

The Hearing Chair has issued the following Directions:-

"Having read the Parties' Sole Reference Documents (SRDs), and the reply by FL/FLHH to the Directions dated 260216, I am giving these Directions to assist the Parties in preparing for the hearing on 230316. I use the categories adopted by FL/FLHH and helpfully followed by NR.

I welcome the areas of agreement reached by FL/FLHH and NR. As I understand it, FL/FLHH wishes the Panel to incorporate the agreed points within the Determination. Will NR please confirm at the opening of the hearing whether it is content with this proposal.

#### **Part 1a**

NR agrees with the first request of FL/FLHH made at 6.1(a) of its SRD. In its SRD NR disputes (b), (c) and (d) of FL/FLHH's request.

It appears to me that FL/FLHH's request at (b) is, in effect, duplicating its request at (a): in that as NR agrees that it will bring the list up-to-date, this will necessarily mean that it will take out of the list trains that no longer run.

Will NR please confirm at the opening of the hearing whether it accepts that it actually agrees to FL/FLHH's request (b).

This leaves major issues still in dispute. For reasons which I can explain at the hearing if necessary, on a strict interpretation of the definitions used in the *Railways Act 1993*, the Network Code and Part D of the Network Code, it is difficult to establish the basis on which NR includes any Network Services which it operates into the WTT. This interpretation would, however, lead to such a patently absurd result that I am adopting a broad interpretation of Timetable Participant in order to reach a workable interpretation to enable the preparation of a WTT which will be useful to the industry.

NR submits (at 4.1.3 of its SRD) that section 1.18 of the TPRs (2016 version) do not apply to the timetabling of its Network Services.

Again relying on the interpretation of defined terms, it is arguable that Network Services are not Access Proposals, in which case the provisions of 1.18 of the TPRs will not apply. But if that conclusion were to be reached, what rules does NR suggest do apply to the inclusion of its services in the WTT?

NR rejects the suggestion that the operation of Network Services which on the face of it do not comply with section 1.18 of the WTT should be achieved through the mechanism of Strategic Paths, primarily, as I understand it, because of the risk of another Operator bidding for the same path. Will NR please

be prepared to explain why, in that event, a proper application of the Decision Criteria would not in all probability give its bid priority.

Could the same priority be applied to Spot Bids?

As individual flexing is appealable (TPR 1.14.10), will FL/FLHH please be prepared to explain at the hearing why it sees it as necessary to seek a Determination dealing with the principle of flexing in relation to Network Services.

#### **Part 1b**

FL/FLHH is seeking a ruling that the entire section of the TPRs dealing with SRTs should be struck out. NR is, in effect, seeking further discussions.

Without the benefit thus far of comments from the Panel members, I am doubtful that the Panel will be willing to simply strike out a section of TPRs dealing with the methodology for an important aspect of constructing the WTT. This appears to leave two options: firstly that of adjourning this one item for further discussion between the Parties, or of dealing with items in dispute in detail at the hearing.

If the Parties wish to follow the latter option, then a list of detailed points should be prepared by the Parties (with discussions between them if necessary), to be exchanged as soon as possible, and available to the Panel at the opening of the hearing.

#### **Part 2a**

My preliminary view is that NR is correct in saying that the previous Determination only required the 2012 TPRs to be re-applied if the Part D procedure to amend later TPRs was not followed. NR's SRD submits that this has been done (and I do not read FL/FLHH's SRD as arguing otherwise).

Given this, fresh appeal rights arise, which FL/FLHH is exercising, but it is not to be expected that the 2012 TPRs are now required to be re-applied.

I am alert to the risk of capacity being lost if TPRs lead to unnecessary increases in SRTs and junction margins, while also recognising the need for SRTs and junction margins to be properly validated, robust, and have the confidence of all Timetable Participants.

It is against this background that the Panel may now need to review the points raised by FL/FLHH in detail, in which case FL/FLHH will assist the process by providing a tabulated list. I note, however, that none of the other Operators potentially affected is participating in the hearing.

#### **Part 3b**

The history of this issue appears to be agreed: that NR initially accepted in full a proposal by FL/FLHH, but then reverted to the previous TPRs because of comments made by ScotRail. FL/FLHH now wishes NR to re-adopt its preferred position.

It is not clear to me what differences exist between FL/FLHH's preferred solution and that of ScotRail, nor what attempts have been made to establish any common ground between FL/FLHH and ScotRail.

As ScotRail is not a Dispute Party and appears not to have been consulted, I invite the Parties to submit at the opening of the hearing how they think it appropriate to resolve this issue.

**Part 4**

While recognising that this issue remains in dispute, I do not think that further Directions will assist the Parties to prepare for the hearing."

Tony Skilton  
Secretary  
Access Disputes Committee