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## **TIMETABLING COMMITTEE**

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### **Determination No.63**

(following a hearing at Kings Cross on Friday 23rd October 1998)

*[Note: no determinations were issued in respect of references 59 - 62 inclusive which were settled by the parties without recourse to hearings; previous published determination was no.58 dated 9.7.98]*

1. The Committee was asked by Anglia Railways to rule that Railtrack's response to its bid for three Boat Train paths between Liverpool Street and Harwich, in the Summer 1999 Timetable, was inadequate as regards both journey time and margin for connection with Boats, and that specific changes should be made to achieve improvements.
2. The Committee noted that the matter was one of the interpretation by Railtrack of Anglia Railways' bid, in relation to Anglia Railways' Firm Contractual Rights in its Track Access Agreement, and Railtrack's flexing rights. The Committee acknowledged that such matters were wholly within the scope of the Committee's remit, and therefore accepted that the matter should be heard. The Committee also noted that the issues before the Committee arose in part because of the decisions of Railtrack in relation to accommodating the rights and requirements of Great Eastern Railway (GER), as part of an exercise to introduce a significantly enhanced timetable affecting all Train Operators, and that therefore it was appropriate that GER should be represented at the hearing. The Committee further noted with satisfaction that the exercise in question had been conducted as part of full consultation on a major restructuring of the timetable under the auspices of Condition D2.3.
3. The Committee was concerned at the extent to which the papers as first submitted had not contained adequate information as to the substance of the rights either of Anglia Railways in relation to the Boat Trains, or of GER in relation to the rights which Railtrack had considered that they needed to take into account in pathing the Boat Trains; the Committee noted that adequate information had only finally been made available on the day of the hearing as a result of actions by the Secretariat.
4. The Committee noted that the three paths (one Down and two Up) in dispute, namely  
1A02 08:55 Liverpool Street to Harwich International,  
1A17 10:37 Harwich International to Liverpool Street, and  
1A21 19:37 Harwich International to Liverpool Street

presented different detail issues, but that they had the following in common:

- 4.1. all three trains, as bid, have their equivalents in present timetables, non-stop trains serving solely the needs of passengers seeking connections with Boat services to or from Harwich;
- 4.2. there is adequate quantum of train slots within Anglia Railways' Track Access Agreement for the running of these trains;

- 4.3. the Track Access agreement makes specific provision in relation to maximum journey time, but does not specify any other contractual Service Characteristics in regard to e.g. pathing time or to connectional allowances (“Port Margin”) in relation to the ferry services in question.
- 4.4. the initiative to agree, in response to promptings from both Train Operators and the Regulator, an enhanced service based upon a standard hourly service pattern, had reduced Railtrack’s freedom of manoeuvre in relation to “off-pattern” services, however long-established.
5. The Committee noted that the offers made to Anglia Railways fulfilled all of the Train Operator’s Firm Contractual Rights. However, as compared with the current equivalent Boat Trains, all three offers have slower elapsed journey times; in the case of the Down train this is at the expense of a reduced Port Margin at Harwich; for the Up trains the result is a later arrival time at Liverpool Street and therefore an extension of the throughout Amsterdam to London journey time.
6. Anglia Railways conceded that its Firm Contractual Rights had been complied with in the offers received, but contended that Railtrack, in balancing off the needs of conflicting services, had not given sufficient regard to Decision Criterion (Access Condition D4(f), in that there had been a material deterioration of journey times, as compared with the current Timetable. The Committee considered that Anglia Railways was entitled to seek protection in Decision Criterion, Condition D4(f) and that this principle had been asserted in the Committee’s determination no.21.
7. However, the Committee noted that the whole text of Condition D4(f) reads:  
*“avoiding material deterioration of the service patterns of operators of trains (namely the train departure and arrival frequencies, stopping patterns, intervals between departures and journey times) which those operators possess at the time of the application of these criteria”.*
8. It was the view of the Committee that where there was a move to a clear repeated hourly pattern in the timetable, this was generally to the potential advantage of all passenger and freight Train Operators; application of this Criterion in Condition D4(f) would mean that it was not normally appropriate, in such a context, to disturb the pattern, in the interests of “off-pattern” services. At the same time, where it was a question of evolving a new service pattern, it was a reasonable test of that new pattern that it did not prove an impediment to the continuation, at the same standard, of long-established, if “off-pattern”, services. The Harwich Boat trains are an example of such long-established services.
9. The Committee also noted that the task facing Railtrack had been further complicated because
  - 9.1. Anglia Railways’ Bid, as submitted, was lacking in supporting qualitative information:
    - 9.1.1. it did not make specific reference to the connectional requirements at Harwich;
    - 9.1.2. it did not highlight the change to an earlier departure time of the boat served by the 08:55 Liverpool Street to Harwich International; and

- 9.1.3. it contained parallel bids for the morning down service, such that the sum of the bids exceeded the contracted quantum.
- 9.2. there has been some exchange of traditional paths, as between GER and Anglia Railways, and the introduction of additional quantum for GER, to give a pattern where each operator provides two services per hour between Liverpool Street and Ipswich, and that some of these changes are incorporated into Supplemental agreements that do not yet have formal status; one such change,
- 9.3. a new Anglia Railways' service to Norwich, departing Liverpool Street on the hour, would, in the case of the 09:00 departure, be delayed by the preceding 08:55 Liverpool Street to Harwich Boat Train, unless that train is looped to allow it to pass, and Anglia Railways were very insistent on the achievement of this franchise obligation of a 100-minute maximum journey time for the Norwich service.
10. The Committee noted that, in its determination no.18, it had determined that where a Train Operator "*had not formally asserted its right to the specific connection under clause D2.7(f) ... the Firm Contractual Rights to make that connection had technically lapsed in the Timetable Development Period in question*". The Committee was sympathetic to the view, advanced by Railtrack that, although the wording of Access Condition D2.7(f) only relates specifically to "*other railway passenger services*", there was a reasonable expectation that Train Operators should make explicit requirements in relation to connections with boats, (as is also implied in Access Condition D4(b): "*enabling a Train Operator to comply with any contract to which it is a party ... in each case to the extent that Railtrack is aware, or has been informed of such contracts*").
11. The Committee noted that Railtrack was seeking to justify some of its decisions by reference to Access Condition D4(a), and the passenger loadings on conflicting trains; the Committee considered that such data should inform discussions between Railtrack and Train Operators, but should not necessarily be an absolute determinant of priorities.
12. The Committee reviewed the counterproposals that had been produced by Railtrack in an effort to continue to allow Anglia Railways to enjoy the service characteristics of previous timetables, noting the interest and involvement of GER in each case, and determined that
- 12.1. in the case of 1A02 08:55 Liverpool Street to Harwich International, it is not appropriate that a train of this status be looped to the detriment of its journey time; however there do not appear to be any viable options open to Railtrack, given the intensity of the service, the desirability of establishing the service pattern for the day, and the explicit priorities set by Anglia Railways; nonetheless Railtrack is directed to explore with Anglia Railways all those options for a better path for this service that can be achieved without impact on GER services.

- 12.2. in the case of 1A17 10:37 Harwich International to Liverpool Street, the desirability of minimising disruption to service patterns during the day, and the apparent parity of the carryings on the Boat train and the GER service that it follows, means that there is no logical alternative to the path proposed by Railtrack, and Anglia Railways' appeal in relation to this train is rejected.
- 12.3. in the case of 1A21 19:37 Harwich International to Liverpool Street, there is a less compelling need, in the period after the peak, to preserve the service pattern and there is a significant disparity between the carryings of the Boat Train and the GER service that it follows, and that therefore Railtrack is directed to engage in meaningful dialogue with both Anglia Railways and GER, with a view to producing a path for this service comparable in time and journey time with the equivalent in the present timetable. For the avoidance of doubt, this determination 12.3, in accordance with Track Access Condition D3.3.5(c), empowers Railtrack to flex the timings of other Train Operators within their agreed flexing limits, even where the services affected are the subject of previously accepted bids, for the purposes of achieving an improved path for 1A21. The Committee acknowledges the right of any party adversely affected by such a decision of Railtrack to submit an appeal to the Committee pursuant to Condition D5.1.

Bryan Driver,  
Chairman,  
23rd October 1998