
TIMETABLING PANEL of the ACCESS DISPUTES COMMITTEE

Determination in respect of dispute reference TTP2613 (following a hearing held in London, on 19 March 2025)

The Panel:

Matthias Kelly KC SC Hearing Chair

Members appointed from the Timetabling Pool

Peter Warhurst elected representative for Franchised Passenger Class, Band 2
Richard Parsons appointed representative of Network Rail

The Dispute Parties:

Freightliner Ltd. ("FLL")

Chris Matthews Head of Planning (Long Term)
Peter Graham Policy and Government Affairs Director

Network Rail Infrastructure Limited ("NR")

Nick Coles Timetable Production Manager (Freight)
Georgie Newby Senior Customer and Commercial Manager
Adam Hodgson Timetable Policy Manager

Involved Parties:

Diane Thomson Access and Rail Network Advisor (DB Cargo (UK) Ltd.)
Ian Kapur Head of Strategic Access Planning (GB Railfreight Ltd. ("GBRf"))

In attendance:

Tamzin Cloke Committee Secretary ("Secretary")

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A Background and Jurisdiction

1. Dispute TTP2613 was raised by FLL by service of a Notice of Dispute on 06 March 2025 in respect of NR's decision to reject its TOVRs. The dispute was brought on the basis that FLL felt NR had misapplied Part D of the Network Code, and not acted in accordance with the ADR Rules, following the hearing of a previous, and related, Timetabling Dispute TTP2540 on Monday, 03 February 2025.
2. Specifically, FLL said that GBRf (a Dispute Party, alongside FLL and NR, in TTP2540) had submitted a TOVR on Sunday, 02 February 2025, in an alleged attempt to circumvent the outcome of TTP2540 and that NR, rather than rejecting GBRf's TOVR due to it arriving prior to the verbal determination of TTP2540, had accepted it. NR had then rejected other freight operators' TOVRs, for the same capacity, as they had arrived after GBRf's.
3. I was appointed as Hearing Chair on 11 March 2025 and I satisfied myself that the matters in dispute included grounds of appeal which may be heard by a Timetabling Panel convened in accordance with Chapter H of the ADR Rules to hear an appeal under the terms of Network Code Condition D5.
4. In its consideration of the Parties' submissions and its hearing of the Disputes, the Panel was mindful that, as provided for in ADR Rule A5, it should 'reach its determination on the basis of the legal entitlements of the Dispute Parties and upon no other basis'.
5. The abbreviations used in this determination are set out in the list of Parties above, in this paragraph 5 and as otherwise defined in this determination document:

ADR Rules mean the Access Dispute Resolution Rules and **Rule** is construed accordingly

Decision Criteria means Network Code Condition D4.6

Part D means Part D of the Network Code

SRD means Sole Reference Document

TAC means Track Access Contract

TOVR means Train Operator Variation Request

TTP means Timetabling Panel

WTT means Working Timetable

B History of this dispute process and documents submitted

6. At my request (and as permitted by both ADR Rules H18 and H21), the Dispute Parties were required to provide SRDs using the Committee's procedure for short-notice Timetabling Disputes. The proposed Panel hearing was notified generally by means of the website and by email to those identified as potential Involved Parties by the Dispute Parties.
7. On 11 March 2025, NR and FLL served their case summaries in accordance with the guidance and dispute timetable as issued by the Secretary.
8. DB Cargo (UK) Ltd. and GBRf declared themselves to be Involved Parties. Both were represented at the hearing.
9. On 18 March 2025 the Dispute Parties were advised – for the purposes of ADR Rule H18(c) – that the relevant issues of law were: the meaning and import of Network Code Condition A1.5; the meaning and import of ADR Rule A3(h); the meaning and import of

ADR Rules A9(a), A9(b) and A9(c), together with ADR Rule A10. The remaining issues were ones of mixed fact and law, which constituted the substance of the dispute to be determined.

10. The hearing took place on 19 March 2025. The Dispute Parties made opening statements, responded to questions from the Panel concerning various points and were given the opportunity to make closing statements. GBRf, as an Involved Party, was also given the opportunity to raise any points of concern.
11. In line with the Committee's procedure for short-notice Timetabling Disputes I provided an oral determination on the day of the hearing, followed by brief written reasons, and guidance, on Friday 21 March 2025. I confirmed to NR - in response to its request - that it did not need to take any immediate action if it first wished to review my full, written reasons in this determination, however my oral determination had immediate legal effect from the moment it was given, i.e. Wednesday 19 March 2025.
12. The NR Panel Member declared the following interest: NR colleagues had sought his view on the issues under dispute, prior to NR making the disputed decision. He confirmed that he had no involvement in the final decision-making process, and had not discussed the matter with colleagues following the decision being made. This information had also been provided to the Dispute Parties prior to the hearing. None of the Dispute Parties raised an objection to the NR Panel Member's appointment, either at the hearing or beforehand in writing. In any event, ADR Rules A8 and H5(b) governing impartiality of Panel Members, apply.
13. I confirm that the Panel had read all of the papers submitted by the Dispute Parties and I confirm that I have taken into account all of the submissions, arguments, evidence and information provided to the Panel over the course of the dispute process, both written and oral, notwithstanding that only certain parts of such materials are specifically referred to or summarised in the course of this determination.

C Outcomes sought by the Dispute Parties

14. In its case summary, FLL requested I determine that:
 - a. NR had not acted in accordance with the Network Code, and had accordingly breached FLL's TAC;
 - b. If the Panel felt exceptional circumstances applied then NR should be instructed to withdraw the offer of Train Slots made to GBRf and reconsider TOVRs submitted to NR in the order submitted after the determination of TTP2540, and that an award of damages should be made;
 - c. If the Panel felt exceptional circumstances did not apply, NR should pay FLL damages for the loss of revenue resulting from the alleged TAC breach [under para 11(a), above].
15. FLL considered that the circumstances surrounding the case were so exceptional, particularly in terms of the alleged behaviour by GBRf and NR, that a finding of 'exceptional circumstances' was warranted under Condition D5.3.1(c).

16. NR asked me to uphold its decisions relating to the acceptance of GBRf's bid, and rejection of FLL's. NR asked for guidance on its application of the Network Code in this matter, including on how it should administer the outcome of appeals made under Condition D8.5.
17. NR submitted that exceptional circumstances did not apply.

D Relevant provisions of the Network Code and other documents

18. The versions of Parts A and D and the ADR Rules dated 19 November 2024 were applicable to these dispute proceedings.
19. ADR Rules A3(h), A9 and A10, and Network Code Conditions A1.5, D4.3.1, D4.7, D5.4 and D8.5 were particularly relevant and are appended in Annex A.

E Submissions by the Dispute Parties

20. FLL's written Opening Statement can be found at Annex B.
21. NR's written Opening Statement can be found at Annex C.

F Oral evidence at the hearing

22. I started by asking the Parties what their understanding of the use of the words 'bid again in the upcoming round' was, and whether they agreed that it clearly implied that there was going to be a timetable bidding process after I gave a verbal determination in TTP2540. NR declined to answer. FLL confirmed that was its understanding, and FLL couldn't "see any other interpretation of it".
23. Both Parties confirmed they were aware of the determination of ADA50, in which GBRf had been criticised for appearing to pre-empt the outcome of that previous industry dispute.
24. I then took the Parties through the ADR Rules governing behaviour of Dispute Parties, and Condition A1.5 ('good faith' provision) of the Network Code, asking for their views on what had transpired with the Train Slots, and whether what had happened met the definition of a party "frustrat[ing] or avoid[ing] determination or resolution of the dispute". FLL agreed that this could be inferred from GBRf's actions, particularly as the original decision made by NR (putting GBRf on notice that the paths were to be removed) was made in November 2024; why, then, had GBRf waited until the Sunday night before the hearing of TTP2540 to submit a TOVR for virtually identical Train Slots? NR did not comment.
25. NR was advised that, although I accepted that none of the individuals present at TTP2540 had personal knowledge of GBRf's 02 February 2025 TOVR, I must come to the conclusion that NR as a corporate entity was aware of the TOVR, and that a Hearing Chair must deal with corporate entities, not individuals. NR said it accepted my view.
26. I reminded both Parties that the discussion during the hearing of TTP2540 clearly raised post-hearing bidding scenarios, and my recollection was that at no point did GBRf - a Dispute Party during that hearing - disclose that it had already submitted a TOVR. FLL agreed. NR did not comment.

27. At this point, the Panel asked some questions about what Access Proposals the relevant operators had submitted for the December 2025 WTT, to assist with the wider context of the dispute. NR agreed to seek the information during a break, and later confirmed that Victa Railfreight and Maritime Transport¹ had not submitted Access Proposals, FLL had submitted Access Proposals for Train Slots into the port using different times, and requiring flexes to other services, and GBRf had submitted Access Proposals for the same / very similar Train Slots as were the subject of TTP2540.
28. There was extensive discussion about the requirements of Conditions D4.3.1(b), D5.4.1 and D5.4.2. FLL was of the view that the time of my oral determination in TTP2540 was the key point: its TOVR had been sent to NR after that determination; GBRf and Victa Railfreight's TOVRs² had been sent prior to it. FLL said that the two TOVRs arriving prior to my determination should have been rejected as they conflicted with GBRf's Train Slots, which had not yet been removed from the WTT. FLL's expectation was that, as FLL had submitted its TOVR post-determination, it was effectively bidding into 'white space'. NR agreed that until the point that the Train Slots in question were removed, a TOVR would conflict, and that TTP2540 provided a determination to remove the Train Slots from the WTT. NR said that its usual practice, when issuing a Condition D8.5 Notice which was subsequently disputed by the incumbent operator (GBRf in TTP2540), was to "pause" work awaiting the outcome of the hearing; NR later clarified that whilst Condition D5.4.1 binds the industry to comply with NR's decision pending appeal, if it were to remove Train Slots subject to Condition D8.5 immediately, proceed with accepting new TOVRs, and then its decision was to be overturned at appeal, there could potentially be disruptive work unpicking the timetable to revert back to its previous state and NR felt it ran the risk of "mishandling" TOVRs to do otherwise.
29. NR advised that Condition D8.5 was not clear, when read in conjunction with Condition D5.4.1, and sought guidance on the matter, which I provide later in this determination (paragraphs 73 and 74). NR confirmed, in response to questions from the Panel, that there was no step-by-step formal process or an internal process that provided the requisite detail, described in Condition D8.5. The process NR usually followed was informal, and not documented anywhere within NR; it was "custom and practice". NR confirmed that it was not currently following the mandated timescales under Condition D3.3.6 for responding to TOVRs; response times were, on average, fifteen days. NR confirmed that its Customer Team keeps a record of what Condition D8.5 Notices are issued. I note here that NR's decision to "pause" work between a Condition D8.5 Notice being disputed, and the appeal being heard, would seem - on the basis of the explanation provided by NR - to be consistent with ADR Rule H16(d) (not disrupting production processes to the potential detriment of third parties), and it is something I develop in my guidance below.
30. All Parties agreed, at several points, that this situation was unique / unprecedented. NR said it had never seen an operator subject to a Condition D8.5 Notice immediately submit a TOVR to use "similar or identical" capacity.
31. NR was asked several questions about the process it had followed after the determination of TTP2540, in deciding to accept GBRf's TOVR in a 'first-come-first-served' approach. NR said that, whilst in a general sense when assessing competing Access Proposals, it would apply the Decision Criteria, when it came to assessing TOVRs it felt that the correct interpretation of Condition D4.3.1 as a whole was that it should try and flex competing

¹ Maritime Transport was an Involved Party for TTP2540.

² Victa Railfreight's on the morning of the TTP2540 hearing.

TOVRs, and apply the Decision Criteria to do so, but if it could not accommodate all proposals then it should only accept the first TOVR to arrive. NR pointed to the wording of D4.3.1(c) in reaching this conclusion. NR did not agree that accepting TOVRs for competing capacity in a 'first-come-first-served' approach was unfair. I discuss this further below. I suggested to NR that it could put some rigour into the process, to support fair access to capacity, by - in cases where it was actively aware there would be competing TOVRs - offering a 'bidding window' in a similar fashion to the process for building the WTT (Condition D2.6) and effecting NR Variations (Conditions D3.4 and D3.5). NR agreed this would seem "reasonable", but as this process was not already prescribed in the Network Code, it felt it could not have done that. NR repeated its request for guidance as to what it should do in similar circumstances.

32. NR attempted to suggest that it was not clear on the hearing day of TTP2540 that Parties should submit TOVRs after my oral decision was given. FLL confirmed that its understanding matched mine, and the Panel's, as to the outcome of TTP2540, and my determination given on the hearing day. NR stated its submissions had *"been quite clear, that we validate bids based on the timetable state, by which time we get round to them. So I think it's quite well understood by companies, that we don't get round to bids within one day, and it does take us a considerable time"*.
33. At several points NR made conflicting submissions as to the status of the Train Slots, which were the subject of TTP2540. Firstly, NR said that the Slots were in effect until the oral determination of TTP2540, but that at the point it reviewed all the TOVRs received (including GBRf's) they were not in effect, as it was post-oral determination, so GBRf's TOVR did not conflict. It later said that NR's Condition D8.5 Notice had the effect of removing the original Train Slots, such that when GBRf submitted its TOVR on Sunday 02 February GBRf was bidding into 'white space'. Whatever the reasons for NR accepting GBRf's TOVR, the point it made was that it considered GBRf to have made a valid TOVR that did not conflict with existing Train Slots. I note Condition D3.3.4(a) means that NR should have deemed GBRf's TOVR to have been received at 09:00 on Monday 03 February, i.e., before the hearing of TTP2540 commenced, and more importantly, before the outcome was known.
34. NR's view was that it was in an "unenviable" position; it felt, had it taken a different course of action and offered the Train Slots to either FLL or Vici Railfreight, it would still have ended up at a TTP hearing. At this stage, NR requested guidance on a third point: what should NR do if, in future, an operator subject to a Condition D8.5 Notice that had been initiated under Condition D8.5.5³, accepted the Notice, relinquished its Slots (creating 'white space') and then immediately submitted a TOVR to obtain those Train Slots again, without the third party who had initiated the Condition D8.5.5 Notice being aware. NR felt there were a number of "unusual" or "perverse" issues in, or around, the situation and wanted to "close, or strengthen" the Code, to avoid a repeat of the situation, or a similar situation in the future. I address this third guidance request in paragraphs 75 and 76. When invited to consider whether NR felt it had been 'led up the garden path', NR declined to comment, but said it would have been helpful if GBRf had disclosed its Sunday 02 February 2025 TOVR during the hearing on Monday 03 February 2025.
35. NR reiterated, several times, at this point and later on in the hearing, that it was seeking guidance on: what it should have done, having issued the Condition D8.5 Notice, and being aware of competing operators' aspirations; what it should have done with the TOVRs it

³ That is, initiated by a third party that may wish to use the same capacity.

received on, or around, the hearing of TTP2540; and, what it should do in future situations. NR said that Condition D8.5 Notices were increasing in frequency, and that this guidance would be essential to avoid future disputes. I confirmed this was guidance the Panel could, and would, provide. I advised the Parties that, as an industry, it should not want to get into a dystopian situation; the ADR Rules and Network Code are not there to inhibit, they are there to create a regulated, orderly path that everyone understands. I advised the Parties that it was inevitable, when an industry had a code, that it couldn't possibly cover every scenario. There would end up being room for interpretation, and that was a key reason why an appeals body existed.

36. In response to a question, FLL confirmed it was seeking damages due to what it alleged was NR's breach of Clause 4.2 of FLL's TAC. It felt GBRf had made a pre-emptive TOVR, timed to frustrate the dispute resolution process, and that NR, in accepting that TOVR, had not conducted itself in accordance with the 'good faith' obligations in the Network Code, the ADR Rules and FLL's TAC.
37. The Parties then gave closing statements, which reflected - in large part - the submissions and requests that had already been made. GBRf was invited to comment, as it had been a Dispute Party in TTP2540, but stated the Panel had "covered everything you need to" and it did not "have anything specific [to say] on the mechanics of the bidding process".

G Analysis/Observations and Guidance

38. This dispute arises out of the determination in TTP2540 which confirmed NR could and should remove Train Slots allocated to GBRf. That dispute had arisen from the service of a Notice of Dispute on 19 November 2024 by GBRf in respect of NR's decision to serve notice of its intention to remove Train Slots (not supported by access rights) using Network Code Condition D8.5. That dispute was brought on the basis that GBRf disagreed that NR had behaved reasonably in making the decision, which of course, is a proviso of Condition D8.5. I determined on 03 February 2025 that NR had in fact behaved reasonably in issuing the Notice of intention to remove the Train Slots which had originally been allocated to GBRf in May of 2022, and had not been operated for at least two years.
39. Following the determination of TTP2540, FLL submitted its own TOVR to utilise the vacated capacity. That TOVR was submitted immediately after I had made the determination on 03 February 2025. On 28 February 2025 NR formally rejected FLL's TOVR on the basis that the capacity was already held by GBRf. Those were exactly the same Train Slots that had been subject to TTP2540. It was confirmed at the hearing of this dispute on 19 March 2025 that GBRf had, on the day prior to the hearing in TTP2540 (Sunday 02 February 2025), sought a TOVR for exactly the same Train Slots it had held and which were the subject of the dispute in TTP2540. It is of significance that neither NR nor GBRf who were both represented and present at the hearing of TTP2540 informed the Panel that GBRf had submitted a TOVR for the Train Slots which were, of course, the subject of the hearing.
40. It is contended by NR that none of those persons present on behalf of NR at the hearing on the 03 February 2025 were aware of the fact that GBRf had submitted, the previous day, a TOVR for the Train Slots in question. That, on the face of it, was a surprising position. However, having listened to the evidence and having heard from NR, I accept that those from NR who were present on the day of the hearing were unaware that GBRf had in fact submitted the relevant TOVR. However, the fact is that NR as a corporate entity was aware of GBRf's TOVR. GBRf, in my view, certainly knew on the day of the hearing that it had

submitted its TOVR the day before. The undisputed fact is neither Party told the Panel hearing TTP2540 that such a TOVR had been made, in circumstances where the TTP was entitled to be told, should have been told and/or might reasonably expect to be told.

41. By issuing the original Condition D8.5 Notice all that had happened in literal and legal terms was NR had indicated that its intention was to take back possession of the Train Slots. GBRf had objected and appealed, as was its right under Condition D8.5.3. The Train Slots were not vacant/available until they were actually taken back. That could only happen if and when there was a determination by a TTP that NR had behaved reasonably in issuing the Condition D8.5 Notice.
42. The removal of the Train Slots does not, and cannot, occur until either the operator holding the Slots (GBRf) does not appeal against the Condition D8.5 Notice, or a TTP determines that the notice is legally valid. The mere service of a Condition D8.5 notice, in itself, does not enable NR to actually take back possession of the Train Slot(s), if it is disputed. In TTP2540 GBRf did object and the matter fell to be determined in accordance with the ADR Rules. In TTP2540 I determined that NR had behaved reasonably in issuing the Condition D8.5 Notice and it was therefore valid. Only at that point could NR remove the Train Slots from GBRf. Thus, the Train Slots were not vacant/available to be obtained by way of a TOVR on 02 February 2025. GBRf's TOVR should have been rejected by NR as being in conflict with Condition D4.3.1(b) which, provides that NR "...shall not accept a Train Operator Variation Request (TOVR) if to do so would give rise to any conflict with any Train Slot already scheduled in." To do otherwise is, in effect, to unreasonably reserve capacity for the operator, something which is impermissible and places the operator who made the TOVR in an advantaged position as well as being, in my view, unfair to other competing operators.
43. At the hearing of this dispute (TTP2613) GBRf was present, but merely as an observer and declined to comment on this issue. Whatever its view or position was, or might be, my view is that those who represented GBRf on the 03 February 2025⁴ must have known that the preceding day GBRf had submitted a TOVR to NR but had not informed the Panel of this fact. That was a serious omission.
44. In the case of NR, I have to conclude that NR, as a corporate entity, was aware that the TOVR had been submitted to it. To say otherwise would be to suggest that NR had no idea at all as a corporate entity of the TOVR being submitted. That simply does not accord with the facts because NR subsequently purported to grant exactly those Slots to GBRf on the basis that GBRf was the first to submit a TOVR. As has been identified above, FLL was a Dispute Party in TTP2540. FLL says it was effectively denied the opportunity to have its TOVR considered for these Train Slots. FLL says that it had a legitimate expectation that it would in fact have been able to have its TOVR considered, equally alongside GBRf's, by NR and not rejected 'out of hand' by NR for being too late. I agree.
45. FLL makes the point at paragraph 2.4 in its SRD that "*Network Rail's decision contradicts the principles outlined in the TTP2540 determination. The determination made it clear that the opportunity to bid for relinquished capacity would follow the Hearing Chair's decision to uphold Network Rail's issuance of the [Condition] D8.5 notice*". I agree.
46. FLL goes on to record that I said at paragraph 57 of the TTP2540 determination "*GBRf is, as I have pointed out, free to bid again in the upcoming round*". At paragraph 48 of

⁴ At the hearing of TTP2540.

TTP2540 I had made the point *“However given that I have upheld NR’s decision as being reasonable in the circumstances, that capacity will now be released, and GBRf or Maritime Transport are, so far as I am aware, free to take part in a Part D Train Operator Variation Request to secure the Slots.”*

47. Those statements by me clearly indicated that the process for obtaining this capacity, by means of submitting TOVRs, was intended to occur after the dispute hearing following the ruling on the Condition D8.5 Notice. I did clearly envisage that the process to submit TOVRs for the capacity relinquished would follow the determination to uphold NR’s decision. That was a view that, prior to giving that written determination I had expressed in the hearing, and that is and was my view. Those present at the hearing⁵, when I gave short reasons, heard that and could not possibly have been unaware that the process was to be after the hearing and that GBRf, FLL and Maritime Transport (and indeed any other operator) would have the opportunity to submit TOVRs in an open and transparent process. No-one expressed a contrary view at the hearing of TTP2540.
48. My conclusion as to what happened is that the actions of GBRf, combined with the decision by NR to allocate the Train Slots to GBRf on 26 February 2025, can fairly be seen to have the effect of pre-empting the outcome of TTP2540. It is correct to point out that my colleague Jacqueline Finlay in ADA50, at paragraphs 51 and 52, deplored such an attempt to frustrate, or avoid, or to pre-empt the outcome of an appeal decision. I agree that such behaviour should not be tolerated.
49. The dispute resolution framework is, in my view, designed to *“avoid the use by any party of any dispute resolution process to delay, frustrate or avoid determination or resolution of the dispute”*. That is clearly provided for by ADR Rule A3(h).
50. During the course of the oral hearing, I mentioned a recent determination, TTP2570, dated 05 March 2025, where the Chair, John Hewitt, said:
“17. In its opening statement NR said, amongst other things, “Network Rail sees no evidence of exceptional circumstances within CrossCountry’s claims and have produced, within our TTP2570 Determination 4 defence papers, Decision Criteria’s [sic] that would still be accurate should the Chair request that we re-examine our decisions.”
51. He continued:
“19. Where NR asserts that, if directed to reconsider its decision it would do so but that it would arrive at the same conclusion, it renders the direction of the TTP rather futile and of limited practical value. This is a point which the Parties and all other operators need to have in their minds when pursuing Timetable Disputes. All parties involved in a dispute also need to have in their minds the obligation set out in ADR Rule A9(b) to conduct themselves in good faith with the objective of resolving the dispute.”
52. I raised TTP2570 with the Parties, because the behaviour of the Parties in this TTP raises similar issues with regard to good faith and dispute resolution. GBRf submitted a TOVR for the Train Slots in consideration under TTP2540 the day prior to the hearing, and neither NR, nor GBRf, mentioned that fact during the hearing of TTP2540. Were this behaviour to be condoned it would render the hearing of both TTP2540 and this TTP not only futile but a waste of everyone’s time and money. I was reassured that no Party would seek to render

⁵ Which included NR and GBRf, as well as FLL.

any hearing futile or a waste of time and money. Were it otherwise it would mean that the current rules-based system was failing to function as intended.

53. As discussed earlier in this determination, the following Network Code Conditions and ADR Rules are of relevance to this dispute, and are appended in Annex A: Condition A1.5 ('good faith'); ADR Rules A3(h), A9 and A10.
54. Since GBRf was not a Dispute Party at this hearing, I could not address this issue directly with it. I did invite GBRf to comment towards the end of the hearing on any aspect of the proceedings. Its representative decided not to comment.
55. GBRf should have declared at the hearing on 03 February 2025 that it had already submitted a TOVR. The fact is it did not. It also knew that NR's view was that the capacity remained available until the determination of TTP2540. GBRf also knew that if the Condition D8.5 Notice was upheld, the consequence would be that the Train Slots would be vacated. GBRf seems to me to have taken the view that, that if it put in a TOVR for the Train Slots, and the Condition D8.5 Notice was upheld, then by submitting its TOVR before the TTP determination, irrespective of the outcome of the hearing, it would be allocated those Train Slots because NR would allocate them on the basis of 'first-come-first-served'⁶.
56. If that were the case, it was a cynical manoeuvre, and one to be deprecated. It is for that reason that I have indicated as will be apparent later in this determination, that whilst NR should pay damages to FLL, NR should seriously consider the possibility of joining GBRf as a party so as to enable whoever may end up deciding the issue to direct that GBRf should contribute to the damages assessed, if the Chair deciding the issue thinks it right to do so. My view is that GBRf's action in submitting what I regard as a pre-emptive TOVR on the day before the hearing, and not disclosing it to the hearing, was a manoeuvre to frustrate or avoid the determination or resolution of the dispute.
57. The process of allocation of Train Slots must, in my view, be transparent, fair and provide equality of opportunity. This is a key principle that runs throughout Part D. At Condition D3.4.4(a), for example, it is said "*No amendment may be made unless NR has consulted with all timetable participants likely to be affected*". Although I acknowledge that this Condition relates to NR Variations, nevertheless, this it seems to me, is to advance and promote the concept of transparency, openness and fairness.

At Condition D4.7 it is said:

"where Network Rail has announced a final decision in respect of any process regulated by this Part D, that decision shall be ... binding on Timetable Participants save to the extent that it is changed by an appeal authorised by this Part D ... binding on Network Rail save to the extent that ... a decision is changed by an appeal authorised by this Part D."

Again at Condition D5.4.1 it is said:

"... where an appeal to a timetable panel pertaining to this Part D is pending the relevant decision of Network Rail shall remain binding until such time as the timetable panel determines otherwise ..."

That clearly indicates that the decision by NR to issue a notice of their intention in TTP2540 to take back unused Train Slots would remain binding and valid until the TTP declared otherwise.

⁶ Shorthand for the process described in Condition D4.3.1(c).

58. In TTP2540 there was an appeal against the issue by NR of a Condition D8.5 Notice. An appeal was lodged by GBRf, and it had the effect of ‘freezing’ NR’s decision until the TTP had made a determination. That determination was made on 03 February 2025, when the decision was orally announced at the conclusion of the hearing. In my view, to accept the TOVR from GBRf (who were contesting the notice) made on the day before the hearing was in breach of Condition D5.4.1. That provides:
- “Save where expressly stated otherwise in this Part D, where an appeal to a Timetabling Panel pertaining to this Part D is pending, the relevant decision of Network Rail shall remain binding until such time as the Timetabling Panel determines otherwise”.*
59. In any event it offends against the principle that all Timetable Participants who wish to submit TOVRs should have an equal opportunity to do so. Here, the Train Slots were not even available until the TTP in TTP2540 had determined the dispute. As NR was clearly aware of competing aspirations for the capacity, it should have set a timetable for the submission of TOVRs setting out clearly an opening and closing date and then, by applying the Decision Criteria, decide which TOVR to accept. It did not do so. I accept that the Network Code is somewhat unclear in this respect, and that is why, as part of this decision, I am providing guidance. The fact that such an open, competitive, TOVR submission process did not take place was fundamentally unfair to FLL⁷ (and indeed any other operator who may have wanted to obtain that capacity). FLL did not know that until I announced the determination on the day of the hearing that the Train Slots would become available. In TTP2540 GBRf continued with an appeal, despite having put in a TOVR in an attempt, in my view, to sabotage the outcome and deprive the other likely parties of an effective opportunity to have their own TOVRs to be equally considered by NR. That, it seems to me, is contrary to the good faith provisions of Condition A1.5, and other provisions of the ADR Rules. NR, for its part in accepting the TOVR which had been submitted the day before the TTP2540 hearing and subsequently processing it must, inevitably, take its share of the blame because it went on to re-allocate those Train Slots back to GBRf. There has been a breach of the duty to avoid using the dispute resolution process to frustrate or avoid the consequence of a determination. But my main finding against NR is that, corporately, it was guilty of a breach of faith.
60. Condition D4.3.1(b) directs NR to apply the Decision Criteria and that it shall not accept a TOVR if it would give rise to a conflict with a Train Slot already scheduled in the WTT. That means that the TOVRs submitted by GBRf and Victa Railfreight should have fallen. The reason for that is that until the determination (TTP2540) had been made, the capacity was not available. They therefore conflicted, and for that reason, should have been rejected by NR. Those Parties should have been instead invited to resubmit their TOVRs following the determination of TTP2540 becoming known.
61. When FLL submitted its TOVR, it had a legitimate and reasonable expectation that it was bidding into an open space, and that its TOVR was going to be considered, in the round, with any TOVRs submitted validly by other known Timetable Participants, and that NR was going to apply the Decision Criteria in arriving at a decision between them. NR’s actions in accepting a TOVR from GBRf, made before the determination, meant that the legitimate expectation of FLL was frustrated.

⁷ According to NR’s Chronology of Events, GBRf submitted a TOVR to occupy the capacity of GBRf Train Slots 4L24/4M24 on Sunday 02 February 2025 at 09:20. Victa Railfreight submitted a TOVR for the same slots on Monday 03 February 2025 at 09:12 Freightliner submitted its TOVR to occupy the slots 4L24/4M24 on Monday 03 February 2025 at 11.50

62. It seems to me that FLL may well have suffered loss of the opportunity to generate revenue by securing these Train Slots. That is a loss which ought to be compensated. It is for that reason that I direct that NR shall pay damages to FLL. I direct that those damages should be assessed. I merely hold that damages are payable in principle, not what they may amount to. I also am of the view that such damages probably do encompass the costs which FLL has had to bear in these proceedings (TTP2613). However, that is a matter for the relevant forum, which may have to determine the damages, to decide. I understand the argument that NR makes, that the TOVRs are processed in strict receipt order on the basis of compliance with the WTT that prevails at the time they are processed. However, that seems to me to totally lack any reality. TOVRs, in the Panel's experience, are routinely processed out of order, in order to accommodate varying timescales between receipt and intended date of operation, as well as TOVR complexity. That is very often to the benefit of all Parties as it optimises the delivery of changes. These events in the aftermath of TTP2540 are without precedent. It is for that reason that I came to the conclusion that exceptional circumstances do exist here.
63. NR in its SRD made the point, which it amplified at the hearing, that it relied on Condition D4.3.1. It said that:
"In the first instance, NR will seek to accommodate all TOVRs, using its flexing right under D4.3.1(a). We will also ensure that we utilise the decision considerations when we are accepting, modifying or rejecting a TOVR (both D4.3.1(b) and D3.3.3)."
64. NR made the point that Condition D4.3.1(c) specifies that in the event that two or more requests (i.e. TOVRs) would give rise to conflict, if both were to be accepted, then they shall be prioritised in the order in which they were submitted and any conflict resolved accordingly.
65. NR's interpretation of the Network Code means that no other Timetable Participant had a real opportunity to submit a TOVR with any possibility of success, and the only TOVR before NR, on NR's interpretation of Condition D4.3.1, was from GBRf, who, of course, had not actually used the Train Slots it was then requesting since 2022.
66. NR in its SRD goes on to say that *"in this matter, the order of submission of the TOVRs is clear: GBRf, followed by Victa, followed by FL, and NR has processed in this order."*
67. This view is incorrect, because D4.3.1(b) meant that GBRf's TOVR (and, indeed, Victa Railfreight's TOVR) should not have been accepted as it was made at a time when the Train Slots remained allocated. FLL waited until the decision had been made before it submitted its TOVR. GBRf and Victa Railfreight did not. There was therefore not a level playing field for all those interested. That is unfair. It cannot be allowed to stand.
68. It is for those reasons, and at NR's request, that I have decided that non-binding guidance should be issued. A copy of that has already been sent by way of an aide memoire to the parties following the hearing which took place on the 19 March 2025. This guidance provides the sought-for rigour to NR's handling of the Condition D8.5 process, and is in line with the way NR manages other bid and offer processes in Part D of the Network Code.

Request for guidance 1: What should NR do following the hearing of a disputed Condition D8.5 Failure to Use Notice

69. After a TTP decision/determination is notified to the Parties either:

- a. Orally at the conclusion of the hearing; or,
- b. If no oral decision is given following the conclusion of the hearing, and the TTP decision is notified in writing to the Parties,
- c. Then within 7 Working Days (or such shorter period as the Involved Parties consent to⁸) of the decision being so notified NR shall inform the Involved Parties that an opportunity to submit a TOVR has arisen and shall set a date and time for the opening and closing of such a bidding opportunity/window; and,
- d. That bidding opportunity/window shall be for a period not less than one week, or less, with the consent of all affected Parties⁹.

70. Thereafter NR shall decide on the allocation of capacity with reference to D4.3.1(b) and (c).

71. D4.3.1(b) and (c) require NR to apply in the first instance the Decision Criteria when allocating capacity.

72. For the avoidance of doubt, in the circumstances surrounding this dispute, the affected Parties are: FLL; GBRf; Maritime Transport (TTP2540); Victa Railfreight¹⁰.

Request for guidance 2: What should have taken place following NR's receipt of GBRf's appeal under D8.5.3

73. It is my view that, because of the "good faith", "Principles" and "Duties of the Dispute Parties", clauses in the TAC, the Network Code and in the ADR Rules:

If NR receives an objection under Condition D8.5.3, then any TOVRs received for that capacity are put in "limbo" or "stayed" or "frozen" until the objection under Condition D8.5.3 is determined. In respect of the situation where NR receives an TOVRs in the intervening period between the objection under Condition D8.5.3 and the date of the hearing, it should put that Timetable Participant on notice that it should consider itself an Involved or Dispute Party for the purposes of that TTP, and attend the hearing. NR should take no action in respect of those TOVR(s) until the TTP is determined. If NR's decision is overturned, then no action is needed; NR would reject any TOVRs, as they would clash with the D8.5 incumbent, which retains its Train Slots. If NR's decision is upheld, then the guidance (from this hearing TTP2613) on what to do post-dispute applies, and any Party which has already made an TOVR should be required to re-submit their bid in accordance with the guidance which accompanies this decision under 'Request for guidance 1' above, should they wish to proceed with their bid.

74. My reason for recommending that a Timetable Participant re-submit their TOVR for a Train Slot(s) during a defined TOVR submission window is to eliminate what I regard as the current haphazard process of allocating capacity on the basis of 'first-come-first-served'. Each TOVR should be capable of being assessed, and NR able to make a decision, in compliance with Conditions D4.3.1(a) and (b), and by reference to the Decision Criteria, which are at the heart of decision-making within the Code.

⁸ To allow a degree of operational flexibility, not to create a new normal.

⁹ To allow a degree of operational flexibility, not to create a new normal.

¹⁰ Although Victa declined to be an Involved Party to this dispute, it was not to be aware of the guidance I have issued, and should therefore be given an opportunity to submit a bid in these specific circumstances.

Request for guidance 3: What prevents an incumbent operator accepting a Condition D8.5 Notice, and immediately submitting a TOVR for the same capacity

75. NR raised this hypothetical issue, as described in paragraph 34 above. Its concern was that, if a third party had approached NR (as FLL had done in November 2024) and asked NR to issue a Notice under Condition D8.5, it might be open to the incumbent operator to accept the Notice, allowing NR to release the capacity, then immediately submit a TOVR for the same capacity, effectively cutting the third party out of the process. NR asked that the Panel provide guidance on this point.
76. The Panel's guidance is that the good faith and behavioural obligations, outlined elsewhere in this determination, in addition to the protection offered to third parties under Condition D8.5.6, sufficiently protects NR and any third party from such behaviour. Should this scenario arise, NR is obligated to put in "limbo" or "stay" or "freeze" any such TOVR from the incumbent operator until it has contacted the third party, in accordance with D8.5.6. I would suggest that then offering a TOVR submission opportunity/window to those two Timetable Participants, as described in paragraphs 69 to 71 above, would allow NR to arrive at an appropriate and Network Code-compliant outcome.

Recommendation: Condition D4.3.1(c)

77. In my view there is no need for the wording in Condition D4.3.1(c), and consideration should be given to its removal from the Code completely. The thorough, and conscientious, application of the Decision Criteria using Conditions D4.3.1(b) and D4.6 should, in each case, produce an outcome. It is difficult to imagine how a 'first-come-first-served' approach can be acceptable. It is for that reason that I recommend its removal from the Code. However, that is not a matter for me to decide, but for the wider industry.
78. In the exceptional circumstances which have prevailed here, and in response to a request from NR at the close of the hearing, I said in the aide memoire that NR should read the full written decisions before activating the TOVR submission opportunity/window for the capacity relevant to this dispute. The application of this guidance should provide an open clearly defined TOVR submission opportunity and is, in my view, in the interests of the industry as a whole in that everyone then knows exactly where they stand. There will be, as one of the Parties put it at the hearing of this dispute, a clear time set out where everyone knows when "the starting gun is fired", and there is also a clear end, after which NR's decision will be made. The guidance is intended to provide transparency, a level playing field, and open, fair and logical approach that is consistent with Part D provisions, and the wording of D8.5.

H Determination

79. Having carefully considered the submissions and evidence and based on my analysis of the legal and contractual issues, my determination is as follows.

80. NR did not act in accordance with both the Network Code (in particular Condition A1.5 and ADR Rules A3(h), A9(a) and A9(b)), which is incorporated by reference in FLL's TAC, and Clause 4.2¹¹ of FLL's TAC.
81. Exceptional circumstances applied.
82. NR is to withdraw the Train Slots offered to GBRf, set a TOVR submission window for all affected Parties, and reconsider the TOVRs it receives during said window, in accordance with the guidance above.
83. NR should pay damages to FLL, those damages to be assessed by another relevant forum in default of agreement between the Parties. Those damages may include FLL's costs in these proceedings. It will be open to NR to seek a contribution to any such award of damages from GBRf, in which case GBRf should be joined in those proceedings as a Party on the application of NR to the relevant forum appointed to conduct any assessment of damages.
84. I confirm that so far as I am aware, this determination and the process by which it has been reached are compliant in form and content with the requirements of the ADR Rules.



Matthias Kelly KC SC
Hearing Chair
26 March 2025

¹¹ The original version of this determination, published on 26 March 2025, referenced Clause 2.4, instead of 4.2 (per paragraph 36 above). This reissued version corrects that typo, and is in all other respects identical to the original document.

Annexes

Annex A: relevant extracts from the Network Code and ADR Rules

A1.5 Good faith

The Access Parties shall, in exercising their respective rights and complying with their respective obligations under this code (including when conducting any discussions or negotiations arising out of the application of this code or exercising any discretion under it) at all times act in good faith.

D4.3 Decisions concerning Train Operator Variations

4.3.1 In responding to a Train Operator Variation Request, Network Rail shall conduct itself as follows:

- (a) it is entitled to exercise its Flexing Right;
- (b) when exercising its power set out in Condition D3.3.3 Network Rail shall apply the Decision Criteria in accordance with Condition D4.6 except that it shall not accept a Train Operator Variation Request if to do so would give rise to any conflict with any Train Slot already scheduled in:
 - (i) the New Working Timetable after it is published at D-26 or the relevant Working Timetable, unless it is a Strategic Train Slot or an International Freight Train Slot for which the criteria for use in Condition D2.4.8 are met and which has not already been allocated to a Timetable Participant; or
 - (ii) the Rules;
- (c) where the Decision Criteria have been applied as set out in sub-paragraph (b) immediately above but two or more such requests would give rise to conflict were they to be accepted, they shall be prioritised in the order in which they were submitted and any conflict resolved accordingly.

D4.7 Finality of decisions

4.7.1 Save where expressly otherwise stated in this Part D, where Network Rail has announced a final decision in respect of any process regulated by this Part D, that decision shall be:

- (a) binding on Timetable Participants save to the extent that it is changed by an appeal authorised by this Part D;
- (b) binding on Network Rail save to the extent that:
 - (i) Network Rail is expressly permitted by any provision of this Part D to deviate from or amend that decision; or
 - (ii) a decision is changed by an appeal authorised by this Part D.

D5.4 Status of decisions

5.4.1 Save where expressly stated otherwise in this Part D, where an appeal to a Timetabling Panel pertaining to this Part D is pending, the relevant decision of Network Rail shall remain binding until such time as the Timetabling Panel determines otherwise.

5.4.2 Save where expressly stated otherwise in this Part D, where an appeal to the Office of Rail and Road pertaining to Part D is pending, the relevant decision of the Timetabling Panel shall remain binding until such time as the Office of Rail and Road determines or orders otherwise.

D8.5 Removal of Train Slots obtained by a Train Operator that are not being used

8.5.1 Where:

- (a) A Train Operator has obtained Train Slots in the Working Timetable; and
- (b) the Train Slots are not underpinned by a Quantum Access Right; and
- (c) Network Rail acting reasonably, considers that the Train Slots are not being used;

then Network Rail shall notify the Train Operator of its intention to remove the Train Slots from the Working Timetable.

8.5.2 Upon receipt of a notice under Condition D8.5.1, the Train Operator shall respond to Network Rail in writing within 10 Working Days stating that it either accepts or disagrees with Network Rail's decision.

8.5.3 If the Train Operator disagrees with Network Rail's decision under Condition D.8.5.1, then in addition to its response under Condition D8.5.2, it shall also at the same time refer the matter for determination in accordance with the ADRR.

8.5.4 If the Train Operator fails to respond to Network Rail in writing within 10 Working Days of receiving a notice under Condition D8.5.1, it will be deemed to have accepted Network Rail's decision.

8.5.5 Where a Timetable Participant reasonably believes that sub Conditions D8.5.1(a) and (b) apply then it may report this to Network Rail who shall consider whether to remove the Train Slots from the Working Timetable in accordance with Condition D8.5.1.

8.5.6 Within 10 Working Days of making its decision following the process set out in Condition D8.5.5, Network Rail shall advise the Timetable Participant who made the relevant report of the outcome.

8.5.7 Conditions D8.5.1 and D8.5.5 shall not apply to International Freight Train Slots.

ADR Rules Chapter A - the principles and operation of the determination procedure

Purpose

3 The determination procedure for disputes described in these Rules is intended to:

- (h) avoid the use by any party of any dispute resolution process to delay, frustrate or avoid determination or resolution of the dispute.

Duties of Dispute Parties

9 Dispute Parties shall at all times:

- (a) co-operate with any reasonable request of the Allocation Chair, any Forum, the Secretary and each other;
- (b) conduct themselves in good faith with the objective of resolving the dispute; and
- (c) avoid antagonistic or unduly adversarial behaviour.

10 Dispute Parties shall provide voluntarily, or where reasonably requested, to each other, to the Allocation Chair, the Secretary and to any Forum, all material required for the effective

consideration and determination of the dispute, mindful of the requirements of Rules F19, G24, H26, and I19 on Documents.

Annex B: FLL's Written Opening Statement

Thank you for the opportunity to present Freightliner's position in this dispute. We firmly disagree with NR's decision to reject the Train Operator Variation Requests subject to dispute, and question NR's actions in accepting another operators TOVRs (in this case GBRf's) when these were submitted while the subject of an ongoing dispute.

Freightliner believes that there are three key considerations that Network Rail failed to adequately assess while prioritising the TOVRs submitted by GBRf over those submitted by Freightliner.

First consideration: The TOVRs submitted by GBRf were for the same capacity that was the subject for determination in TTP2540 regarding Network Rail's decision to issue a Failure to Use notice. Specifically, these TOVRs had the same origin, destination, departure time, arrival time, and routing as the capacity subject to the Failure to Use. Given the characteristics of a Train Slot are defined as "a train movement or a series of movements, identified by arrival and departure times at each of the start, intermediate (where appropriate) and end points of each train movement" there is little doubt in Freightliner's mind that the Train Slots are the same as those subject to the Failure to Use, and that the TOVR containing them should therefore have been rejected.

It's unclear how any other outcome can be seen as acceptable, had GBRf submitted a TOVR a week earlier, and the Train Slots been input into the WTT prior to the Determination of TTP2540, they would have either been rejected as duplicated paths, or removed through the subsequent instruction from NR following the TTP2540 Determination.

Second consideration: The TOVR submitted by GBRf appears to be a clear attempt to pre-empt the outcome of TTP2540. The only reason for submitting the TOVR prior to the hearing was pre-emptively responding to a scenario where the Hearing Chair would uphold Network Rail's decision to remove the Train Slots in question. A previous hearing, ADA50, which involved the same parties, warned against pre-empting dispute outcomes. Network Rail should have taken this into account, yet by making the offer to GBRf, it has effectively endorsed this behaviour.

Freightliner believes that this behaviour violates the ADR rules, as the pre-emptive bid serves to 'frustrate' the dispute resolution process. Moreover, both parties' failure to provide "all material required for the effective consideration and determination of the dispute" further constitutes a breach of the ADR rules, which Network Rail has been complicit in.

Third consideration: In line with the first two points, Freightliner believes that Network Rail's decision to offer the Train Slots to GBRf disregards the outcome of TTP2540. The determination in TTP2540 was clear – following the decision to uphold Network Rail's decision to remove the Train Slots, the determination stated that the "capacity will now be released" and that GBRf would be "free to bid again in the upcoming round." This wording clearly indicates the expectation of a future bid by all parties, and not a bid that had already been pre-emptively submitted. Freightliner contends that Network Rail failed to consider the outcome of the determination, and in doing so, failed to honour its contractual commitments.

Given these considerations, Freightliner believe Network Rail have failed to act in accordance with our Track Access Contract in issuing the rejection of this TOVR on the grounds the capacity had already been allocated to another operator. There has been a clear mishandling of the process within NR which undermines both the outcomes of the ADC and the Network Code in general.

To find ourselves back at a Hearing so soon after TTP2540, with questions over adherence to ADR Rules is an exceptional situation. If the Panel believe Exceptional Circumstances do apply, Freightliner request that the Panel instruct Network Rail to withdraw the Train Slots offered to GBRf,

and reconsider TOVRs in the order they were submitted to them after the Determination by the Hearing Chair in TTP2540. Should the Panel not consider that Exceptional Circumstances apply, we request Freightliner be awarded damages for the loss of revenue relating to this breach.

Annex C: NR's Written Opening Statement

This dispute is being brought by Freightliner who disagree with the order in which Network Rail has processed a set of Train Operator Variation Requests (TOVR) submitted to Network Rail by three separate Timetable Participants, but all of which were competing for the same (or substantially similar) capacity on the Network.

Network Rail's decision to process GB Railfreight's TOVR before that of either Victra Railfreight or Freightliner was made in accordance with procedures set out in Part D of the Network Code.

This dispute has followed on from TTP2540, which did not explicitly prohibit the submission of TOVRs prior to the hearing, nor did it mandate a specific sequence for processing such requests. It is submitted that there was no need for the latter as this is dealt with by Part D.

The Determination in TTP2540, as well as Freightliner's submission in this dispute, both give mention to GB Railfreight's ability to "bid again in the upcoming round" for the capacity removed from GB Railfreight in that matter. Network Rail finds no definition or qualification of "upcoming round" within the Network Code regarding the timing of TOVR submissions. GB Railfreight's submission of their relevant TOVR would appear to be within their rights in the Network Code.

Network Rail notes the content of Freightliner's submissions and must take this opportunity to clarify the following points:

The electronic audit trail clearly shows that the relevant GB Railfreight TOVR was submitted and received by Network Rail on Sunday 2nd February 2025. This would formally be deemed to be received by Network Rail at 9am on Monday 3rd February 2025 as per D3.3.4(a) of Part D. This TOVR would have joined the workload queue in the company's systems to be allocated for review and processing.

Network Rail wish to make it abundantly clear that no one in the Network Rail delegation for TTP2540 (and arguably no one in Network Rail as a whole) was aware of the submission of this TOVR from GB Railfreight either before or during the hearing for TTP2540. The only party with knowledge of the submission was GB Railfreight who failed to raise this as information that could have been of relevance to TTP2540.

Network Rail refute any accusation that it has acted in bad faith, irrationally or capriciously.

Network Rail are unable to comment on the rationale for the timing of the relevant submission by GB Railfreight or why they did not deem it relevant to inform parties of their submission at the TTP2540 hearing.

Historically, Network Rail have been criticised for failing to adhere to the letter of the contract (i.e. Part D) or for invoking the 'spirit' of the Code when there is no explicit Condition dealing with certain scenarios. It is not our role to comment on whether a 'result' is right or wrong, but rather to follow the process set out in the Network Code dispassionately.

Network Rail submits that its actions are consistent with the explicit Conditions set out in the Network Code as referenced in our summary of the matter in dispute. All parties had equal opportunity to submit a TOVR, the choice of timing was theirs.

The rejection of Freightliner's relevant TOVR was because the capacity had already been allocated to GB Railfreight, and it is submitted that this decision aligns with the Network Code.

Network Rail agrees with any assertion that the way in which Part D is written does not seem to explicitly address how any Failure to Use progressed under Condition D8.5 interacts or impacts upon the processing of TOVRs. In the absence of explicit Conditions, guidance or hearing precedent, Network Rail has followed the Conditions that are relevant, although note that this particular issue seemed highly likely to result in an additional dispute given the intense competition for very specific capacity on the Network and the fact that only a limited number of Train Slots exist to serve the emerging purpose.

As a result, Network Rail welcomes any discussion and guidance in this area, especially that which might strengthen or clarify Condition D8.5 of the Code where deemed necessary.