Determination no. 189**

(following a hearing at Kings Cross on 28<sup>th</sup> October 2003)

*[Note: previous published determination is determination no 190]*

1. The Committee was asked by Thames Trains Ltd (TTL) to rule that Network Rail Infrastructure Ltd (Network Rail) should not be empowered to implement, within the Rules of the Route for the 2004 Timetable, a programme of varying extended midweek possessions between Ladbroke Grove and Foxhall Junction, the delivery of which was proposed to be supported by a nightly regular “2 Track Railway timetable” commencing much earlier in the evening than the two track arrangements which are provided for in the 2003/4 Rules of the Route.
2. TTL considers the implementation of this proposal for an earlier start to the “two track timetable” to be prejudicial to its commercial interests, and to frustrate its ability to fulfil its PSR commitments; in particular because of
  - 2.1. the reduction in the number of paths per hour for TTL services, after 2130;
  - 2.2. the earlier (by one hour) curtailment of the Paddington to Greenford service;
  - 2.3. the loss of the ability to serve any of Acton Main Line, Hanwell and West Ealing, after 2130, irrespective of which lines are in use, because of the intensity of service to Heathrow Airport Junction;
  - 2.4. the inability to serve Taplow, and Burnham stations when trains are running over the Main Lines;
  - 2.5. the need to curtail the service to Henley-on-Thames to a Twyford to Henley Shuttle after 2120;
  - 2.6. the need in a number of instances for a replacement bus service, for the duration of the Timetable.
3. TTL is further concerned because of indications from Network Rail that the proposed extension earlier of the midweek “2 Track Railway timetable” is not just for the 2004/5 Rules of the Route, but is to be proposed for future Timetables also.
4. For Network Rail, details were given of the track maintenance backlog that it was necessary to address, the programme of works that were proposed, and the possessions that would be necessary. It had become apparent to Network Rail that any programme aimed at first, stemming the rate of deterioration, and then, making good on the arrears, could only be achieved by the deployment of significantly greater Engineering Resources (which are not available) or by increased Access Time (Possessions). In particular Network Rail was seeking to deploy all its Track Maintenance resources in as productive a way as possible, and contended this required intensive use of possessions that were both longer in length of track, and of duration.

5. The proposal for a standard “2 Track Railway timetable” to operate on every weeknight, between Ladbroke Grove and Didcot after 2130, was considered the most expedient way of achieving a balance between the needs for maintenance (in particular minimum 8 hour possessions), and those of the Train Operator and passengers, perceived as requiring a regular stable timetable. A regular timetable also offers potential benefits to Network Rail, and potentially to the Train Operator, because it could significantly reduce the Short Term Train Planning workload associated currently with engineering work.
6. The Committee was pleased to note that TTL did not in any way dispute the necessity of all the works in question. The objection from TTL relates not just to the potential loss of paths, but also to the fact that replacement services will be required, from 2130, on days when there is perhaps no immediate need for such disruption. As a consequence, TTL sees itself as being at a disadvantage as compared with the method of working used in previous Timetables, namely that a “2 Track Railway timetable” applied after 2330, and, where it required to be extended earlier, this was delivered under Short Term Planning arrangements.
7. It was noted that TTL was not assured that it would be the Franchise Operator for the Timetable in question, but that it was acting in consultation with the SRA to protect all existing service characteristics in the interests of any future Franchisee.
8. Before the Committee could address the merits of the issues, there was a need to take into account a number of preliminaries, namely
  - 8.1. given the references in the papers to an intention that the “2 Track Railway timetable” would apply in subsequent timetables, was this a matter that lay within the locus of this Committee?
  - 8.2. what exactly are the rights of TTL in respect of any services operated after 1<sup>st</sup> April 2004, the nominal date of expiry of the TTL Track Access Agreement?
  - 8.3. what is the final proposal from Network Rail as to the area, and hours of operation, of the proposed “2 Track Railway timetable”.
9. On the matter of jurisdiction the guidance of the Access Dispute Resolution Committee had been sought, and the direction received that the Committee “may hear the case as presented, but should be careful to confine its determination to the proposed Rules of the Route for the 2004 Timetable only”. (Minute 63/5 of the ADRC meeting of 15th October 2003).
10. On the matter of TTL’s rights, as they apply for the 2004 Timetable, the Committee was able, after questioning, to elicit the following clarifications.
  - 10.1. The majority of TTL’s Access Rights (referred to as the “base” rights) are incorporated into the Track Access Agreement effective from the inception of the Franchise. Because this agreement would otherwise lapse on 1<sup>st</sup> April 2004, the parties had concluded, before the Priority Date, a 32<sup>nd</sup> Supplemental Agreement, extending the expiry date to at least 12<sup>th</sup> December 2004 (i.e. the end of the 2004 Timetable);

- 10.2. Since the 1998 Timetable, TTL had been seeking to increase the frequency of service on a number of routes. This had been achieved by a process of bidding for trains to be included into the Timetable, and then, on the basis of what could be delivered, incorporating the necessary rights into Supplemental Agreements, effective for the duration of one Timetable only. In practice, TTL had sought, at successive Timetables, to “roll over” the services covered by one year’s Supplemental Agreement, into the next Timetable and a consequential new Supplemental Agreement.
- 10.3. The 2003 Timetable fulfils the “base” rights, and such other rights (referred to as “rollover” rights”) as are documented in the 33<sup>rd</sup> Supplemental Agreement.
- 10.4. It appeared to the Committee that the rights cited by TTL as supporting its opposition to the proposed Rules of the Route were a mixture of “base” rights, and an element of “rollover” rights, still to be the subject of any formal Supplemental Agreement. The Committee was critical that no clear exposition of the different natures of the rights in question had been provided, despite a request for supplementary information on TTL’s precise rights.
11. As to Network Rail’s precise proposals these were revealed as having been substantially revised since the publication of Version 2 of the Rules of the Route, and as affects the services in dispute, reduced in scope:
  - 11.1. “2 Track Railway timetable” before 2330 would henceforward not apply to the tracks east of Southall;
  - 11.2. there would be an overtaking facility at Reading;
  - 11.3. “2 Track Railway timetable” before 2330 would apply only Monday to Thursday, with maintenance east of Southall, and on Friday Nights, being subject to Short Term Planning.
12. The consequence of this curtailment, by Network Rail, of the scope of the Rules of the Route and associated “2 Track Railway timetable” was that
  - 12.1. there was no longer any problem associate with providing a fully PSR compliant service to Greenford, and to Acton Main Line; however
  - 12.2. stops at those stations which do not have Main Line platforms, will still be lost, and require to be substituted by Bus services; furthermore
  - 12.3. the extent of the draft timetables so far tabled does not extend beyond Reading to the West and Heathrow Airport Junction to the East: a fuller understanding of the practical impact of “2 Track Railway timetable” will have to await upon the formal Timetable Offer.
13. The Committee noted that TTL acknowledged that bus substitution was feasible, but that it would also incur costs that were not compensated for under the provisions of Schedule 4. TTL was of the view that bus substitution should not be contemplated for a whole Timetable. The Committee was of the view that bus substitution could not necessarily be ruled out in such circumstances. Considerations of compensation were not within the locus of the Timetabling Committee.

14. The Committee therefore determined that
  - 14.1. it did not accept the arguments advanced by TTL that any general application of the “2 Track Railway Timetable” should be confined to the hours after 2330, and that arrangements to cater for works in the late evening should be catered for under Short Term Planning arrangements; that said
  - 14.2. Network Rail is proposing such fundamental changes to the Rules of the Route, as compared with those published at Version 2, that it would not be appropriate, in advance of further clarifications, to endorse any particular proposal as meeting the needs either of TTL, or of other affected parties; therefore
  - 14.3. Network Rail should refine, and then formally publish and widely consult on, those new proposals for the 2004 Timetable, as described to the Committee, notably the proposal that there should not be any late evening “2 Track Railway Timetable” east of Southall;
  - 14.4. Network Rail, in preparing such detailed new proposals, should aim to achieve, during the hours that the “2 Track Railway Timetable” is to operate
    - 14.4.1. the fullest reasonable approximation to both the quantum and qualitative aspects of such of TTL’s rights as are incorporated into the “base” Track Access Agreement (as extended by the 32<sup>nd</sup> Supplemental Agreement), together with
    - 14.4.2. best achievable compliance with the quantum of those rights of TTL’s currently expressed (for the 2003 Timetable) in the 33<sup>rd</sup> Supplemental Agreement.
  - 14.5. Network Rail should make arrangements to ensure that it puts in place monitoring arrangements capable of demonstrating the effectiveness and efficiency of the use made of the possessions enabled by the introduction of “2 Track Railway timetable”.
15. For the avoidance of doubt, this determination
  - 15.1. gives limited endorsement to Network Rail’s intention to develop further the principle of Rules of the Route sustained by the use of “2 Track Railway Timetable” for the 2004 Timetable only, but does not endorse the detail of any specific proposals;
  - 15.2. does not entitle Network Rail, in its consultations with other parties, to claim more than that this Committee has supported the principle of an umbrella “2 Track Railway Timetable” to apply for an entire Timetable period, as opposed to a commitment to regular Short Term Planning;
  - 15.3. does not imply that the Committee considers that Network Rail’s current or mooted proposals for a “2 Track Railway Timetable” are necessarily fit for purpose;

- 15.4. does not prejudice the rights of any other affected Train Operator to contest any revised Rules of the Route proposals (i.e modifications to the previous Version 2 proposals) through the laid down procedures in Track Access Condition D2.1.6;
- 15.5. does not prejudice the rights of any Train Operator to contest, in accordance with Track Access Condition D5.1, the detail of any Timetable offer that may be made, where it considers that the offer made does not comply with its rights, taking account of the “applicable Rules of the Route”;
- 15.6. encourages the parties to proceed, at the appropriate stage in the Timetable Development process, towards documentation of any appropriate “rollover” rights to a subsequent Supplemental Agreement relating to the 2004 Timetable.

Bryan Driver,

Independent Vice Chairman