

IN THE MATTER OF PART D OF THE NETWORK CODE

AND IN THE MATTER OF THE ACCESS DISPUTE RESOLUTION RULES

AND IN THE MATTER OF TIMETABLING DISPUTES: TTP: 1064; 1065; 1066; 1069; 1070; 1071; 1073

BETWEEN:

**(1) ABELLIO SCOTRAIL LIMITED ("ASR")
(2) DB CARGO (UK) LIMITED ("DBC")
(3) FIRST GREATER WESTERN LIMITED ("GWR")
(4) XC TRAINS LIMITED ("XCT")
(5) GB RAILFREIGHT LIMITED ("GBRf")
(6) EAST COAST MAIN LINE COMPANY LIMITED ("VTEC")**

Claimants

v

NETWORK RAIL INFRASTRUCTURE LIMITED ("NR")

Defendant

**APPENDIX NR1 TO NR'S RESPONSE TO
THE 1st GBRf SRD**

Introduction

1. This appendix gives the detail of NR's consultation with GBRf and other Network Participants over the issue GBRf introduces at paragraphs 5.1 to 5.8, NR's alleged failure to implement Freightliner's proposal in respect of Stratford SRTs and margins.
2. The material dates and actions of the chronology of this proposal are:

Prior to Consultation Obligations in Part D

3. 19 April 2016: Determination TTP625/685/733/872.
4. 24 June 2016: On 24 June 2016 NR sent operators an email with an agenda for a TPR forum on 1 July 2016 which was to discuss TPRs for the 2017 Timetable year, which had already been consulted and were now at version 4.0. Mr Bird of FL replied to NR's email, copying in the other operators, setting out FL's values for Stratford.¹ These were an AOB item on the agenda. This discussion was to be an advance look at the values. The values were later formally proposed by NR for the 2018 timetable year through Version 1 of the TPRs.

¹ The proposals included an inconsistency in the document which led to NR inadvertently omitting an allowance in Version 1. The inconsistency was that the table of the changes in the FL email from Mr Bird was missing an item that was listed in the text of that same email. NR had reproduced the table Mr Bird provided in V1 of the 2018 TPRs, hence the omission.

D-64 (16/09/16) to D-60 (14/10/16): NR shall consult with timetable participants in respect of any proposed changes to the Rules

5. 3 October 2016: NR circulated the proposals for discussion at the upcoming TPR Forum (D-64 to D-60) [**Annex / p.207**]
6. 10 October 2016: Discussion at TPR forum following advance consultation of Version 1.0 of the 2018 TPRs and circulation of the proposals. Abellio Greater Anglia ("GA"), MTR Crossrail ("MTR") and DBC all indicated they were happy with the changes proposed. GBRF was in attendance. (D-64 to D-60) [**Annex / p.226-228**]

D-59 (21/10/16) – NR shall provide to all timetable participants a draft of the revised rules

D-59 to D-54 (25/11/16) NR shall consult with timetable participants; timetable participants may make representations in respect of any changes they propose or objections they may have to the draft rules

7. 21 October 2016: Issue of Version 1.0 of the 2018 TPRs.
8. 20 November 2016: GBRf response to Version 1.0 of the 2018 TPRs. This mentioned that allowances had been missed from the original FL proposal. (D-59 to D-54) [**Annex/ p.109-132**].

D-54 (25/11/16) to D-44 (03/02/17) – NR shall consider representations and objections

9. 5 to 8 December 2016: Emails between NR and GBRf to clarify the relevant allowances. (D-54 to D-44) [**Annex / p.233-235**]
10. 6 January 2017: Discussion of Stratford area at TPR forum [**Annex/ p.324**], following circulation of the agenda on 5 January 2017.
 - 10.1 GBRf did not attend the forum, but a spreadsheet of FL's proposed values was shown to those present by the Chair, Chris Deal of NR [**Annex/ p.1-18**].
 - 10.2 NR had concerns with FL's values and the consequential likely reduction in transit time in most cases. The differences between the existing values and FL's proposals were shared with the operators in order to get their views on FL's proposals. GA and MTR challenged FL's proposals, as did FL themselves, now represented by Dave Beadle. GA requested evidence for the SRT reductions so Chris Deal of NR noted that he had requested ODA data in order to investigate the matter more fully.
 - 10.3 NR refutes the allegation in 5.3 that "NR had not fully understood the extent of the proposals and was seeking to reverse the agreement previously reached, the indication being that there was going to be a significant reduction in transit time in all cases". NR does not know which agreement that was previously reached is being referred to. It may

be the emails of 5 to 8 December 2016 between Jason Bird and Lee Brinklow (of NR). These emails were seeking to gain clarification of the FL proposal. This was on the basis that at that stage NR were intending to implement the FL proposals in the face of no objections or new evidence to the contrary. There was no agreement that NR would implement the values or bypass the proper consultation process. With respect to the allegation of an indication that there was going to be 'significant reduction in transit time in all cases' this is not the case and the spreadsheet that Chris Deal shared at the forum (see paragraph 10.1 above) shows that while the majority of transit times will reduce not all of them will.

11. 10 January 2017: Chris Deal of NR emailed Mr Bird at GBRf setting out concerns that were raised at the previous TPR Forum and asking GBRf for evidence to back up the original FL proposals (which by this point were no longer supported by FL or other operators) and offering to meet to discuss further. GBRf did not respond with an evidenced proposal as part of the consultative process, but responded simply saying that NR had no choice but to implement the values (D54 – D44) [**Annex/ p. 261**].
12. 19 January 2017: Chris Deal of NR emailed Mr Bird of GBRf saying that the data mentioned in the 10 January 2017 email was slightly wrong but still did not support reducing values [**Annex/ p. 262**].
13. 23 January 2017: NR Capacity Planning emailed the Liverpool Street Local Ops Manager regarding Stratford, quoting the FL dispute and asking for signalling comment on this. Liverpool Street SSM (Shift Signalling Manager) emailed back to NR Capacity Planning stating that the FL view on approach control to signal L292 was incorrect. [**Annex/ p. 264**].
14. 24 January 2017: MTR Crossrail wrote to provide support for retaining the existing values but proposed looking at the values through the Event Steering Group [**Annex/ p. 265**].
15. 24 January 2017: A phone conversation between FL and NR took place where FL stated that they no longer supported their original proposals, that they were content with the current values and proposed that the values be reviewed more thoroughly through the Event Steering Group. This was followed up by an email from FL on 25 January 2017 [**Annex/ p. 266**].
16. 24 January 2017: Chris Deal, Hazel Chalk and Mark Sleet of NR held a meeting at short notice with Mr Bird of GBRf, but no other operators (although others were invited), to explain the reasons why NR was not intending to proceed with what were now the GBRf proposals. NR took along ODA data supporting the current values [**Annex/ p. 267**]. GBRf provided no evidence and simply maintained that FL's figures were correct. GBRf argued that in order for the trains to be able to pass through the section in their proposed values that they should be put on manual signalling as opposed to ARS system signalling, but this is not feasible or safe. NR offered to review values through the Event Steering Group but GBRf said it would not make any difference to the dispute.

17. 27 January 2017: Greater Anglia emailed NR to state they had performance concerns with the FL proposal. They stated that performance had improved since the current values were introduced and that they wanted the values looked at as part of the Event Steering Group [**Annex/ p. 268**].
18. 31 January to 2 February 2017: NR planners and the Liverpool Street Shift Signalling Manager ("SSM") exchanged emails. The SSM wrote on 31 January that workstations are all busy, especially Stratford and manually setting routes would not be practicable, raising a performance risk (as it would not be recognised by other ARS trains) and would only serve to increase rather than reduce delays. On 2 February the SSM wrote to highlight approach control issues with the FL proposal, and reported signaller issues with the plan, and the issue of removing services from ARS affecting them across the network. The SSM makes clear that there would be safety concerns in moving the signalling to manual operation at Stratford. If a freight train were to come out of ARS then ARS would signal other trains as if the removed train was not there until the track circuit signalling, separately, stopping the two trains from entering the same section [**Annex/ p. 269-270**].

D-44 (3/2/17) – NR shall issue the final revised rules (v2)

19. On 3 February 2017 NR published Version 2.0 of the 2018 TPR.