

## **TIMETABLING PANEL DISPUTE PAPER**

**Dispute Reference:** TTP 2540

**Dispute Parties:** GB Railfreight Limited (GB Railfreight) vs. Network Rail Infrastructure Limited and Freightliner Limited

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### **1. DETAILS OF PARTIES**

#### **1.1 Claimant:**

- GB Railfreight Limited (“GB Railfreight”)
- Registered Office: 5<sup>th</sup> Floor, 62-64 Cornhill, London, EC3V 3NH

#### **1.2 Respondents:**

- Network Rail Infrastructure Limited (“Network Rail”)
  - Registered Office: 1 Eversholt Street, London, NW1 2DN
  - Freightliner Limited (“Freightliner”)
  - Registered Office: 1<sup>st</sup> Floor, 85 London Wall, City of London, London, EC2M 7AD
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### **2. THE CLAIMANT'S RIGHT TO BRING THIS REFERENCE**

2.1 This dispute is referred to a Timetabling Panel (“The Panel”) for determination in accordance with Condition D8.5.3 of the Network Code. The dispute arises from Network Rail’s decision to issue notice of the intention to remove Train Slots currently assigned to GB Railfreight, despite evidence of a confirmed commercial contract and imminent traffic commencement by GB Railfreight.

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### **3. CONTENTS OF THE REFERENCE**

3.1 This Sole Reference includes:

- (a) The subject matter of the dispute in Section 4.
- (b) A detailed explanation of issues in dispute in Section 5.
- (c) Decisions sought from the Chair in Section 6.
- (d) Appendices containing relevant documentation and evidence.

#### **4. SUBJECT MATTER OF DISPUTE**

GB Railfreight holds the following Train Slots in the previous (June 2024) and current December 2024 Working Timetables:

**4L24 [SX] 05:36 East Midlands Gateway GBRf – London Gateway GBRf (arr. 12:01)**

**4L24 [SO] 04:55 East Midlands Gateway GBRf – London Gateway GBRf (arr. 12:23)**

**4M24 [SX] 16:32 London Gateway GBRf – East Midlands Gateway GBRf (arr. 23:33)**

Network Rail's Freight Team initially issued a Part D, D8.5.1 notice, dated 11<sup>th</sup> November 2024, to GB Railfreight citing non-utilisation of the above three Train Slots (Appendix 3). On the 6<sup>th</sup> December 2024, Network Rail was forced to re-issue the initial Part D8.5 in order to correctly cite the right Third Party Applicant, Freightliner Ltd, vice DB Cargo (UK) Ltd (Appendix 5).

GB Railfreight responded on the 19<sup>th</sup> November 2024 (Appendix 4), disagreeing with Network Rail's decision to remove the Train Slots in question due, at the time, to a live contract extension and with these additional Train Slots in negotiation with one of its most important Intermodal customers, Maritime Transport Ltd. ("Maritime") and raised a dispute, as required under Condition D8.5.3.

These Train Slots would be used by GB Railfreight, from origin to destination terminal, for "new-to rail" business. The use of these Train Slots, developed additionally for this contract, from end to end, would be the best use of Network capacity for this new traffic given that the off-Network terminal times fit in perfectly with the on-Network capacity.

Despite GB Railfreight providing evidence of the contract renewal and informing Network Rail on the 6<sup>th</sup> December 2024 (Appendix 2), inclusive of additional services with Maritime for services using these Train Slots, Network Rail's Freight Team reaffirmed its decision to remove the Train Slots on the 16<sup>th</sup> December 2024 (Appendix 6). GB Railfreight formally responded to Network Rail on the 18<sup>th</sup> December 2024 citing need for an appeal via the Access Dispute Resolution process and potential options to assist in resolution, the latter has been declined and no formal response has been received on the former (Appendix 7).

It is worth noting that, as anticipated, GB Railfreight has now been awarded a contract extension with these additional Train Slots, starting from the 1<sup>st</sup> April 2025, that needs to make use of these specific GB Railfreight Train Slots between London Gateway and East Midlands Gateway.

The Train Slots in question form part of a 24-hours rotation essential to fulfilling this commercial contract between GB Railfreight, Maritime and Maersk for the London Gateway – East Midlands Gateway route.

GB Railfreight has continued to work on a resolution to avoid this dispute, pursuing the items in its Appendix 7 and writing to Network Rail informing them of Maersk, the Freight End User, of their wishes for the Train Slots in the context of their global supply chain requirements (Appendix 8).

The Network Code Part R Section 9 (b) states that ‘Dispute Parties at all times: (b) conduct themselves in good faith with the objective of resolving the dispute’ (Appendix 12). It is clear that Network Rail has not acted with the objective of resolving this dispute, rather ‘using this opportunity (GB Railfreight’s emphasis) to seek guidance from ADC’ (Appendix 10).

## **5. EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT’S ARGUMENTS TO SUPPORT ITS CASE**

### **5.1 Reasonableness of Network Rail’s Decision**

(a) GB Railfreight believes that the principles of reasonableness require actions to be fair and moderate under the set of circumstances in question.

(b) GB Railfreight has provided evidence of the contract extension inclusive of additional services with Maritime (Appendix 2) and the ultimate end customer Maersk (Appendix 8), demonstrating that the Train Slots in question are required for new, end-to-end traffic from 1<sup>st</sup> April 2025.

(c) In a previous similar Condition D8.5 decision made by Network Rail’s Freight Team (Appendix 1), in February 2021, Network Rail, in making its decision on a similar counter notice to that in this dispute, reviewed evidence supplied by the incumbent which included a recently signed contract for new traffic yet to commence.

(d) The Freight Team’s view was that, with this evidence, it recognised that a Train Slot removal would render the incumbent Freight Operating Company unable to deliver its up-coming contractual obligations for the new traffic.

(e) Network Rail, therefore, stated it considered it would be unreasonable to remove the Train Slot in question from the Working Timetable as such course of action would not be aligned with the wishes of the relevant Freight End User.

(f) Network Rail's decision was to not remove the Train Slot in question. There were, also, no appeals by any party to this decision.

(g) On the basis of the above Network Rail decision, on what was deemed reasonable in that case, GB Railfreight submits that such a course of action is also a reasonable decision to take in this case (TTP 2540).

(h) GB Railfreight believes the previously made decision can, arguably, be deemed to honour the terms of the Track Access Contract between GB Railfreight and Network Rail, given the previous action where the same Network Rail Freight Team had sided with the incumbent Train Slot holder from similar notices and actions (Appendix 1). This is especially the case given the facts in paragraph 5.1 (f).

(h) In addition, it is not clear to GB Railfreight for what traffic Freightliner requires these end-to-end Train Slots. GB Railfreight, however, has confirmed terminal slots at East Midlands Gateway (from Maritime Transport Ltd) and a requirement to use the specified Train Slot capacity to London Gateway and return from 1<sup>st</sup> April 2025 (Appendix 2 and 8).

(i) The imminent commencement of traffic and the absence of alternative Train Slot for this "new-to rail" traffic amplifies the impact of Network Rail's decision.

(j) The removal of these Train Slots undermines GB Railfreight's ability to meet its contractual obligations and the development of "new-to rail" business with Maritime Transport Ltd and Maersk causing potentially profoundly serious reputational damage to GB Railfreight and the whole rail industry.

## **5.2 Network Code Condition D4.6**

(a) As per Network Code Condition D4.6.1, Network Rail is required to decide any matter in Part D (GB Railfreight's emphasis) on the basis that "its objective shall be to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services ("the Objective")." (Appendix 11).

(b) In the case of TTP 2540, the carrying of new-to-rail goods traffic, as described in this Sole Reference Document in the most efficient manner and with a confirmed user in place, is absolutely key in making the correct decision as per this Condition.

(c) In achieving the Objective, Network Rail shall apply any or all of "the Considerations" in paragraphs a) to l) – Condition D4.6.2 of the Network Code.

(d) Moreover, Network Rail *must consider* (GB Railfreight's emphasis) which of "the Considerations" are relevant to these particular circumstances and apply them so as to reach a decision which is fair and is not unduly discriminatory – see Condition D4.6.3 of the Network Code.

(e) GB Railfreight has seen no evidence that Network Rail has applied any of "the Considerations" in reaching its decision to remove the Train Slots in question.

(f) On this basis, GB Railfreight believes that Network Rail has not acted in line with the Network Code before making and enacting its decision to remove the Train Slots from GB Railfreight.

(g) In applying the Decision Criteria to Condition D8.5, and the actions described in TTP 2540, GB Railfreight believes the following considerations have a particularly high weighting in the required decision-making:

- that the spread of services reflects demand;
- enabling operators of trains to utilise their assets efficiently;
- that journey times are as short as reasonably possible;
- maintaining and improving an integrated system of transport for passengers and goods;
- the commercial interests the any Timetable Participant, of which Network Rail is aware;

In the absence of any transparency in how "the Considerations" were applied, weighted and used in Network Rail's decision to remove the Train Slots, GB Railfreight believes the required Part D processes (i.e. application of "the Considerations" in arriving at a decision) have not been followed and, therefore, the current decision made by Network Rail was made on flawed basis.

Additionally, given similar circumstances (Appendix 1) where Network Rail's Freight Team came to an agreed decision whereby the incumbent kept the Train Slots for imminent newly contracted traffic (similar to this case), GB Railfreight believes it is reasonable that a similar decision should be determined in this case.

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## **6. DECISIONS SOUGHT FROM THE CHAIR**

### **6.1 Determination Sought:**

(a) In respect of the decision made by Network Rail, "the Considerations" in Condition D4.6.2 have not been applied at the point of making the decision with regard to the Part D8.5 of Train Slots 4L24 and 4M24.

(b) That the panel find on the basis of the evidence provided in this Sole Reference Document, that the decision made by Network Rail to remove the three Train Slots in question is flawed and the Panel determines that the decision be withdrawn.

## 7. APPENDICES

### ***Appendix 1: e-letter of a previous Network Rail Freight team decision on a Part D8.5 for Train Slot 6L04***

- o Date: 19/02/2021
- o Letter Titled: Network Code Condition D8.5 – Response to GB Railfreight Counter Notice – 6L04.
- o Summary: Network Rail’s previous decision-making surrounding Part D8.5 and their reasoning for this decision when commercial contracts with customer in place.
- o Content:

Dear Jack,

#### **Network Code Condition D8.5 – Response to GB Railfreight Counter Notice – 6L04.**

Thank you for your letter dated 9 February 2021 containing GB Railfreight Limited’s (“GB Railfreight”) Counter Notice pursuant to Condition D8.5.2 of the Network Code in response to Network Rail’s Failure to Use Notice of 27 January 2021, which followed a Third Party Application from Devon and Cornwall Railways Limited (“DC Rail”).

Network Rail understands that the Train Slot (below) is required to support a recently signed contract with SCS to deliver spoil product between Willesden Euroterminal and Barrington in relation to the HS2 Materials by Rail programme. We note the evidence from SCS to this effect and recognise that a removal would render GB Railfreight unable to deliver its contractual obligations.

Additionally, we note the letter of support provided to you by the relevant Freight End User (Cemex) who is only providing GB Railfreight with permission to enter its Barrington rail terminal utilising the Train Slot in question. We note the relevant Freight End User has also been clear that they no longer give permission to any other rail operator to access the Barrington rail terminal in the Train Slot below.

Given the above and the supporting information provided, Network Rail considers that on this occasion it would be unreasonable to remove the Train Slot from the Working Timetable; as such course of action would not be aligned with the wishes of the relevant Freight End User.

#### **Working Timetable Train Slots:**

6L04 [SX] 03:51 Willesden Euroterminal to Barrington Unloading Pad (arr. 08:15)

Network Rail notes that GB Railfreight has referred the matter for determination in accordance with the ADRR and would request confirmation on whether that still stands in light of the above decision.

Yours sincerely,

**Customer Relationship Executive, Network Rail**

Cc:

**Appendix 2: e-Letter by Maritime Transport Ltd to GB Railfreight sent to Network Rail confirming the Maritime contract renewal and Train Slots.**

- o Date: 06/12/2024
- o Letter Titled: LONDON GATEWAY – EAST MIDS GATEWAY INTERMODAL TRAFFIC
- o Summary: Maritime Transport Ltd confirming contract renewal and additional service request relating to the Train Slots of 4L24 and 4M24, with service specific details.
- o Content:

Dear Julie [GB Railfreight Intermodal Director],

Following positive conclusion of the contract renewal between Maritime Transport Ltd. (“MTL”) and GB Railfreight Ltd. (“GBRf”), this letter is to confirm the commencement of the new lane between London Gateway and East Midlands as part of the 2025 commitment. The will be used to service MTL’s commitment to Maersk following the announcement that their Gemini partnership ships will call at London Gateway going forward. The train will operate six days per week [SECTION REDACTED COMMERCIALY SENSATIVE INFORMATION] and is to commence within Q1 2025.

The new trains will utilise an overnight terminal slot at Eat Midlands Gateway so as to align with the incumbent rail services already in operation. GBRf will be responsible for securing the necessary network capacity but, for the sake of clarity, MTL expects the train to operate in the network paths outlined below, for which a working window has been identified and resource allocated at East Midlands Gateway solely for this GBRf service at the times outline.

- 4L24 [Mon – Fri] 05:36 East Midlands Gateway – London Gateway (arr. 12:01)
- 4M24 [Mon – Fri] 16:32 London Gateway – East Mids Gateway (arr. 23:33)
- 4L24 [Sat] 04:55 East Midlands Gateway – London Gateway (arr. 12:23)
- 4M24 [Sat] 16:xx London Gateway – East Midlands Gateway (arr. 21:xx)\*

\*Exact timing for the Saturday path from London Gateway to East Midlands Gateway to be confirmed.

We look forward to the continuation of our partnership and the delivery of the new lane between London Gateway and East Midlands Gateway in 2025.

Yours Sincerely,

General Manager – Intermodal

Letter cc'd to:



**Appendix 3: Network Rail e-letter of initial Part D8.5 notification on Train Slots 4M24 and 4L24 served on GB Railfreight**

- o Date: 11/11/2024
- o Letter Titled: Network Code Condition D8.5 – Failure to Use Notice – 4L24 SX/SO – 4M24 SX
- o Summary: Network Rail’s initial Part D8.5 for Train Slots of 4L24 and 4M24 which incorrectly cites DB Cargo as the Third Party Applicant.
- o Content:

Dear Tom,

**Network Code Condition D8.5 – Failure to Use Notice – 4L24 SX/SO – 4M24 SX**

Network Rail is in receipt of a Third Party Application from DB Cargo (UK) Limited (“DB Cargo”) under Part D8.5 of the Network Code in respect of the below unused Train Slots held by GB Railfreight (“GBRf”) The Train Slots (listed below) have been validated by Network Rail and included in the Current Working Timetable. Network Rail believes that the below Train Slots are not underpinned by Access Rights, have not been utilised in the thirteen weeks preceding DB Cargo (UK) Limited (“DB Cargo”) letter to us on 11 November 2024, and that this non-use is continuing.

**June 2024 Train Slot**

4L24 [SX] 05:36 East Mids Gateway Tml GBRf – London Gateway GBRf (arr. 12:01)  
4L24 [SO] 04:55 East Mids Gateway Tml GBRf – London Gateway GBRf (arr. 12:23)  
4M24 [SX] 16:32 London Gateway GBRf - East Mids Gateway Tml GBRf (arr. 23:33)

**December 2024 Train Slot**

4L24 [SX] 05:36 East Mids Gateway Tml GBRf – London Gateway GBRf (arr. 12:01)  
4L24 [SO] 04:55 East Mids Gateway Tml GBRf – London Gateway GBRf (arr. 12:23)  
4M24 [SX] 16:32 London Gateway GBRf - East Mids Gateway Tml GBRf (arr. 23:33)

As such, Network Rail would be grateful for your confirmation that the Train Slot will be relinquished by GB Railfreight at the earliest opportunity.

Network Rail will make arrangements for the removal of this Train Slot from the current and future Working Timetables from 09 December 2024. Should you wish to appeal this Failure to Use Notice, please could I ask that Network Rail receive your objection not later than 25 November 2024.

Yours sincerely,

**Customer Support Manager, Network Rail**

CC:

**Appendix 4: GB Railfreight email formal response to Network Rail on D8.5 notification on Train Slots 4M24 and 4L24.**

- o Date: 19/11/2024
- o Letter Titled: Network Code Condition D8.5 – Failure to Use Notice – 4L24 SX/SO – 4M24 SX.
- o Summary: Network Rail's initial Part D8.5 for Train Slots of 4L24 and 4M24 which incorrectly cites DB Cargo as the Third Party Applicant.
- o Content:

Good Afternoon Tony,

GBRf disagree with Network Rail's decision to pursue D8.5 for the relinquishment of the aforementioned paths. GBRf do not feel it is reasonable for Network Rail to relinquish the paths as an active and live tender process is still to be decided by Maritime, for this traffic.

I attach for your pursual a redacted copy of the correspondence in which Maritime confirm the position which GBRf describes.

Please can you let GBRf know of Network Rails position as soon as is practicable.

Please also note that as a matter of process GBRf must raise a dispute, which hopefully can be avoided through a pragmatic resolution.

I look forward to hearing further from you on this matter.

Best Regards,

**Head of Timetabling**

**Appendix 5: Network Rail re-issue correcting original Part D8.5 on Train Slots 4M24 and 4L24 served on GB Railfreight**

- o Date: 06/12/2024
- o Letter Titled: Network Code Condition D8.5 – Failure to Use Notice – 4L24 SX/SO – 4M24 SX.
- o Summary: Network Rail re-issue Part D8.5 in order to correct the Third Party Applicant
- o Content:

Dear Tom,

**Network Code Condition D8.5 – Failure to Use Notice – 4L24 SX/SO – 4M24 SX.**

Network Rail is in receipt of a Third Party Application from Freightliner Ltd (“Freightliner”) under Part D8.5 of the Network Code in respect of the below unused Train Slots held by GB Railfreight (“GBRf”). The Train Slots (listed below) have been validated by Network Rail and included in the Current Working Timetable. Network Rail believes that the below Train Slots are not underpinned by Access Rights, have not been utilised in the thirteen weeks preceding Freightliner Ltd (“Freightliner”) letter to us on 11 November 2024, and that this non-use is continuing.

**June 2024 Train Slot**

4L24 [SX] 05:36 East Mids Gateway Tml GBRf – London Gateway GBRf (arr. 12:01)  
4L24 [SO] 04:55 East Mids Gateway Tml GBRf – London Gateway GBRf (arr. 12:23)  
4M24 [SX] 16:32 London Gateway GBRf - East Mids Gateway Tml GBRf (arr. 23:33)

**December 2024 Train Slot**

4L24 [SX] 05:36 East Mids Gateway Tml GBRf – London Gateway GBRf (arr. 12:01)  
4L24 [SO] 04:55 East Mids Gateway Tml GBRf – London Gateway GBRf (arr. 12:23)  
4M24 [SX] 16:32 London Gateway GBRf - East Mids Gateway Tml GBRf (arr. 23:33)

As such, Network Rail would be grateful for your confirmation that the Train Slot will be relinquished by GB Railfreight at the earliest opportunity.

Network Rail will make arrangements for the removal of this Train Slot from the current and future Working Timetables from 09 December 2024. Should you wish to appeal this Failure to Use Notice, please could I ask that Network Rail receive your objection not later than 25 November 2024.

Yours sincerely,

**Customer Support Manager, Network Rail**

CC:

**Appendix 6: Network Rail email reaffirming D8.5 decision on Train Slots 4M24 and 4L24**

- o Date: 16/12/2024
- o Email Titled: RE: Part D8.5 failure to use notice 4L24 SX/SO - 4M24 SX.
- o Summary: Network Rail reaffirms their decision to seek removal of 4M24 and 4L24 Train Slots
- o Content:

Hi Tom.

As you are aware, we have been reviewing this Part D.8.5 failure to use notice.

I am writing to confirm that having completed this review our intention remains to remove the Train Slot as outlined below on 11<sup>th</sup> November 2024.

I note that you have referred this matter to Access Disputes Committee and this email is attached for completeness.

Regards,

**Customer Relationships Executive**

Cc:

**Appendix 7: GB Railfreight formal response to Network Rail on Part D8.5 on Train Slots 4M24 and 4L24**

- o Date: 18/12/2024
- o Email Titled: RE: Part D8.5 failure to use notice 4L24 SX/SO - 4M24 SX.
- o Summary: GB Railfreight formally responding to Network Rail and seeking plan of action to resolve the matter in time for 1<sup>st</sup> April 2025.
- o Content:

Dear Sarah,

GB Railfreight is extremely disappointed with Network Rail's decision, and will consider its position, but is highly likely to appeal via the ADRC process set out within the Network Code.

Having recently concluded a new haulage contract with Maritime to utilise the Train Slots sought for discontinuation on a daily basis within Q1 2025, the decision made, and the risk that it imparts on the business interests of GBRf, Maritime and Maersk, is unreasonable and unacceptable as a result. Do note this is a very different scenario to other similar disputed examples of non-use of Train Slots given our customers' involvement.

Pending the outcome of the probable appeal, action has already commenced in an attempt to mitigate the issues caused by the decision made. The commercial agreement with Maritime has been specifically created based upon the 4L24/4M24 Train Slots and these have been purposefully timetabled to work around both the incumbent network gauging restrictions and the cyclical engineering work. To enable the delivery of its new contract with Maritime, and notwithstanding the adverse commercial impact, GB Railfreight will need one or both of the issues listed below to be delivered by 1<sup>st</sup> April 2025.

Having chosen not to support GB Railfreight in its decision regarding 4L24/4M24, I implore Network Rail to approach the issues below with the urgency required to resolve them within the timescales specified so as to avoid the loss of a daily contracted intermodal service to road.

- Resolution of the gauging issue relating to W10 traffic via Trent South Jn – Syston North Jn on the Up Slow due to the prohibit at 'Flying Arch' bridge.
  - o GBRf would support a possession of the Slow Lines to deliver gauge clearance via a track lower in the timescales specified (by 1<sup>st</sup> April 2024).

- Easement of the following list of possessions (as shown in the right hand column):

East Midlands				
	Route No.	Affected Section	Current Times	Required Times
East	LN3520	Castle Donnington – Stenson Jn	1 in 6 2355 – 0535 M/T – F/S	2355 – <b>0235</b> M/T – F/S
Route	LN3501.1 to .3	Derby LRJ – Barton SJ	1 in 6 2355 – 0520 M/T – F/S	2355 – <b>0305</b> M/T – F/S
	LN3501.5	Tamworth HL – Wichnor Jn	1 in 6 2345 – 0540 M/T – F/S	2345 – <b>0315</b> M/T – F/S
	LN3232	Wigston NJ – Nuneaton SJ	1 in 6 2325 – 0540 M/T – F/S	2325 – <b>0425</b> M/T – F/S
LN35	LN3201.17 to.20	Market Harborough - Knighton Jn	1 in 12 2345 – 0530 M/T – F/S	2345 – <b>0500</b> M/T – F/S
LN35	LN3201.20 to.21	Knighton Jn - Leicester North Jn	1 in 12 2350 – 0520 M/T – F/S	2350 – <b>0500</b> M/T – F/S
LN32				
LN32	LNW - Central			
LN32	MD501	Tamworth HL – Kingsbury BJ	1 in 6 2345 – 0540 M/T – F/S	2345 – <b>0325</b> M/T – F/S
	MD545	Kingsbury Jn – Whitacre WJ	1 in 6 2345 – 0540 M/T – F/S	2345 – <b>0335</b> M/T – F/S
LNW	MD545	" " " "	1 in 6 0030 – 0530 T-F	0030 – <b>0335</b> T – F
	MD555	Coleshill Parkway – Abbey Jn	1 in 6 0030 – 0530 T-F	0030 – <b>0335</b> T – F
MD5	MD232	Hinckley – Abbey Jn	1 in 6 2325 – 0540 M/T – F/S	2325 – <b>0425</b> M/T – F/S
MD5				
MD5	The following Section 4 possession would need easing Monday morning as well:			
MD5				
MD2	MD545	Kingsbury Jn – Whitacre WJ	2250 Sun – 0550 Mon	2250 Sun – <b>0335</b> Mon

The following Section 4 possession would need easing Monday morning as well:

MD545	Kingsbury Jn – Whitacre WJ	2250 Sun – 0550 Mon	2250 Sun – <b>0335</b> Mon
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Yours sincerely,

**GBRf Head of Timetabling**



**Appendix 8: GB Railfreight forwarded email from Freight End User. REDACT COMMERCIALY SENSITIVE.**

- o Date: 16/01/2025
- o Email Titled: RE: LONDON GATEWAY – EAST MIDS GATEWAY INTERMODAL LANE
- o Summary: GB Railfreight *updating Network Rail on position and seeking reconciliation on the D8.5 Train Slots of 4M24 and 4L24, highlighting Freight Rail End position.*
- o Content:

Hi Georgie,

We have had our first tripartite implementation call today, with Maritime and Maersk, and they are clear GBRf should move forward. Having been made aware of the risk to their businesses, please take note of Maersk's wishes, below.

Maritime Transport is also now joining the dispute as an Involved Party to assure that, as the customer, their position is protected. [The ADC Secretary] has been formally advised.

In the spirit of continuing to seek resolution without formal dispute would Network Rail like to reconsider its position, given this overall picture?

Best Regards,

**Head of Timetabling**

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Dear James

As you're aware, Maersk will soon be entering into the Gemini Corporation with Hapag-Lloyd from February 2025. The associated review of the Asia-Europe shipping routes identified London Gateway as the most optimal port to serve our customers and, consequently, the majority of Maersk's UK Railfreight haulage will transfer from Felixstowe in 2025.

On this basis Maersk requires the incumbent Felixstowe – East Midlands Gateway rail lane that is contracted between Maersk and Maritime Transport Ltd. ("MTL") to transfer to London Gateway, in alignment line with the Gemini Corporation from 1<sup>st</sup> April 2025 or earlier as required. Please could you

immediately commence the necessary arrangements to achieve this, in line with the target commencement date.

The terminal slots for the new London Gateway lane are to operate as detailed below and Maersk has confirmed this desire with DP World. It is noted that, as operator of East Midlands Gateway terminal, MTL is responsible for the allocation of capacity within the inland terminal and that these have been allocated as detailed. Maersk understands that MTL contracts rail haulage of the incumbent Felixstowe rail lane to GB Railfreight Ltd. ("GBRF"), and that this arrangement will continue after the transfer to London Gateway.

**London Gateway:**

Arrivals: 12:01 Monday to Friday

12:23 Saturday

Departures: 16:32 Monday to Friday

16:00 Saturday

**East Midlands Gateway:**

Arrivals: 23:35 Monday to Friday

21:00 Saturday

Departures: 05:36 Monday to Friday

04:55 Saturday

Regards

Head of Procurement UKI [Maersk]

**Appendix 9: Network Rail response to GB Railfreight regarding Appendix 8**

- o Date: 20/01/2025
- o Email Titled: RE: LONDON GATEWAY – EAST MIDS GATEWAY INTERMODAL LANE
- o Summary: Network Rail refusing to seek resolution.
- o Content:

Hi Tom,

Thanks for sharing the below – I'm pleased to hear there's collaboration across the sector and support Maritime joining the Dispute as an Interested Party.

Unfortunately, our position remains and whilst I know that will be disappointing to hear, I want to remind you that we're using this opportunity to seek guidance from ADC on whether 'future use' can be reasonably considered under the Part D8.5 – Failure to Use process.

I hope you will understand, we haven't taken this decision lightly but I'm optimistic that the guidance provided will avoid the need for future disputes where similar circumstances apply.

Thanks,

Senior Customer & Commercial Manager

Cc:

**Appendix 10: GB Railfreight response to Network Rail regarding Appendix 8 and 9**

- o Date: 21/01/2025
- o Email Titled: RE: LONDON GATEWAY – EAST MIDS GATEWAY INTERMODAL LANE
- o Summary: GB Railfreight citing concern over Network Rails decision in Rail refusing to seek resolution and risking GB Railfreight’s commercial contract.
- o Content:

Hi Georgie,

Many thanks for the response.

GBRf would like to place on record their disappointment at Network Rail not continuing to seek a resolution to this dispute and putting in jeopardy GB Railfreight’s signed commercial contract to generate an opportunity to seek guidance from ADRC.

Best Regards,

**Head of Timetabling**

## **Appendix 11: Network Code Part D The Decision Criteria**

- o Summary: The Network Code Part D Decision Criteria and “the Considerations”
- o Content:

### **4.6 The Decision Criteria**

4.6.1 Where Network Rail is required to decide any matter in this Part D its objective shall be to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services (“the Objective”).

4.6.2 In achieving the Objective, Network Rail shall apply any or all of the considerations in paragraphs (a)-(l) below (“the Considerations”) in accordance with Condition D4.6.3 below:

- (a) maintaining, developing and improving the capability of the Network;
- (b) that the spread of services reflects demand;
- (c) maintaining and improving train service performance;
- (d) that journey times are as short as reasonably possible;
- (e) maintaining and improving an integrated system of transport for passengers and goods;
- (f) the commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant of which Network Rail is aware;
- (g) the content of any relevant Long Term Plan and any relevant Development Timetable produced by an Event Steering Group;
- (h) that, as far as possible, International Paths included in the New Working Timetable at D-48 are not subsequently changed;

- (i) mitigating the effect on the environment;
- (j) enabling operators of trains to utilise their assets efficiently;
- (k) avoiding changes, as far as possible, to a
- (l) Strategic Train Slot other than changes which are consistent with the intended purpose of the Strategic Capacity to which the Strategic Train Slot relates; and
- (m) no International Freight Train Slot included in section A of an International Freight Capacity Notice shall be changed.

4.6.3 When applying the Considerations, Network Rail must consider which of them is or are relevant to the particular circumstances and apply those it has identified as relevant so as to reach a decision which is fair and is not unduly discriminatory as between any individual affected Timetable Participants or as between any individual affected Timetable Participants and

Network Rail. Where, in light of the particular circumstances, Network Rail considers that application of two or more of the relevant Considerations will lead to a conflicting result then it must decide which of them is or are the most important in the circumstances and when applying it or them, do so with appropriate weight.

**Appendix 12: Network Code Part R Duties of Dispute Parties.**

- o Summary: Network Rail has stated it is not seeking resolution but pursuing an ADRC determination against the duties of a Dispute Party as per Part R Section 9 (b).
- o Content:

**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.

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**8. SIGNATURE**

For and on behalf of GB Railfreight Limited.

Signed

Head of Timetabling