

**Sole Submission to Timetabling Panel by Network**

**Rail Infrastructure Limited**

**TTP reference 1610**

## **1 DETAILS OF PARTIES**

1.1 The names and addresses of the parties to the reference are as follows: -

(a) First Trenitalia West Coast Rail Limited whose Registered Office is at 4th Floor Capital House, 25 Chapel Street, London, United Kingdom, NW1 5DH ("Avanti West Coast" (AWC) ("the Claimant"); and

(b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("Network Rail" (NR) ("the Defendant").

1.2 Third parties that may be affected by the Panel finding in any of the ways sought in this sole reference are West Midlands Trains (WMT), Legge Infrastructure Services (in respect of NR/HS2 'Materials by Rail' services), Serco Caledonian Sleeper, Abellio ScotRail, and Grand Central North West.

## **2 CONTENTS OF THIS DOCUMENT**

This Response to the Claimant's Sole Reference includes: -

(a) Section 3 – a summary of the matter in dispute.

(b) Section 4 - a detailed explanation of Network Rail's arguments in support of its position on the issues in dispute.

(c) Section 5 - the decisions of principle which Network Rail seeks from the Panel in respect of

(i) legal entitlement; and

(ii) remedies.

(d) Section 6 – Appendices.

### **3 SUBJECT MATTER OF DISPUTE**

The nature of the dispute in Section 4 of AWC's Sole Reference Document (SRD) is as follows:

- AWC's dispute is centred around the journey time extension made to 85 of their services by Network Rail as a result of Network Rail exercising its flexing right in the development of the May 20 New Working Timetable (NWT). AWC states that this will result in a deterioration of services.
- AWC alleges that Network Rail has incorrectly applied its Flexing Rights and failed to adhere to Part D4.2 and not applied the Decision Criteria pursuant to Part D4.6.
- AWC also alleges that Network Rail has failed to consult as required pursuant to D.2.6.2(b).
- Network Rail: (i) denies it has breached Part D of the Network Code; (ii) denies that it has failed to consult appropriately; and (iii) has applied its Flexing Rights appropriately.

Network Rail has in the seven days available to respond to the Sole Reference Document of AWC, has sought to address as many of the relevant issues as possible. However, Network Rail reserves the right to bring further issues to the attention of the Timetable Panel and to make further submissions.

### **4 EXPLANATION FROM THE DEFENDANT'S PERSPECTIVE OF EACH ISSUE IN DISPUTE**

#### **4.1 Issues where the Defendant Accepts the Claimant's Case**

Network Rail does not accept the Claimant's case. Network Rail agree with AWC that there has been no breach of their Track Access Contract.

#### **4.2 Issues where the Defendant qualifies or refutes the Claimant's Case**

##### **The Process of Developing the May 20 New Working Timetable**

At D40 for the May 20 NWT Network Rail received nationally 18,211 schedules in PDNS bid from operators to be incorporated into the NWT. These schedules were all either amendments, cancelations or new services to be incorporated into the timetable. Of this total number, 5,567 were on the North West and Central route.

As part of West Midlands Trains ("WMT") D40 PDNS submission Network Rail received a proposal for the inclusion of an additional hourly off peak fast line path between Northampton and London Euston. These paths were reviewed by Network Rail at the beginning of the development period, as no advance timetable working on

these additional train slots had taken place and no understanding of the timetable performance impact of introducing these trains into the timetable had been undertaken.

Network Rail had to ensure that the correct decision was made in relation to whether to accommodate these schedules requested by WMT. A decision not to accommodate the schedules requested by WMT was made on 3rd October 2019 (D32). At this point Network Rail started validation of the WMT D40 PNS Access Proposals, in relation to which the first task was to remove the additional hourly Fast Line off peak paths and advise WMT that these would not be included in the D26 publication of the NWT.

Network Rail did not receive a revised Access Proposal from WMT and flexed, or in dialogue during the validation process altered, the WMT PDNS to align to the outcomes of not including the additional hourly Fast Line off peak paths from the original D40 PDNS submission.

From D40 to D32 while this process was ongoing Network Rail concentrated its validation on the areas where WMT do not operate. Once this process was complete Network Rail then concentrated its validation on the West Coast Main Line South again. The order in which Network Rail delivered the work is why AWC experienced notification of flex later in the development period. The delivery plan that Network Rail had for the development of the May 20 NWT achieved the validation of all the Access Proposals received at D40 and subsequently published the May 20 NWT at D26 as per Network Rail obligations in Part D.

#### **Incorrect interpretation of Network Code D4.2.2 Priority for Inclusion**

Network Rail has acted in accordance with the Network Code Part D4.2.2. Network Rail confirms that AWC had Firm Rights at D40, and these were exercised correctly; WMT and HS2 materials by rail had an expectation of rights.

Network Rail understands AWC's dispute in this area to centre around two areas:

- the Priority for Inclusion of specific Train Slots into the New Working Timetable and associated rights of those Train Slots; and
- Network Rail's acceptance of a modified Access Proposal from WMT after D40.

Part D4.2.2 sets out the principles which Network Rail is obliged to follow when compiling the NWT. These are that Network Rail:

- shall endeavour wherever possible to comply with all Access Proposals which have been submitted;
- conform with the Rules;
- shall ensure the NWT is consistent with Exercised Rights; and
- is entitled to exercise its Flexing Right in compiling the NWT.

It is only if all Access Proposals cannot be included in the NWT that Network Rail has to allocate to a train slot a priority for inclusion. In this case all Access Proposals have

been included and, parts (a) to (c) of Part D4.2.2 have been achieved. Therefore D4.2.2 (d) is not applicable.

Network Rail does not accept the argument from Avanti WC that there has been a failure by Network Rail, to priorities the Access Proposals correctly. In accordance with D2.4.1 both Avanti WC and WMT submitted their requirements for the May 20 NWT at D40, Firm Rights were exercised or there was an Exception of rights for all train slots within the D40 Access Proposal. Avanti WC and WMT Access Proposals at D40 met the criteria of D2.5.

In progressing the WMT requirements for the May 20, following the decision not to include the additional hourly fast line path Network Rail, removed these trains slots from the NWT, this change was not progressed via and amended Access Proposal for WMT. Therefore D4.2.2 (d) priorities for inclusion were not applicable

Network Rail has not between D40 and D26 received an amended Access Proposal from WMT. Network Rail made decisions not to accommodate certain WMT Train Slots and to Flex other Train Slots during the development of the May 2020 NWT. By using its Flexing Right Network Rail was able to accommodate all AWC Train Slots and the priority for inclusion of these Train Slots do not need to be considered in this case.

#### **Network Rail's Flex**

During the development of the May 20 NWT, Network Rail Flexed 105 AWC services. A breakdown of these Flexes are shown below and in Appendix A:

- 26 services - Journey times were extended to make these services conform to the rules as set out in 4.2.2 (a). Network Rail does not consider these changes to be part of the dispute.
- 19 services were flexed and have now returned to the previous journey time. Network Rail does not consider these to be part of this dispute.
- 28 services had journey time improvements. Network Rail does not consider these changes to be part of the dispute.
- 10 services had journey time extensions to accommodate Access Proposals from Grand Central West Coast, ScotRail and Serco Caledonian Sleeper. Network Rail does not consider these to be part of this dispute.
- 21 services - Journey times were extended to accommodate an Access Proposal from WMT. Network Rail understands these to be part of this dispute.
- 1 service - Journey time was extended to accommodate an Access Proposal for HS2 Materials by Rail. Network Rail understands this to be part of this dispute.

Network Rail's entitlement to Flexing Right is defined in Part D as: *"a right, exercisable by Network Rail in allocating a Train Slot in the New Working Timetable, to vary a Train Slot:*

- (a) sought in an Access Proposal; or
- (b) arising from a Rolled Over Access Proposal; or
- (c) sought in a Train Operator Variation Request,

*in any way within and consistent with the Exercised Firm Rights of the relevant Timetable Participant or, where the Train Slot which is being varied is a Strategic Train Slot, in anyway without limitation;"*

In this case, Network Rail has utilised this right to enable it to fulfil its obligation in D4.2.2 to comply with Access Proposals submitted to it. While utilising this right Network Rail has sought to keep any journey time extension to a minimum. In 28 cases during the development of the May 20 NWT Network Rail has been able to improve AWC journey times.

### **Compensation and jurisdiction of the Timetabling Panel**

The only relief which the Timetable Panel can grant is that set out in Part D paragraph 5.3.1. Part D Paragraph 5.3.1 provides that:

*"In determining any appeal pursuant to this Part D, any Timetabling Panel or the Office of Rail Regulation (as the case may be) may exercise one or more of the following powers:*

- (a) it may give general directions to [NR] specifying the result to be achieved but not the means by which it shall be achieved;*
- (b) it may direct that a challenged decision of [NR] shall stand;*
- (c) it may substitute an alternative decision in place of a challenged decision of [NR] provided that the power described in (c) above shall only be exercised in exceptional circumstances."*

The power of the Timetable Panel does not extend to compensating AWC for detrimental revenue impact and it therefore has no jurisdiction to order compensation against Network Rail.

### **Network Rail's requirement to demonstrate application of the Decision Criteria**

Network Rail accepts that pursuant to Part D4.1 it is required to make all decisions by applying the Decision Criteria in the manner set out in Condition D4.6. However notwithstanding this provision, the volume of changes that are progressed in the NWT Development Period and the practicalities of using condition D4.6 for each of these changes means that in practice timetable planners if they have achieved the obligations of D4.2.2 (a) to (c) don't specifically use condition D4.6 for each instance of their use of Network Rail's Flexing Right.

All of Network Rail's Timetable Planners have an awareness and understanding of the Objective and Considerations as set out in condition D4.6, and mindful of the requirements that this, places on Network Rail for making decisions during the development period. It is this general understanding of the Objective and Considerations that is relied upon for processing most changes.

### **Consultation with AWC during the compilation of the May 2020 NWT**

Network Rail does not agree that it didn't adequately consult with AWC during the Timetable Preparation Period.

As per appendix C of AWC's Sole Reference Document, Network Rail shared on 10 occasions weekly change forms which have detailed the changes made to AWC's services during the development period. The single biggest entry of change shared with AWC (116 schedules) formed version 1. It is noted that during the final week of compiling the May 2020 New Work Timetable there was an increase of changes shared against previous weeks but as stated in D2.6.2 this consultation process takes between D40 and D26 and is not limited to a point in time during the 14-week plan.

As per appendix D & E of AWC's Sole Reference Document, dialogue between AWC took place after the sharing of these forms and Network Rail acted accordingly as stated in Condition D2.7.3.

As per 2.6.2 AWC had access to the evolving timetable through read only remote access to TPS and could visit the Network Rail planning office at any point to review progress during the development of the May 20 NWT.

AWC's Appendix E submission mail of the 12th November to Jordan Atkinson was answered by Julian Noble on the same day please see appendix C.

AWC's Appendix F e-mail was received on the 21st November post D26. Network Rail was unable to fully investigate and respond to this mail before the contents of this mail were then repeated in the AWC offer response e-mail of the 29th November. This further mail was fully responded to as Appendix B shows. AWC advise in 5.1 (k) of their submission that Network Rail have continued to work pro-actively to reduce the total number of services affected.

### **The Expectation of Rights to be Granted to Timetable Bids**

AWC sets out that not all WMT or HS2 Material by train paths had rights when they bid at D40. AWC go on to say that "*AWC believes that it is by no means certain that Access Rights can be 'expected' to be granted*". Network Rail can confirm that in this instance rights are not material to the decision made as Network Rail has accommodated all proposals that were submitted.

Therefore, Network Rail has in this instance developed a timetable using its Flex Right consistent with the Exercised Firm Rights of all participants.

**4.3 Issues not addressed by the Claimant that the Defendant considers should be taken into account as material to the determination**

**Journey Time Improvements to AWC services in the May 2020 New Working Timetable**

AWC's dispute of the May 2020 NWT largely centres around erosion of end to end journey times and the subsequent cost impact thereof. However, during the compiling and publication of the May 20 NWT Network Rail did include end to end journey time improvements to AWC services (10xSx 14xSo and 4xSU).

AWC has also been unable to demonstrate an alternative solution to the flexes made to AWC services with a shorter journey time that still incorporates all the Access Proposals made.

**4.4 Why the arguments raised in 4.1 to 4.3 taken together favour the position of the Defendant**

Network Rail has acted in accordance with the Network Code in the compilation and validation of the May 20 WTT. Network Rail has used its Flexing Right to accommodate all Access Proposals submitted to it in accordance with Part D4.2.2 (a, b & c).

If Network Rail had not been able to accommodate all the Access Proposals, it would be required to make a decision for inclusion based on the rights of paths in Part D4.6.2 (d) . In this instance this was not required

Network Rail has included the services without breaking any timetable participants' Track Access Contract. AWC has quantum rights without Journey Time Protection. The industry moved to quantum rights in 2016 to allow for greater flexibility within the timetable process.

**5 DECISION SOUGHT FROM THE PANEL**

Network Rail is seeking the panel to determine that:

- a) AWC's claims be dismissed.
- b) Network Rail has acted in accordance with Part D.
- c) Network Rail did adequately consult with AWC.
- d) AWC is not entitled to compensation.



**SIGNATURE**

For and on behalf of  
*[usually Network Rail Infrastructure Limited]*

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Signed



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Print Name  
Matt Allen

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Position  
Head of Timetable Production

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