

**Access Disputes Committee –
Timetable Panel**

Network Rail Submission to Timetable Panel

Ref:- TTP384

Network Rail Offer for the 2011 Subsidiary Timetable

Re:-Brighton Main Line

1 DETAILS OF PARTIES

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

- (a) Network Rail Infrastructure Limited whose Registered Office is at Kings Place, 90 York Way, London, N19 AG ("NR") ("the Defendent"); and
- (b) First Capital Connect Limited whose Registered Office is at 3rd Floor, E Block, Macmillan House, Paddington Station, London W2 1FG ("FCC") ("the Claimant").

Please note that NR is not the Claimant in this matter as stated in FCC's submission.

This is a single party submission on behalf of NR and the contact is:-

Fiona Dolman
Customer Relationship Executive
Network Rail
Floor 7
1, Eversholt St
London
NW1 2DN

Tel:- [REDACTED]

e-mail:- fiona.dolman@networkrail.co.uk

2 THE PARTIES' RIGHT TO BRING THIS REFERENCE

2.1 This matter has been referred to the Timetabling Panel ("the Panel") by FCC for determination.

3 CONTENTS OF REFERENCE

3.1 NR has produced this single party response to FCC's submission in accordance with Access Dispute Resolution Rules Chapter H 21(b)(ii) of the Network Code and it includes:-

- (a) A response to FCC's subject matter of the dispute in Section 4;

- (b) A response to FCC's summary of the issues in dispute in Section 5;
- (c) A response to FCC's section 6 regarding relevance of ORR correspondence in Section 6;
- (d) A response to FCC's detailed explanation of the issues in dispute prepared by the claimant in Section 7;
- (e) The decisions of principle sought from the Hearing Chair in respect of legal entitlement and remedies in Section 8; and

4 SUBJECT MATTER OF DISPUTE

- 4.1 The subject of this dispute is the Offer of the First Working Timetable in respect of the Subsidiary Change Date 2011. Specifically, the offer to Southern of train slots to enable the operation of a fourth fast train each hour between London Victoria and Brighton all day Saturday only, from 11 September 2011 to the end of the Subsidiary timetable period.
- 4.2 The Part or Condition that the dispute relates to, or is associated with, is D 3.2.2., D 3.2.7., D 3.2.8. , D5 and D 6 of the Network Code.
- 4.3 FCC hold a Track Access Agreement with Network Rail dated 9 February 2006.
- 4.4 It is NR's view that the ORR's published letters regarding an Operator's access rights application should not be taken into account at the panel stage of a dispute hearing within Part D of the network code.

5 RESPONSE TO FCC'S SUMMARY OF DISPUTE

- 5.1 We agree that paragraph 5.1 is factually correct in relation to Saturday services only.
- 5.2 We agree that paragraph 5.2 is factually correct.
- 5.3 We agree that paragraph 5.3 is factually correct.
- 5.4 NR notes that following the previous hearing the ORR determined, in line with its duties, not to grant the access rights to Southern. It is NR's view that the ORR's published letters regarding an Operator's access rights application should not be taken into account at the panel stage of a dispute hearing within Part D of the network code.

NR believes that it has correctly applied the Decision Criteria in the acceptance of the Train Slots bid by Southern.

- 5.5 NR understands that Part D 3.2.1 (D) does not require an operator to have firm rights for paths submitted in their bid. NR accepts that rights need to be properly established prior to the operation of services on the network.
- 5.6 It is NR's view that First Capital Connect's 5.6 relates primarily to the SX services; these services have been removed from the Subsidiary Timetable. In respect of the SO services we believe that NR's arguments cited in paragraphs 6.2, 6.3 and 6.4 of its submission to the Timetable Panel dispute references TTP356 and TTP375 apply equally to the offer made in the Subsidiary Timetable.
- 5.7 NR has responded to issues raised in First Capital Connect's 5.7 in the paragraphs above.
- 5.8 NR recognises that the ORR has the responsibility to approve or reject access rights. However, this is a separate responsibility to the allocation of timetable paths within the Network Code.
- 5.9 NR and Southern have worked together to deliver Timetable Planning Rules compliant paths and consequently some retiming of paths has taken place.

6 RESPONSE TO FCC'S SECTION 6 REGARDING RELEVANCE OF ORR CORRESPONDENCE;

- 6.1 NR agrees that the ORR has a role to play within the appeal process under Part M; we don't agree that ORR prior determination regarding access rights in a previous timetable is relevant to the timetable dispute process.
- 6.2 NR sees no reason for the Hearing Chair to reach different conclusions in respect of TTP384 than the conclusions drawn regarding TTP356 and TTP375 and that ORR views and opinions are appropriate in their role either as appellate body under Part M or in relation to granting access rights to Operators.
- 6.3 Given the arguments presented elsewhere in this response, NR has not made any further comment on First Capital Connect's section 6.

7 RESPONSE TO FCC'S DETAILED EXPLANATION OF THE ISSUES IN DISPUTE

- 7.1 Southern do not require Firm Rights for their bid to be considered in the timetable planning process. NR has complied with relevant Network Code sections in planning and offering these paths.
- 7.2 We agree that paragraph 7.2 is factually correct.
- 7.3 NR agrees that the ORR has a role to play within the appeal process under Part M. However, as stated above, it is NR's view that the ORR's published letters regarding an Operator's access rights application should not be taken into account at the panel stage of a dispute hearing within Part D of the network code.
- 7.4 Not relevant for SO services as First Capital Connect services terminate at London Bridge throughout this timetable period.
- 7.5 Not relevant for SO services.
- 7.6 Not relevant for SO services.
- 7.7 Not relevant for SO services.
- 7.8 Not relevant for SO services.
- 7.9 The offer made for SO services is compliant with the Timetable Planning Rules.
- 7.10 It is NR's view that the ORR's published letters regarding an Operator's access rights application should not be taken into account at the panel stage of a dispute hearing within Part D of the network code.
- 7.11 It is NR's view that the ORR's published letters regarding an Operator's access rights application should not be taken into account at the panel stage of a dispute hearing within Part D of the network code.
- 7.12 It is NR's view that correspondence and discussions with ORR relating to an Operator's access rights application should not be taken into account at the panel stage of a dispute hearing within Part D of the network code.
- 7.13 Not relevant for SO services.

- 7.14 Not relevant for SO services.
- 7.15 Not relevant for SO services.
- 7.16 It is NR's view that correspondence and discussions with ORR relating to an Operator's access rights application should not be taken into account at the panel stage of a dispute hearing within Part D of the network code.
- 7.17 Not relevant for SO services.
- 7.18 Not relevant for SO services.
- 7.19 Not relevant for SO services.
- 7.20 We are satisfied the benefits that the additional capacity the SO services provide outweigh the potential performance impact they may import upon the timetable. Therefore we have applied the decision criteria correctly.

The fourth train is compliant with Timetable Planning Rules.

7.21 to 7.25 inclusive

It is NR's view that correspondence and discussions with ORR relating to an Operator's access rights application should not be taken into account at the panel stage of a dispute hearing within Part D of the network code.

7.26 and 7.27

The additional SO train slots included in the Subsidiary Timetable offer are consistent with the appropriate application of the Network Code Decision Criteria D6. We believe that NR's arguments sited in paragraphs 6.2, 6.3 and 6.4 of its submission to the Timetable Panel dispute references TTP356 and TTP375 apply equally to the offer made in the Subsidiary Timetable.

8 DECISION SOUGHT BY THE PANEL

- 8.1 The Panel is asked to determine that:

- (a) Network Rail's Offer to Southern of Saturday train slots between Brighton and London Victoria was correct.

9 SIGNATURE

For and on behalf of Network Rail Infrastructure Limited

Signed 

Print Name: **Fiona Dolman**

Position: **Customer Relationship Executive**

Date: **21 March 2011**

