

**TTP2591 – Network Rail response to Third Directions, issued on 04 April 2025****TTP2591****Directions issued on 04 April 2025**

1. I am grateful to Network Rail ('NR') for the submission of its Sole Reference Document ('SRD'), although I note that the question posed in paragraph 20 of the Directions issued on 25 March 2025 has not been addressed. Network Rail must be prepared to answer it at the hearing.

NR believes that in paragraph 4.3.7 of its SRD it has answered the question posed of it in paragraph 20 of the First Directions. Should any expansion of the below point be required at the hearing, NR will be able to elaborate.

*"4.3.7 In response to point 20 of the First Directions, NR merely asserts that if 4L73HA were to experience a level crossing incident, being that it could impact London-serving passenger flows, there is a wide-reaching impact to network performance, which in turn could impact Infrastructure Monitoring services. Notably, NR scored this matter 'Low' in its Decision Criteria evaluation."*

2. In relation to paragraph 21, whose duty is it to seek any flexing to other services to try to achieve compliance for any bid, is it NR's responsibility, or that of the bidder? The Parties should be prepared to address this question at the hearing. While NR has explained 5Q98's originating point and destination, it is also to explain at the hearing its role and routing.

When submitting a TPR compliant TOVR outside of the D-40 to D-26 timetable development period, it is the duty of the Operator (the bidder) to agree with Third Parties any flexes required of other services in order to make their own bid non-conflicting and thus compliant. NR does from time-to-time help organise agreement to such flexes, to be helpful, but it is not NR's duty to do so.

On 13th March 2025, this point was partially discussed at the quarterly *Freight Planning Group* (a meeting of NR and FOC train planning practitioners), and was formally noted in the minutes of the meeting as follows:

*"[REDACTED] cited frustrations with TOVR turnaround times. Furthermore, [REDACTED] sought to know if other FOCs in the room would be willing to automatically permit minor/non-material retimings of their services to help ease the TOVR progress along – in [REDACTED's] words, "can we all agree to small 30-second retimes in the processing of TOVRs?". This followed some frustrations that [REDACTED] were having getting a 30-second retime out of [REDACTED]. [REDACTED] responded by saying that any such issues with [REDACTED] retimes could be escalated to him."*

The extract above is contemporary evidence supporting the point that Third Party flexes are sought by the Operator. The full notes of the *Freight Planning Group* meeting can be supplied to the Hearing Chair if required.

FL had three attendees at the *Freight Planning Group* meeting.

3. The Panel will be assisted by seeing NR/L/XNG/100 (Provision and Risk Management of Level Crossings) before the hearing. Providing a link will be sufficient so long as the document can be opened by those outside NR.

NR encloses this document within its reply to these Third Directions.

4. Paragraph 5.1 appears to argue that unless exceptional circumstances apply, a TTP has no option but to support NR's Decision(s) in question. Have I correctly understood this?

No. NR wishes to clarify that in its paragraph 5.1 it did not intend to suggest that the Panel must agree with us if exceptional circumstances do not apply. NR simply meant that we are not aware of any exceptional circumstances which would prevent the Panel from agreeing with us.

5. This is an argument that NR has raised previously on a number of occasions, but not since 2017 to my knowledge. I had thought that paragraph 61 of the ORR's Determination of the Appeal against TTP1064 (which I chaired) had disposed of this argument. If, however, NR believes that there are reasons for being able to raise this argument afresh then I will want to deal with this as a preliminary issue at the hearing.

NR believes its answer to point 4 above clarifies this situation.

6. NR is to confirm by no later than 1200 on Monday, 07 April, whether I have correctly understood its point in this paragraph and, if so, what authorities it is relying on to counter the ORR's stated position on this issue. If not, what does this paragraph mean?

NR believes its answer to point 4 above clarifies this situation.

7. Depending on NR's reply, we may need to open the hearing to deal with the preliminary point of the powers of the TTP. In that event, I will require submissions from both Parties.

NR believes its answer to point 4 above clarifies this situation.

8. When we start the substantive hearing, it might assist the Parties, and will certainly assist the Panel, if each Party gives its Opening Statement on the headway/junction margin question, which will then be determined. After this, each Party should give a brief second Opening Statement, dealing with the substance of NR's Decision, in other words examining NR's identification of the relevant Decision Criteria in this case and the weighting applied to those deemed relevant.

NR notes this proposal and will prepare appropriately.

#### **Rule H18(c) Note**

Whatever decision the TTP reaches on the facts of this Dispute, there is clearly an open question as to the most appropriate way of alerting operators to potential restrictions on bids on a given route for safety reasons relating to the infrastructure. This has the potential to become a legal issue, or issues, depending on progress at the hearing.

I hope that the Parties can approach this question, potentially of considerable importance to the industry, on a non-adversarial basis. NR approaches this point, constructively in my view, in paragraphs 4.3.2 to 4.3.4 of its SRD; in 4.3.4 it raises one possible solution. I think that it would be helpful if the final part of the hearing could involve a discussion between those present, including Involved Parties, on how best to ensure that sufficient information is made available to operators to enable them to have confidence that bids that they submit are fully informed. This would, of course, only be a matter for Observations and Guidance, rather than part of the TTP's Determination.

NR notes the above points.

*[Signed on the original]*  
Clive Fletcher-Wood  
Hearing Chair  
TTP2591

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