

**Southern Railway Ltd and Network Rail
Infrastructure Ltd submission to Timetabling
Panel**

Reference TTP 350

1 DETAILS OF PARTIES

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

(a) **Southern Railway Limited** whose Registered Office is at 3rd Floor, 41-51 Grey Street, Newcastle-upon-Tyne, Tyne and Wear, NE1 6EE ("**Southern**"); and

(b) **Network Rail Infrastructure Limited** whose Registered Office is at Kings Place, 90 York Way, London, N1 9AG ("**Network Rail**").

2 THE PARTIES' RIGHT TO BRING THIS REFERENCE

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition D5.1 of the Network Code.

3 CONTENTS OF REFERENCE

Southern has produced this reference and it includes:-

(a) The subject matter of the dispute in Section 4;

(b) A summary of the issues in dispute in Section 5;

(c) A detailed explanation of the issues in dispute prepared by Southern in Section 6;

(d) A detailed explanation of the issues in dispute prepared by Network Rail in Section 7;

(e) The decisions of principle sought from the Panel in respect of legal entitlement and remedies in Section 8; and

(f) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

4.1 This dispute relates to the application of Part D of the Network Code and the Rules of the Plan.

4.2 A copy of the relevant extract from the Network Code referred to above is attached at Annex 1.

5 SUMMARY OF DISPUTE

5.1 This dispute principally concerns Network Rail's formal offer of the First Working Timetable to Southern for the December 2010 timetable under Condition D3.2.7 of the version of the Network Code in force on the date the First Working Timetable was compiled. There are a number of disputed issues which can be summarised as:

- Network Rail's rejection (in part) of Train Slots to operate a revised Weekday and Saturday services between Brighton and Southampton where stops would be made at Eastleigh and Southampton Airport Parkway; and
- The rejection of a number of services particularly late on Friday and Saturday evenings for alleged non-compliances with the Rules of the Route.

6 DETAILED EXPLANATION OF EACH ISSUE IN DISPUTE PREPARED BY SOUTHERN

6.1 Brighton – Southampton via Eastleigh

6.1.1 Southern's Service Level Commitment 2A (Part Two) effective from the December 2010 Passenger Change Date contains an obligation in Route J4 Brighton – Southampton Central for services from Brighton to Southampton to call at Eastleigh & Southampton Airport Parkway Stations. The trains will operate in a one way circular loop returning from Southampton via Swanwick providing direct services linking Southampton Airport with services to and from Brighton and West Sussex. An extract of the SLC is attached at Annex 2.

6.1.2 Arriva Crosscountry's SLC effective from the December 2008 Passenger Change Date contains a clause which allows it to extend its Newcastle-Reading services (Route 2) to and from Southampton. An extract of the SLC is attached at Annex 3.

6.1.3 Arriva Crosscountry's service meets the recommendation made in paragraph 6.9.4 of the Great Western RUS. An extract of the RUS is attached at Annex 4. The Great Western RUS was published 1st March 2010. At the Priority Date on 8 January 2010 there was no relevant published RUS.

- 6.1.4 The essential argument is whether Network Rail correctly applied the Decision Criteria.
- 6.1.5 In assessing the respective bids of Southern and Arriva Cross Country it would appear that Network Rail applied Decision Criteria (b), (c) and (f) in considering Arriva Crosscountry's and Southern's bids. Southern believes that criterion (b) does not apply as there was no published RUS at the Priority Date.
- 6.1.6 Network Rail argues that Arriva Crosscountry's service provides better connectivity than Southern's. In reaching this conclusion it ignored the circular nature of the service, which effectively provides connections in both directions on the Coastway route. A list of rejected trains is attached at Annex 10.
- 6.1.7 Southern believes that Network Rail's consideration of Decision Criterion (f) was incomplete and did not fully reflect the nature of Southern's proposed service. Further, greater weight should have been given to Decision Criterion (c) as its SLC requires the operation of the service as the service complies with a firm requirement in its franchise agreement dated 20 September 2009.

6.2 Rules of the Route

- 6.2.1 Southern's Service Level Commitment 2A (Part Two) effective from the December 2010 Passenger Change Date contains obligations to run later services up to 0030 throughout the Greater London Authority area to locations such as, Dorking, Sutton, Tattenham Corner and West Croydon. Extracts from the SLC are attached at Annex 5.
- 6.2.2 The operation of later trains on a weekday and Saturday was requested by Transport for London during the consultation period leading up to the re-franchising of the South Central Franchise.
- 6.2.3 Southern understand high level discussions were undertaken by the DfT and Network Rail assessing the feasibility of the proposals over the routes which the late evening trains were to operate prior to the bidding period commencing during November 2008.
- 6.2.4 The report concluded the operation of late evening trains up to 0030 was possible on the desired routes but only on a Friday and Saturday night and on

the understanding that some routes would require to start operation 30 minutes later on a Sunday morning to allow for adequate maintenance.

- 6.2.5 Southern's SLC did not include the provision for later start times on a Sunday morning but required the late evening trains to operate as subsequently bid by Southern.
- 6.2.6 Southern requested a number of changes to the Rules of the Route Section 4 under Part 1.6 Change Procedure condition 1.6.2 Changes Initiated by Train Operators of the Rules of the Route 2010 Final Principal and Final Subsidiary Rules, the rules and changes are attached at Annex 6. The required amendments were sent to Network Rail on 05 October 2009 and detailed the changes required and the reasons for each route. The requests were sent by e mail to the Senior Network Access Planner for the Network Access Unit, the Network Access Planner for the Network Access Unit and the Project Manager for the TPC South as required under condition 1.6.2.2.2. This process was in advance of the Priority Date and the Capacity Request Date for the December 2010 Passenger Change Date.
- 6.2.7 Southern received acknowledgement of receipt of these requests on 18 November 2009 from the Senior Network Access Planner advising the principal contact would be the Network Access Planner who would be the main negotiator between Operators, NDS and Route Teams.
- 6.2.8 Under condition 1.6.2.3 Network Rail shall, within 5 working days of receipt of the proposed changes, notify all Train Operators affected details of the proposed change and Network Rail's comments including concise reasons for the change and a statement as to whether Network Rail supports the proposal. Southern understand this rule was not followed by Network Rail.
- 6.2.9 Southern and Network Rail have entered into numerous e mail dialogues to resolve and agree the proposed times submitted by Southern. Some changes were agreed in principal by Network Rails Commercial Schemes Sponsor as part of the 7 Day Railway programme although these have not been changed in Rules of the Route versions. In particular the late trains required to operate on the West Croydon to Sulton route have been accepted but without officially changing the Rules of the Route possession times on the understanding the

additional late evening trains would be accommodated. Late evening trains on this route have been offered by Network Rail.

- 6.2.10 Network Rail and Southern during the Rules of the Route TOC Liaison meetings, led by the Network Access Planner, agreed possessions between December 2010 and November 2011 affecting the operation of the late evening trains be amended to start later to accommodate the new or amended services. For the first year there are no possessions which will affect the operation of these trains.
- 6.2.11 In later correspondence it emerged that the Network Access Planner believed that the Commercial Schemes Sponsor to be taking forward the changes to the Rules of the Route. This was not the case. A copy of the correspondence is attached at Annex 7.
- 6.2.12 Southern consider Network Rail have not followed the agreed procedures laid down in the Rules of the Route or in Part D of the Network Code to accommodate these changes and that the failure to follow due process has led to the rejection of the trains. List of rejected trains attached at Annex 11.

7 DETAILED EXPLANATION OF EACH ISSUE IN DISPUTE PREPARED BY NETWORK RAIL

7.1 Brighton – Southampton via Eastleigh.

- 7.1.1 The Westbound services to Southampton Central, which had been bid by Southern as diverted via Eastleigh and Southampton Airport Parkway, have been rejected as they clash with SSWT services which have Firm Contractual Rights. In each alternative hour the change to the SSWT is complimentary to an AXC service extended from Reading to Southampton Central, although similarly to the proposed Southern service the Arriva Crosscountry services currently have no Firm Contractual Rights. The Southern service also conflicts with a number of freight services that operate in the area that also have Firm Contractual Rights.
- 7.1.2 Network Rail considered the flexing of the SSWT services to a path more consistent with those contained within the May 2010 timetable, which in turn

would have meant that train slots for the proposed Southern service could have more readily been identified (although conflicts with the freight paths would still exist).

7.1.3 To understand the relative merits of the conflicting Arriva Crosscountry and Southern services an exercise using the Decision Criteria contained within Part D of the Network Code. This revealed that the bids were equal in all Decision Criteria with the following exceptions:

- The Arriva Crosscountry bid was a recommendation of the Great Western RUS. The Southern service was expected to be in the London & South East RUS but this would not be established until after the December 2010 timetable was in place, and on this basis the paths were awarded to Arriva Crosscountry. It was noted that the RUS recommendation was subject to performance modelling and this work has commenced and is expected to be complete by week commencing 24 September 2010. On this basis this score was awarded to Arriva Crosscountry.
- The Southern bid was a Franchise Obligation, whilst the Arriva Crosscountry service was not (although it is allowed within its SLC), and on this basis the score was awarded to Southern.
- The Southern services offered connectivity to Southampton Airport Parkway from the West Coastway services in one direction. The Arriva Crosscountry services offered connection to all stations between Newcastle and Birmingham from all stations between Reading and Southampton. On this basis the score was awarded to Arriva Crosscountry.
- Performance was scored neutral between Southern and Arriva Crosscountry but as the RUS recommendation required performance modelling to be undertaken, Network Rail has commissioned Railsys modelling through RWA, to help support the final decision. This work has commenced and is expected to be completed by week commencing 24 September 2010.

7.1.4 In addition there was a recommendation from the Wessex Route Timetable Change Risk Assessment Group (TCRAG) that suggested if paths were found

for both the AXC and Southern services an assessment of signaller workload would need to be undertaken. As it has not proved possible to accommodate both the Arriva Crosscountry and Southern bids this work would not be undertaken.

7.1.5 Network Rail considered each Decision Criteria based on its understanding of the respective bids and on the supporting information supplied each of the Operators. Each of the Criteria was scored equally with the exception of (b), (c) and (f). As the Great Western RUS was published and established at the point the Offer for December 2010 was made that, Network Rail believes it was correct to consider this within Decision Criteria (b).

7.1.6 Network Rail believes that each of the Decision Criterion should be viewed individually on its merits, but that for the purpose of 'scoring' the bids by Arriva Crosscountry and Southern, each Decision Criteria was treated as equal.

7.2 Rules of the Route

7.2.1 Network Rail recognises that high level discussions were undertaken between it and DfT and that it agreed to work with the successful Franchisee in achieving later evening trains on a number of routes including those contained within this dispute.

7.2.2 Network Rail recognises that a number of changes to Rules of the Route were required to allow the operation of later evening trains on Fridays and Saturdays up to 0030, proposed by Southern and included in its SLC.

As these discussions took place in good faith Network Rail has now reviewed these discussions and local commitments and it is satisfied that a number of the services previously rejected should be offered to Southern, although they remain foul of the published Rules of the Route.

7.2.3 However, Southern requested further alterations to Rules of the Route to facilitate a number of services, but no agreement was reached between the parties. Network Rail undertook an internal review of these proposals with the local Maintenance Delivery Units and after due consideration considered that it was unable to accommodate Southern's request. This was confirmed by Network Rail and the proposed change was not included in version 2 of the 2011 Rules of the Route.

These services are;

- SO680 - Sutton and Epsom (0050 to 0610 Sun)
- SO680 - Sutton and Epsom (0015 to 0550 S)
- SO685 / SO680 - Leatherhead and Dorking (0040 to 0615 Sun)
- SO685 / SO680 - Leatherhead and Dorking (0030 to 0610 S)

Network Rail believes that Southern should have brought any dispute relating to the Rules of the Route to the timetable panel in accordance with D2.1.7 and having failed to do this, it is now incorrect to dispute the rejection of services that do not comply with the relevant Rules of the Route.

7.2.4 There are further disputed trains that Network Rail received no request from Southern in accordance with D2.1.4 or D2.1.10 to alter the Rules of Route in connection with. These services are;

- SO630 / SO500C - Preston Park and Hove (0025 to 0600 Sun)
- SO630 / SO500C - Preston Park and Hove (0050 T-F to 0505 T-S)
- SO680 - Mitcham Jn and Sutton (0005 to 0720 Sun)
- SO680 - Mitcham Jn and Sutton (2345 Sun to 0520 Mon)
- SO530 – South Croydon and Oxted (0055 to 0715 Sun)

Network Rail rejected these trains as they do not comply with the Rules of the Route.

7.2.5 Network Rail is willing to work with Southern to see if a suitable compromise can be reached for these services, but unless this compromise can be found believes that it has acted in accordance with the requirements of Part D of the Network Code in rejecting these services as they do not comply with the Rules of the Route.

8 DECISION SOUGHT FROM THE PANEL

8.1 The Panel is asked to determine:

- (a) In respect of Issue 6 1 that Network Rail misapplied the Decision Criteria and should have accepted Southern's Bid in preference to Arriva Cross Country's; and

- (b) In respect of Issue 6.2 that Network Rail's rejection of the listed services was incorrect and that they should be incorporated in the December 2010 Working Timetable.

9 APPENDICES AND ANNEXES

Southern confirms that it has complied with Rule A1.34 of the Access Dispute Resolution Rules, which requires that

"Copies of the following documents shall also be annexed and cross referenced to the reference:

- (a) the relevant extracts of contractual documents containing the provision(s) under which the referral to the Panel arises (other than provision(s) from the Access Conditions);*
- (b) the relevant extracts of contractual documents containing provision(s) associated with the substance of the dispute; and*
- (c) any other documents referred to in the reference". (Rule A1.34)*

All appendices, and annexes have been bound into the submission, and are consecutively page numbered (top right hand corner).

Annex 1	Part D of the Network Code	Pages 1 – 42
Annex 2	SLC Route J4	Pages 43 – 50
Annex 3	Cross Country SLC Two Route 2	Pages 51 – 52
Annex 4	GW RUS extract	Pages 53 – 56
Annex 5	Metro SLC	Pages 57 – 68
Annex 6	ROTR Change Procedure	Pages 69 – 72
Annex 7	Email trail	Pages 73 – 94
Annex 8	Route Risk Assessment	Pages 95 – 147
Annex 9	Southern PDNS	Pages 148 – 157

Annex 10	Southampton rejections	Pages 158 – 161
Annex 11	ROTR	Pages 162 - 165

Any information only made available after the main submission has been submitted to Panel Members, will be consecutively numbered, so as to follow on at the conclusion of the previous submission.

10 SIGNATURES

For and on behalf of Southern Railway Ltd

Signed

Print name: David Scorey

Position: Franchise Improvement Director

Date: 12/08/2010

For and on behalf of Network Rail Infrastructure Ltd

Signed

Print name: Paul Thomas

Position: Customer Relationship Executive

Date: 12/08/2010