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## ***TIMETABLING SUB-COMMITTEE***

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### **Determination No. 22**

(Hearing held at Euston House on 25th October 1996)

The Committee was asked to hear a reference from Regional Railways North East in relation to the offer made in response to first iteration bids for services between Manchester Airport, Manchester Piccadilly and Sheffield. The substance of the appeal from Regional Railways North East was that:

1. Railtrack, in making an offer that varied significantly in some details from Regional Railways North East's bid, had failed to give adequate reasons for exercising its flexing rights, and
2. that the details of the offer made did not sufficiently closely meet Regional Railways North East's commercial aspirations, most particularly in the case of train 1B94 (2051 Manchester Airport to Sheffield).

The Committee heard representations from the parties, and noted that, since the date of the submission of papers, there had been some accommodation found as regards some aspects of the second point at issue. However, the Committee, in considering the substance of the matters in question, expressed its extreme displeasure that there was no clear evidence of Regional Railways North East and the Railtrack Zones involved having exercised any of the rights and obligations for consultation implied in Access Condition D2.3.

In response to the specific Determinations sought by Regional Railways North East, the Committee noted that Access Condition D3.1.1 (as amended on 28th September 1996) does require that, in any circumstance where Railtrack is not accepting a bid, it shall give "a concise explanation". The Committee considered that this had not been done, and offered the following guidance as to what should be included for a "concise explanation" to be reasonably considered adequate: in which case the explanation should bring out Railtrack's reasons in terms of:

- i) any contractual terms in the Bidder's contract that determine the decision, and
- ii) elements of the Decision Criteria (taken as a whole), with explicit reference to those that have been given the greater prominence, together with the specific physical circumstances of the case.

The Committee was at pains to stress that the requirement to give "a concise explanation" is not the same as the requirement to give an explanation that will satisfy the Bidder's aspirations; equally, the giving of "a concise explanation" does not remove the need to provide the Bidder with a complete picture of the Timetable, as offered to all Operators at the offer date, for the section of Railway involved.

The Committee further sought to guide the parties by advising them that whilst "a concise explanation" was not required until the date on which the offer was due, this did not in any way preclude a full and early consultation between the parties, and with other

Operators who might possibly be affected, where this might in any way ease the process of reaching a workable Timetable, Equally, it was not acceptable to the Committee to be advised that processes had been frustrated because the parties had not made adequate arrangements during the Annual Leave period to ensure responsible persons capable of carrying forwards a dialogue were always available.

In relation to the specific matters raised regarding the detail of the Bids for the Manchester to Sheffield service, the Committee acknowledged that Regional Railways North East had been procedurally correct in invoking the Dispute Resolution Procedures once it had felt it necessary to dispute the offers made at the conclusion of the first iteration. However, the Committee was not convinced by the argument that the nature of the dialogue that had belatedly taken place between the parties had revealed solutions that could only be implemented were the Committee to give a direction, and thus to empower Railtrack to vary, without their agreement, the accepted Bids of other Operators in accordance with Access Condition D3.3.5(c).

In relation specifically to train 1B94, the Committee noted that both parties now believed that alternative timings had been devised, which had the agreement of the other affected Train Companies, and that therefore Railtrack should amend the offer accordingly. There was no impediment to implementing the revised timings, in accordance with Access Condition D3.3.5(b), i.e. "provided that every other affected party has also agreed in writing".

In relation to the other services the Committee determined that Regional Railways North East should be directed to accept the offer first made, and to seek alternative adjustments to the timings at the second iteration bid date or through the application of Access Condition D3.3.5(b). Furthermore, to facilitate that process, Regional Railways North East should engage in the maximum possible consultation with other Train Operators who might be affected.

The Committee further gave guidance that it would expect future consideration of services on this route to involve a far wider evaluation of options than was evident in this case, and the inclusion, by the Bidder, of far more detailed and self explanatory commentary on why particular changes are being sought. Furthermore, the Committee did not consider that the nature of the changes sought were likely to be such that even at second iteration bid there should be any need to have recourse to empowerment under Access Condition D3.3.5(c).

Whilst the Committee accepted that at a certain point it had been procedurally necessary to invoke the Timetabling Dispute Resolution Procedures, this point had only been reached because of fundamental flaws in the way in which the parties had conducted the consultation processes required for Access Planning. The Committee considered that the Dispute Resolution Procedures should not be used as a substitute for good management, and that the Train Operator and the two Railtrack Zones were equally open to criticism in this regard.

**Bryan Driver**  
**Chairman of the Committee**  
**25th October 1996**