

TTP2570

Network Rail Defence Submission

1 DETAILS OF PARTIES

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

- (a) Crosscountry Trains Limited (Company Number 04402048), whose registered Office is at: 1 Admiral Way, Doxford International Business Park, Sunderland, Tyne & Wear, SR3 3XP (*"Crosscountry"* or *"XC"*) (*"the Claimant"*); and
- (b) Network Rail Infrastructure Limited whose Registered Office is at Waterloo General Office, London, United Kingdom, SE1 8SW (*"Network Rail"* or *"NR"*) (*"the Defendant"*).
- (c) Crosscountry correspondence address: 5th Floor, Multistory, 18 Priory Queensway, Birmingham, B4 6BS
Network Rail correspondence address: The Quadrant, Elder Gate, Milton Keynes, MK9 1EN.

1.2 Affected or interested parties:

Specific interested parties are expected to be (5.1) West Midlands Trains, Avanti West Coast and Transport for Wales (5.2) Freightliner (5.3) Greater Anglia, (5.4) Colas and GBRF

2 CONTENTS OF THIS DOCUMENT

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

- (a) Confirmation, or qualification, that the subject matter of the dispute is as set out by the Claimant in its Sole Reference, in the form of a summary schedule cross-referenced to the issues raised by the Claimant in the Sole Reference, identifying which the Defendant agrees with and which it disagrees with.
 - (b) A detailed explanation of the Defendant's arguments in support of its position on those issues where it disagrees with the Claimant's Sole Reference, including references to documents or contractual provisions not dealt with in the Claimant's Sole Reference.
 - (c) Any further related issues not raised by the Claimant but which the Defendant considers fail to be determined as part of the dispute.
- (a) The decisions of principle sought from the Chair in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
 - (b) Appendices and other supporting material.

3 SUBJECT MATTER OF DISPUTE

- 3.1 Network Rail agree that this dispute relates to four issues as referred to within the Claimant's SRD and which they claim are 'unsatisfactory'. For clarity, we will refer to these as Issues 1 – 4 and submit that the substantive issues are:
- 3.2 Issue 1 - Network Rail agree that this is a dispute in relation to a Network Rail decision to add pathing into a schedule and assignment of a platform other than the one requested.
- 3.3 Issue 2 – Network Rail agree that this is a dispute in relation to 5 minutes of journey time being added into the schedule for 1M69EX (SX) by being departed 5 minutes earlier from origin than bid, while noting this was through a combination of pathing time and dwell extension at the next stopping station.
- 3.4 Issue 3 – Network Rail agree that this is a dispute in relation to 6 minutes pathing being added into the schedule for 1N69EV (SX) as well as an argument about the status of a 'refresh' offer post D-26.
- 3.5 Issue 4 - No comments have been made in relation to this issue as Network Rail have been able to implement the two specific outcomes of this item that CrossCountry have asked for in their SRD and this item is no longer in dispute.

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

4.1 Issues where the Defendant accepts the Claimant's Case.

- 4.1.1 **In relation to Issue 1:** It is agreed that both 1M69 and 1G71 were submitted as Access Proposals to Network Rail at D-40.
- 4.1.2 The description of the initial composition of services (2 x 5 cars to form x1 10 car service) and the subsequent amendment 'bid' post D-40 via diagram only (1 x 5 car + 1 x 8 car to form a 13-car service) is agreed. It is also agreed that the Claimant requested both variants use Platform 7 at Birmingham New Street.
- 4.1.3 We agree that Network Rail has added 4 minutes pathing into the schedule for 1G71 and that the offer returned to the Claimant at D-26 was for two services (5 car and 8 car) into Platform 9.
- 4.1.4 We agree that the Timetable Planning Rules (TPRs) contain values that would technically allow a 13-car service into Platform 7 (providing the units all arrive from the same direction, do not perform any form of reversal and are unable to access the 'DEL' lines).
- 4.1.5 We agree that the Timetable Planning Rules (TPRs) need amending following the identification of the error in platform length of Platform 7.
- 4.1.6 **In relation to Issue 2:** It is agreed that Network Rail have added 5 minutes journey time into the schedule for 1M69EX (SX) and that the schedule does eventually return to its 'bid path'. It is agreed that this time was added through flexing rights to accommodate inclusion of a freight train and fulfil all access proposals.

- 4.1.7 It is agreed that this service was submitted as an Access Proposal to Network Rail at D-40 and that the bid requested a departure time of 19:00. We also accept that this request represents the same departure times that are in the Dec 24 timetable for its SO and Su version.
- 4.1.8 We agree that the spread of services to Birmingham has been altered from 27/33 minutes at bid to become 22/38 minutes at offer.
- 4.1.9 We agree that there is no contractual right or protection afforded under either the Network Code or Track Access Contract to a standard or unchanged departure time or spread of services.
- 4.1.10 **In relation to Issue 3:** It is agreed that the schedule has been offered with a departure time that is 6minutes earlier than bid.
- 4.1.11 We agree that the Access Proposal was submitted to Network Rail at D-40 and agree the details of the requested path as per the Claimant's SRD.
- 4.1.12 **In relation to Issue 4:** No comments have been made in relation to this issue as Network Rail have been able to implement the two specific outcomes that CrossCountry have asked for in their SRD and this item is longer in dispute.
- 4.2 Issues where the Defendant qualifies or refutes the Claimant's Case.**
- 4.2.1 **In relation to Issue 1:** Network Rail have used its Flexing Right to create a robust and high performing timetable. We are now in agreement about the length of the trains in question at 304.1metre and agree the 10metre signal standage and 2 metre attachment gap. This leaves just 10cm of error before the trains are overlength on Platform 7, signals are prevented from resetting and trains departing or incoming onto these lines will be prevented from operating until such problem is resolved. Network Rail refute the CrossCountry claim that the second arriving train will stop 'momentarily' 2 metres away. Network Rail challenged this description when it was communicated to us on 7th February 2025 as the documented evidence provided does not support this conclusion. Network Rail are yet to receive any further information that supports the CrossCountry position (Network Rail Appendix 6.1.1), and as such are left with the conclusion that this option incorporates an unknown and unnecessary element of performance risk into the timetable. The decision taken mitigates this risk. Network Rail have also considered the operational risk of a driver stopping short. It is a considerable demand to place on a driver to consistently stop their train in a position with 10cm margin of error. Until the second train arrives, it will not be known if the driver has stopped far enough along the platform. There is also an increased possibility that a driver may challenge the route into Platform 7 and this will cause performance incidents, delays and perturbation.
- 4.2.2 Network Rail Appendix 6.1.2 demonstrates the increased and unnecessary risk to train service performance that would be present if using Platform 7, instead of Platform 9. The 'right time' and 'time to 3 minutes' arrival data (referenced in Network Rail appendix 6.1.2) for the CrossCountry's 1Gxx service group also demonstrates that to maintain and improve train service performance, planning the 1Gxx service into a platform with minimal interactions with other train slots would be most likely to achieve this objective. If using Platform 7, there is an unnecessary dependency introduced that a delay of greater than 3 minutes to 1M69 will directly impact four subsequent Train Slots which are all planned on minimum headways or margins. This situation is not present when using Platform 9.

- 4.2.3 Both the Train Slot requested by CrossCountry within their Access Proposal and the Train Slot offered back at D-26 are Rules compliant. The Track Access Contract (TAC) has therefore been fulfilled in this instance.
- 4.2.4 Both the claimant and defendant have, at times, used reference information in their decision making which has been superseded with updated information, and a common agreed position has now been reached regarding the train formation length and the length of the infrastructure. In assessing the most suitable platform allocation, Network Rail have taken into consideration train service performance and relevant to this situation, operational resilience provided by the two options. It would be remiss of Network Rail to not consider operational resilience in the context of train service performance in this case.
- 4.2.5 Network Rail agrees with the claimant that 2W58 West Midlands Trains Walsall – Wolverhampton service could be re-platformed from Platform 7 to an alternative platform. However, as noted in paragraph 4.2.2 above, Network Rail's position is that if Platform 7 were vacant to accommodate 1G71 / 1M69 / 5D69 then it would still allocate Platform 9 due to the unnecessary risks of using Platform 7.
- 4.2.6 Network Rail refute the suggestion from the claimant that they 'just don't like' using Platform 7 for these Train Slots. Network Rail have acted in accordance with the Objective (D4.6.1) in assessing the risk to train service performance that would be brought about by allocating Platform 7 to these Train Slots. Network Rail consider that allocating Platform 9 to these train slots is the most resilient option.
- 4.2.7 **In relation to Issue 2:** Network Rail are unable to comment on whether passengers would be confused by a train departing 5 minutes earlier on certain days. Network Rail would however note that there is no contractual protection that guarantees any Timetable Participant any standard hour or standard departure times and in this instance no conflict free option was available at the requested departure time. 1M69 is also a new Access Proposal for May25 so passengers have no current timings to compare against.
- 4.2.8 Network Rail deemed that the impact to the spread of service for passengers was optimal against an estimated 90+minute increase to the journey time of 4L53 (which is estimated against the comparison of the 4L50 path) and therefore is evidence of a reasonable decision (decision criteria Network Rail appendix item 6.2.1). It also improves the current passenger provision as 1M69 is a new service therefore reduces the current gap in services. Network Rail also submit that 'turn up and go' traffic on such trains is limited. The majority of passengers will plan their journeys in advance, in these cases, the spread of services has limited impact because passengers are focussed on a specific train.
- 4.2.9 Network Rail qualifies the decision to depart from Terminus station earlier as Network Rail deemed this the optimal planning solution to resolve the conflict between the two services whilst being able to accommodate both Access Proposals. The decision to then return the service to its bid times post conflict were due to the timings needed at its destination of Birmingham New Street for attachment to 1G71.
- 4.2.10 Network Rail communicated its decision between D-40 and D-26 in an appropriate and timely manner (CrossCountry Appendix 7.2.1 & 7.2.2). When CrossCountry responded, Network Rail re-iterated our entitlement to exercise our Flexing Rights to accommodate both services and remove conflict from the timetable. As referenced in paragraph 4.2.8 it was clear to us that this presented the optimal timetabling solution. Network Rail can see no evidence that CrossCountry have offered any

alternatives other than “please revert to as bid” which would re-introduce conflict into the timetable. Other alternative options have been explored as part of resolution of the Severn Tunnel issue and when assessing Freightliners access proposal. Due to constraints at the Severn Tunnel and between Swindon and Acton, none have been identified. When Network Rail reviewed Freightliners access proposal it was clear the flex option to follow a similar path of 4L50 was not appropriate due to gauging and resourcing constraints. This view is supported by Freightliner (Network Rail Appendix item 6.2.2).

- 4.2.11 The Claimant has queried the priority for inclusion of 4L53DA. 4L53DA was submitted as an Access Proposal to Network Rail as a new schedule at D-40. Network Rail provided this information to CrossCountry (verbally) prior to the submission of their SRD. Network Rail Appendix 6.2.3 shows the email and Excel extract confirming 4L53DA was bid “on time” giving it equal priority for inclusion to 1M69 (also bid as a new schedule at D-40).
- 4.2.12 The Claimant asserts that 4L53DA has a conflict in the Severn Tunnel (CrossCountry Appendix 7.2.6b) This is outdated information. Network Rail Appendix 6.2.4 contains a more contemporary picture which shows this as an inaccurate claim – there is no conflict.
- 4.2.13 The Claimant poses various questions about the inclusion of 4L53DA vs 4L50. No one has suggested that 4L53 is using the Access Rights of 4L50. 4L53DA and 4L50 have differing characteristics. Both 4L53DA and 1M69 have been submitted to Network Rail in the expectation of acquiring rights (under D4.2.2(d)(iii)). Network Rail note that under D4.2.2(d) (paraphrased) that it is only when application of our Flexing Right is unable to accommodate all Access Proposals that the Priority for Inclusion become relevant and indeed, that Flexing Rights should be applied to accommodate all Access Proposals irrespective of Priority. In this instance, Network Rail have accommodated all Access Proposals.
- 4.2.14 The Claimant requests that the Chair determine that Network Rail has ‘over-reached the definition of contractual flex’ due to the amount of time being added into schedule. Network Rail are unsure on what basis this argument is predicated as the SRD does not make this clear. The same comment is applicable to the Claimant’s request for remedy in relation to Issue 3. Network Rail refute this position and submit that our actions are consistent with the Firm Rights (or any applicable level of rights) of CrossCountry. D4.2.2(a) stipulates that compliance with an Access Proposal must be compliant with the Rules and D4.2.2(b) stipulates that each New Working Timetable must be consistent with the Exercised Firm Rights of each Timetable Participant. The Train Slots offered to the Claimant meet condition (a). The CrossCountry Access Proposal in question does not have Firm Rights and so (b) is not applicable.
- 4.2.15 **In relation to Issue 3:** Within their SRD (Page 6 - Background to Dispute (part b)), the Claimant alleges that a “refresh” of data created by Network Rail is, amongst other things, a ‘Final Offer’ with any subsequent changes done so via consent (Condition D3.6). Network Rail refute this claim and have challenged CrossCountry to present evidence that supports this view (Network Rail Appendix 6.3.1). To date, Network Rail have received no such evidence. Network Rail submit that the process contained within Part D is clear in this respect. The timetable is prepared by Network Rail between D-40 and D-26 (Condition D2.6) and subsequently published at D-26 (Condition D2.7) – this is the offer to Timetable Participants. Timetable Participants then have a two-week window to respond to the offer and inform Network Rail whether they dispute the offer, seek an alternative proposal, or require further information (Condition D2.7.2). In such cases, Network Rail are to respond promptly and by no later than D-22 (Condition D2.7.3). Any revisions within this window can only be made by consent. Appeals

against decisions must be made by no later than D-22. In this instance the appeal window ended at 17:00 on Friday 13th December (note CrossCountry reference in their SRD, Friday 15th December) as per the publicised calendar of Milestones (Network Rail Appendix 6.3.2). Network Rail have provided correspondence (Network Rail Appendix 6.3.1) to CrossCountry within the appeal window that Network Rail were unable to fulfil their appeal changes contained within their offer response.

- 4.2.16 Network Rail refutes the suggestion that Network Rail passed the problem to operators to resolve this conflict and that Network Rail 'adopting a solution from a TOC as their own decision without backing it up through independent work, raises questions'. This is evident in CrossCountry Appendix 7.3.1a-7.3.1d where Network Rail opened the discussion to find a collaborative solution. It is then evident in CrossCountry Appendix 7.3.1b that CrossCountry were the first party to suggest the 19:21 departure time that they are now disputing. Greater Anglia then agreed and suggested further flexes to both operators (CrossCountry Appendix 7.3.1c) to resolve the issue. Network Rail validated these to ensure all conflicts were resolved (CrossCountry Appendix 7.3.1d) along with other trains in this area. Continued dialogue on this geographical area was had between all parties (Network Rail Appendix 6.3.3) CrossCountry did not respond to the matter of 1N69 until the week of D-26 to say they were unhappy with the option Network Rail had decided on.
- 4.2.17 Further to paragraph 4.2.16, Network Rail consider that it is evident through CrossCountry's Appendix items that Network Rail implemented a joint CrossCountry and Greater Anglia proposal that satisfied both parties. CrossCountry are now disputing a solution which they initiated.
- 4.2.18 Network Rail received correspondence during the week of D-26 from CrossCountry stating their unhappiness at the paths as they currently stood. With the close proximity to offer date, it was agreed on a Teams call and followed up with on email (CrossCountry Appendix 7.3.1e email on the 14th of November 2024) that the options CrossCountry proposed for 1N69 would be input and re-investigated later as appropriate. Upon investigation Network Rail decided the proposal did not offer a better resolution due to the creation of multiple minimum margins in the area and as such the offer made at D-26 stood. CrossCountry, claim Network Rail disregarded their proposal and that Network Rail offered them their solution within a refresh of data. Network Rail submit this argument is baseless – communication provided in the form of snapshots of the system are evidence that the proposal had been input into the system to be investigated.
- 4.2.19 Network Rail refute the notion that performance issues are not a valid reason for accommodation of an otherwise TPR compliant service under Part D. 4.6.2 (c) maintaining and improving train service performance. Network Rail has still accommodated the Access Proposals received from CrossCountry but have done so in a manner that improves the resilience of the timetable.
- 4.2.20 **In relation to Issue 4:** Network Rail make no comment in relation to Issue 4 as this has been resolved prior to the submission of this defence document,

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

- 4.3.1 No additional items identified.

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

4.4.1 **Issue 1:** Network Rail submit that we have acted in accordance with our contractual rights to make a decision which is fair and not unduly discriminatory and which accommodates these CrossCountry services in a way that reflects best use of the infrastructure and optimises resilient network operation.

4.4.2 **Issue 2:** Network Rail submit that we have acted in accordance with our contractual rights to make a fair decision to accommodate two new services to the Working Timetable in a Rules compliant manner that reflects best use of the infrastructure and allows both parties to utilise a viable path as per their respective Track Access Contracts.

4.4.3 **Issue 3:** It is submitted that the information above shows a misalignment internally within CrossCountry as to the acceptability of an offered path. It is also submitted that the option Network Rail have offered was first suggested by CrossCountry themselves and then agreed by all parties. Network Rail question the validity of CrossCountry's current stance of this being a disputable item. Alternatives were explored in the 'Offer response' process and the original offered option was deemed optimal. This was communicated to CrossCountry before 17:00 on Friday of D-22.

4.4.4 In relation to Issue 4: Network Rail have no comments as Network Rail have been able to implement the two specific outcomes of this item that CrossCountry have asked for.

4.4.5 Network Rail submit that in all instances, Network Rail have reached a reasonable decision based on the information that was available to it at the time.

5 DECISION SOUGHT FROM THE CHAIR

5.1 Network Rail seeks confirmation from the chair that:

Network Rail has acted in accordance with Network Code Part D in relation to all three issues still in dispute and has reached reasonable decisions that accommodates the aspirations of all participants.

The decision to offer the train slots in question is upheld.

6 APPENDICES

Dispute Item 1

6.1.1 Network Rail Challenging CrossCountry on information about the momentary stop for attachments.

6.1.2 Network Rail Decision Criteria for platforming this move onto Platform 9 vs Platform 7.

Dispute Item 2

6.2.1 Decision Criteria for accommodation of both access proposals.

6.2.2 Freightliner support of our decision making on this issue.

6.2.3 Freightliner bid at D40 with 4L53 included.

6.2.4 Severn Tunnel actual position.

Dispute Item 3

6.3.1 Network Rail challenging CrossCountry to show evidence of a refresh data being a final offer.

6.3.2 Published Calendar of Milestones for 2024 showing D22 as Friday 13th December 2024.

6.3.3 Continued dialogue between Network Rail and Operators to find agreed solutions.

6.3.4 Network Rail Decision Criteria for its decision to accommodate all access proposals.

7 SIGNATURE

For and on behalf of
Network Rail Infrastructure Limited

Signed



Print Name
Mark Judd

Position
Timetable Production Manager
