

**IN THE MATTER OF PART D OF THE NETWORK CODE**

**AND IN THE MATTER OF THE ACCESS DISPUTE RESOLUTION RULES**

**AND IN THE MATTER OF TIMETABLING DISPUTES TTP 1064; 1065; 1066; 1069; 1071;  
1073; 1075**

**BETWEEN:**

**(1) ABELLIO SCOTRAIL LIMITED ("ASR")  
(2) DB CARGO (UK) LIMITED ("DBC")  
(3) FIRST GREATER WESTERN LIMITED ("GWR")  
(4) XC TRAINS LIMITED ("XCTL")  
(5) GB RAILFREIGHT LIMITED ("GBRf")  
(6) ARRIVA RAIL NORTH LIMITED ("ARN")  
(7) EAST COAST MAIN LINE COMPANY LIMITED ("VTEC")**

**Claimants**

**v**

**NETWORK RAIL INFRASTRUCTURE LIMITED ("NR")**

**Defendant**

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**NR's RESPONSE TO HEADS A AND B ISSUES**

**APPENDIX 8**

**NR'S RESPONSE TO THE SUBSTANTIVE PARTS OF VTEC's SRD**

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## **Introduction**

1. This document should be read in conjunction with NR's Response to Heads A and B Issues dated 12 April 2017 (the "*Response*").
2. Abbreviations as used in Virgin Train East Coast's ("*VTEC's*") SRD are adopted in this Response. References to Paragraphs are to Paragraphs in VTEC's SRD.

## **Overview of NR's response to VTEC SRD**

3. NR denies that VTEC is entitled to the relief it seeks, or to any relief, for the reasons set out in this response to VTEC's SRD and the Defence.

## **Relevant chronology**

4. The chronology relevant to the consultation with VTEC and the application of the Decision Criteria.
5. The consultation undertaken in relation to VTEC is set out below in two parts. First, the general process which was put in place is set out; and second, further consultation which is specific to VTEC.

## **TPR Forums**

6. The Network Code obliges NR to consult on the TPRs. The TPR forums is the main way it does that. For the East Coast Route, all operators on the route are invited to the TPR forums.
7. TPR forums were held in relation to previous versions of the TPRs but, in relation to the 2018 version, additional efforts were made due to the volume of proposed changes. NR set up TPR forums for January 2016, February 2016, March 2016, June 2016, July 2016, August 2016 and September 2016, November 2016 and February 2017.
8. To the extent that comments on a proposed change to the TPRs are properly presented to NR, for example supported by reasons and evidence, NR carefully considers these. If a TOC provides evidence that what NR proposes is incorrect or is not in line with the Decision Criteria, NR will change it. However, when a TOC simply states that it does not agree, or it inconveniences the specific TOC, NR is less likely to be able to justify any change being made.
9. The TPR forums were not always minuted. Where forums are not minuted, that is either an oversight or sometimes they are not labelled correctly.

#### **Prior to Consultation Obligations in Part D**

10. 14 January 2016 TPR Forum (**Annex / Tab 1 / p.12-15** – incorrectly dated 3 December 2015): this was attended by seven representatives of NR, Mr. Andrew Long of VTEC and seven representatives of TTPs. The forum included a discussion on the National Methodology. The minutes record that an ODA report on headways and SRTs was to be an agenda item in the February 2016 forum.
11. 11 February 2016 TPR Forum (**Annex / Tab 1 / p.21-25**): again, this was attended by a number of representatives of NR and of TTPs (although Mr Long of VTEC sent an apology). The minutes record an ODA Methodology Discussion and the presentation of a detailed PowerPoint presentation on ODA prepared by Mark Foster of NR titled TRIP Observed Data Analytics (**Annex / Tab 1 / p.26-31**). This included a full page on the ODA analysis of Newcastle to Berwick. The purpose of the ODA tool was explained as allowing “*use of existing data to investigate dwells, headways and SRTs.*” The discussion specifically mentioned that the outputs for the LN600 North sub-group were being examined. Mr Long received a copy of the minutes on 4 March 2016.
12. 10 March 2016 (**Annex / Tab 1 / p.32-35**), 6 April 2016 (**Annex / Tab 1 / p.36-38**): TPR Forums were held in which NR and VTEC did not investigate the use of ODA on the relevant SRTs.
13. 4 April 2016: NR published the initial draft of its Timetable Rules Improvement Programme ODA Report. This document went through a number of drafts, with NR issuing draft v303 on 5 October 2016 as attached at Appendix B to VTEC’s Reference.

14. 29 June 2016 TPR Forum (**Annex / Tab 1 / p.39-43**): again, this was attended by a number of representatives of NR and of TTPs (although Mr Long of VTEC sent an apology). The minutes request that responses to ODA report be provided ahead of the next forum.
15. 27 July 2016 – TPR Forum (**Annex / Tab 1 / p.44-47**): again, this was attended by a number of representatives of NR and of TTPs, including Mr Long of VTEC. The minutes recording actions from previous meeting read “*All to respond to JR with comments on ODA reports – Operators confirm that this was done*”.
16. 24 August 2016 – TPR Forum (**Annex / Tab 1 / p.53-55**): the agenda includes the item ‘ODA Newcastle Berwick’. The meeting itself does not appear to have been minuted.
17. 25 August 2016: Internal NR email from Ken Farms to Viktor Lipiecki and others which shows that NR were properly investigating the matter in order to ensure the ODA reports were accurate (**Annex / Tab 3 / VTEC / p.1742-1745**).

**D-64 (16/09/16) to D-60 (14/10/16) - NR shall consult with timetable participants in respect of any proposed changes to the rules**

18. 28 September 2016 TPR Forum (**Annex / Tab 1 / p.63-65**): Mr Long of VTEC attended, together with a number of representatives of NR and of TTPs. Paul Woodcock of NR ran through the current Version 1 proposals, due for publication on 21st October 2016. He advised that TRIP outputs would be consulted as part of Version 1. ODA consultation “*will be for SRT’s proposals only*”. A day was to be booked after 10 October 2016 for a sub-group to look at LN 600.
19. 5 October 2016: NR issues draft v 303 of the Timetable Rules Improvement Programme ODA Report under cover of an e-mail from Paul Woodcock dated 13 October 2016 (**Annex / Tab 3 / VTEC / p.1746-1873**)

**D-59 (21/10/16) – NR shall provide to all timetable participants a draft of the revised rules**

20. On 21 October 2016 NR published Version 1.0 of the 2018 TPR.

**D-59 to D-54 (25/11/16) - NR shall consult with timetable participants; timetable participants may make representations in respect of any changes they propose or objections they may have to the draft rules**

21. 16 November 2016 TPR Forum (**Annex / Tab 1 / p.72-75**): Mr Long of VTEC attended together with a number of representatives of NR and of TTPs. VTEC commented in respect of a different route (LN627N), as recorded in the minutes “*As an aside, AL confirmed that VTEC will be asking for the SRT proposals relating to their services from ODA reporting to be removed. This is a point of principle that it was agreed that proposals would only be*

*taken forward once they had passed through at TPR forum."* VTEC did not raise any issue relating to LN 600 at this forum.

22. NR did not accept VTEC's argument, which was not made by other TTPs, that proposals would only be taken forward once they had passed through at TPR forum. NR agreed to make proposals and to consult on them, but was not obliged to obtain agreement from all participants.
23. 21 November 2016 (**Annex / Tab 3 / VTEC / p.1874-1875**): email from VTEC to NR requesting that the proposed SRT changes for LN 600 are withdrawn (this email is also at Appendix D to the Reference). VTEC wrote *"While acknowledging the need for ongoing performance improvements, in isolation the ODA reports are not sufficient evidence for us to agree any changes nor are they a recognised methodology by the LE TPR forum"*.

**D-54 (25/11/16) to D-44 (03/02/17) – NR shall consider representations and objections**

24. VTEC did not provide any feedback at this stage and therefore there was no further consultation.
25. NR made no changes in this period as VTEC had raised no particular objection beyond the general comment in the 21 November 2016 email. NR applied the decision criteria, as addressed below, but there is no express record of how it did so.

**D-44 (3/2/17) – NR shall issue the final revised rules (v2)**

26. On 3 February 2017 NR published Version 2.0 of the 2018 TPR.
27. 16 February 2017 (**Annex / Tab 3 / VTEC / p.1876-1878**): Mr Long of VTEC emailed operators and NR. He claimed that NR indicated that they were *"unwilling to withdraw the LN600 SRT alterations from Version 2 of the 2018 TPR"* despite his request at the LNE forum on 8 February 2017. This claim is indicative of VTEC's approach of demanding that NR withdraw proposals rather than VTEC engaging in a consultative process. Mr Long went on to say that he felt he needed to put VTEC's position in writing and continued, *"We have concerns about the methodology used in the ODA report due to the lack of transparency about the process and no will on the part of NR to engage with us over this since our response to Version 1... Without any evidence of how the raw data was cleansed, the amended SRTs are little more than numbers on a piece of paper"*. This assertion cannot be supported as the process of data collection and cleansing had been explained and made clear in the ODA report.
28. Mr Long confirmed that VTEC's position remained that they were *"prepared to discuss the possibility of these being included in version 3 providing they are withdrawn from version 2 and NR are willing to meet ourselves to share the raw data and demonstrate in detail the process of cleansing/converting this to SRTs"*. NR understands that VTEC had assumed, wrongly, that as there had been no positive agreement in the TPR forums, that NR would

have continued to rely on the values which existed before the proposed changes. However, NR had to implement and start using the new methodology which it had been proposing and upon which it had consulted. NR had notified VTEC and others for many months that they proposed this change.

**D-41 (24/02/17) – End of appeal period**

29. 3 March 2017: Paul Richards of NR emailed VTEC to confirm that NR would re-assess the individual proposals internally by the end of the week commencing 6 March 2017. He also indicated that he had asked for the raw data from TRIP. This would include detail of the cleansing process and any assumption applied in TRIP.
30. 3 March 2017 (**Annex / Tab 3 / VTEC / p.1879-1883**): Mr Long of VTEC replied to NR to agree to a meeting, but repeating that it was for NR to satisfy VTEC that the TRIP methodology was flawless.
31. 9 March 2017 (**Annex / Tab 3 / VTEC / p.1884**): Charlotte Heron of NR emailed VTEC with a sample of raw data for VTEC services.
32. 9 March 2017 (**Annex / Tab 3 / VTEC / p.1884**): Mr Long of VTEC replied to NR to argue that use of berthing offsets was flawed as they are “*approximations*” and are not accurate enough to be used as a major component in the production of SRTs. NR addressed this concern in its 3 April 2017 response, as referred to below. Further, NR explains the use of berthing offsets in the witness statement of Mr Matthew Allen, at paragraph 29.3.
33. 14 March 2017: A meeting took place between VTEC and NR to discuss VTEC’s dispute over Version 2.0 of the TPRs (**Annex / Tab 1 / p.98-101**). VTEC described the basis of the dispute as “*the lack of transparency and collaborative working from NR in production of the [ODA based SRT changes between Newcastle and Berwick] as well as the use of berthing offsets in the process*”. The minutes demonstrate NR’s ongoing consultation and explanations of the basis for the Version 2.0 TPR. VTEC’s stated position is simply however that they prefer their own, pre-TRIP SRT review using their on-board GPS-based Falcon system. That methodology had been supported by NR and other operators at the time, but has now been superseded. VTEC’s approach to the meeting shows that they were resistant to change in this one area, when NR proposed ODA-based changes upon which NR had properly consulted all operators.
34. There were eight action points from this meeting to which NR replied, in a detailed email with supporting appendices on 3 April 2017 (**Annex / Tab 3 / VTEC / p.1888-1890**). In this email, NR explained the detail of the methodology and replied to VTEC’s questions which demanded sight of underlying data and assumptions. An Excel spreadsheet summarised VTEC’s response and tabulated the values in the SRTs. NR also provided a document with frequency distribution examples to support the choice of the 25th percentile as applying to berthing offsets.

35. VTEC replied to this email on 10 April 2017(**Annex / Tab 3 / VTEC / p.1888**). VTEC did not accept that NR had given sufficient reasons for VTEC to agree NR's proposed changes. NR's current position, in this ongoing consultation, which it is willing to continue, is as follows:
- 35.1 VTEC repeated their claim that the analysis of berthing offsets is a "*major flaw with the ODA work.*" NR does not accept this criticism, and refers back to the detailed analysis of berthing offsets in the witness statement of Mr Allen at paragraph 33.3. In relation to the particular example highlighted, NR will continue to consult and will take this objection into account.
- 35.2 NR notes VTEC's acceptance of the logic of the 25th percentile in applying berthing offsets.
- 35.3 As for the incorrect B Plan SRTs, NR regrets these errors but repeats that they will not and do not affect NR's proposals.
- 35.4 NR has provided VTEC with the confirmation it sought that the berth offset methodology does not inherently give an uplift. NR will continue to consult over individual instances where VTEC raises a concern.

#### **Response to Section 4 OF VTEC'S SRD**

36. The nature of the dispute in Section 4 of VTEC's SRD is noted. It is accepted that this is a timetable dispute, but for the reasons set out below and in the Defence, it is denied that VTEC is entitled to the relief sought or any relief.

#### **Response to Section 5 OF VTEC'S SRD**

37. As to Paragraph 5.1, it is admitted that NR published 19 amendments in version 2 .0 of the 2018 LNE TPRs. VTEC is right to state that these amendments followed NR's report on TRIP ODA analysis dated 4 April 2016. VTEC disputes the changes on the basis that, as VTEC argues, NR has not provided sufficient evidence of their methodology in calculating these values.
38. As to Paragraph 5.2, it can be seen from the history of the extensive consultations and consideration of VTEC's concerns and issues that NR has provided VTEC with ample evidence in support of its methodology and the robustness of its values. Within the detailed consultations, three items in particular stand out as explaining to VTEC the basis on which NR was making its proposals. The first is the PowerPoint presentation at the meeting on 11 February 2016 (**Annex / Tab 1 / p.26-31**), which VTEC did not attend, but was sent a copy of that presentation on 4 March 2016 (**Annex / Tab 1 / p.16-17**). The second is NR's report on TRIP ODA analysis dated 4 April 2016, updated to v303 on 21 October 2016 (Appendix B to VTEC's SRD). The third provision of supporting material was by a recent email, dated 3 April 2017 (**Annex / Tab 3 / VTEC / p.1888-1890**), after the issue of VTEC's SRD. By that email NR has answered VTEC's queries and continues to engage with

VTEC in the positive and collaborative manner which was recorded in the notes of the 14 March 2017 meeting (Appendix C to VTEC's SRD).

39. For the avoidance of doubt, if VTEC seeks to assert (which is denied) that NR has failed to consult it is denied that NR has failed to consult and/or properly consider VTEC's responses. VTEC was consulted all the way through the TRIP process; its position is however that it does not agree with a limited part of the outcome of the process.
40. As to Paragraph 5.3, VTEC now has as much access to underlying evidence as it needs to understand the accuracy of the underlying data and should be in a position to be supportive. NR accepts that it has not stored the raw data as it is too voluminous. However, it explained in the 3 April 2017 email to VTEC how that data was converted into the proposed values. Further, VTEC are referred to Appendix 1 to NR's SRD Response in this Dispute for further detail and explanation of the gathering of data and its conversion into proposed values for the TPRs, especially the SRTs which form the basis and the limit of VTEC's objection. NR also relies on the witness statement of Matthew Allen which explains the relevant processes.
41. The TRIP methodology is in accordance with the Decision Criteria as set out in the Defence and in Mr Allen's witness statement. NR would not invest approximately £12m and the TOCs and FOCs and would not heavily engage with a two year process if the TRIP methodology did not comply with the Decision Criteria and were not suitable for the TPRs.
42. Paragraph 5.4 is denied – NR has provided detailed supporting evidence. It also sought VTEC's input in developing the methodology. VTEC were involved in the two year process of developing the TRIP methodology. VTEC were also involved in the particular question of SRTs alterations for route LN 600, as can be seen in the chronology above.
43. VTEC state that they would have advised of their reservations regarding the use of berthing offsets as they are an agreed approximation. They advised NR of these reservations at the 14 March 2017 meeting, and NR has provided detailed and full responses. NR provided a summary response in the email of 3 April 2017, with further analysis in an attached spreadsheet with the SRT summary VTEC response and a document providing ODA SRT frequency distribution examples.
44. The spreadsheet lists the 18 sections that make up the Newcastle – Berwick SRT. It then demonstrates how NR has taken the component values including the planned value, 25th percentile value, sample size, various berth offset values and shows how NR has calculated the observed SRT which is the sum of the 25th percentile SRT and berthing offsets. It goes on to list the recommended SRTs, which are the sum of the observed SRTs with +/- cumulative rounding as per the normal rounding rules.
45. In support of this spreadsheet, NR provided a document that it had drafted to satisfy VTEC's concerns over the reliability of data, headed "*ODA SRT Frequency Examples*" (**Annex / Tab 3 / VTEC / p.1900-1905**). NR introduces these examples as follows:

*Below are 10 examples of observed SRT distributions taken from the Observed Data Analytics (ODA) tool to demonstrate the frequency distribution of observed data.*

*The data within the graphs is for train services which have run between 08/12/13 and 04/03/17. The sample sizes for the various movements varies and is stated on each graph.*

46. NR also provided a further spreadsheet with the data for all relevant berths on this route.
47. NR has explained its use of berthing offsets in the email of 3 April 2017, and how it has adopted a consistent approach nationally. Had VTEC made these arguments earlier on in the consultation process, NR would have given the same reply, and would have notified VTEC of the assumptions they had made and how they would not change this nationally consistent approach. There would have been no change to TPRs as a consequence of VTEC raising this argument.
48. VTEC actively entered into the TRIP process and NR and VTEC consulted in detail on the results of the TRIP process.
49. As to Paragraph 5.5, NR provided appropriate responses in its email of 3 April 2017 and is engaging with VTEC in the hope and anticipation that these issues will be agreed by the date of the hearing of this Dispute.
50. As to Paragraph 5.6, NR has now responded to the agreed actions of the 14 March 2017 meeting and hopes that remaining issues may be agreed. If they are not agreed, NR has in any event consulted fully and continues to consult as can be seen at paragraph 35 above. NR's proposal meets the requirements of the Decision Criteria.
51. Although there is no express criticism of NR's application of the Decision Criteria, NR has properly considered and applied the relevant Considerations in order to achieve the Objective and apply the Decision Criteria set out in Part D paragraph 4.6. In particular Consideration (c)<sup>1</sup> was given a high weighting, Considerations (e)<sup>2</sup> and (f)<sup>3</sup> were given a medium weighting, and Considerations (a)<sup>4</sup>, (d)<sup>5</sup>, (g)<sup>6</sup> and (j)<sup>7</sup> were given a low weighting.

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<sup>1</sup> Maintaining and improving train performance

<sup>2</sup> Maintaining and improving an integrated system of transport for passengers and goods.

<sup>3</sup> The commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable participant of which Network Rail is aware.

<sup>4</sup> Maintaining, developing and improving the capability of the Network.

<sup>5</sup> That journey times are as short as reasonably possible.

<sup>6</sup> Seeking consistency with any relevant Route Utilisation Strategy.

<sup>7</sup> Enabling operators of trains to utilise their assets efficiently.



Those Considerations not mentioned were looked at, but were deemed to be not applicable in this case.

## **Conclusion**

52. NR continues to consult with VTEC and the matters in issue are being reduced and limited. NR relies on its general submissions on the suitability of the ODA and TRIP processes, and the supporting witness statement of Mr Allen in response to the remaining objections of principle that VTEC is raising.