

***Defendant's Response to a Sole Reference to a
Timetabling Panel in accordance with the provisions of
Chapter H of the ADR Rules effective from 1 August 2010
(and as subsequently amended)
Timetabling Dispute TTP1174***

1 DETAILS OF PARTIES

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

- (a) *XC Trains Limited whose Registered Office is at 1 Admiral Way, Doxford International Business Park, Sunderland, SR3 3XP ("XCTL") ("the Claimant") ("the Claimant"); and*
- (b) *Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London, W1 2DN ("Network Rail") ("the Defendant").*
- (c) *Abellio ScotRail Abellio Scotrail Ltd, Registered in Scotland, whose Registered Office is at 5th Floor, Culzean Building, 36 Renfield Street, Glasgow, G2 1LU ("ASR") ("dispute party").*

2 CONTENTS OF THIS DOCUMENT

This Response to the Claimant's Sole Reference includes:-

- (a) Confirmation, or qualification, that the subject matter of the dispute is as set out by the Claimant in its Sole Reference, in the form of a summary schedule cross-referenced to the issues raised by the Claimant in the Sole Reference, identifying which the Defendant agrees with and which it disagrees with.
- (b) A detailed explanation of the Defendant's arguments in support of its position on those issues where it disagrees with the Claimant's Sole Reference, including references to documents or contractual provisions not dealt with in the Claimant's Sole Reference.
- (c) Any further related issues not raised by the Claimant but which the Defendant considers fall to be determined as part of the dispute;
- (d) The decisions of principle sought from the Panel in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
- (e) Appendices and other supporting material.

3 SUBJECT MATTER OF DISPUTE

- 3.1 Network Rail agrees with the claimant that this is a dispute regarding the running order of seven XCTL trains and ASR trains between Uddingston Junction and Glasgow Central in the Principal 2018 Working Timetable (WTT).
- 3.2 Network Rail agrees with the claimant that the dispute arises over the interpretation of Condition D4.6 of the Network Code. Network Rail confirms that the Decision Criteria document included in the claimant's Appendix E is correct and therefore the contents have not been duplicated in the Defendant's Response.
- 3.3 Network Rail does not agree that the circumstances described by the claimant in paragraph 4.8 of their sole reference document amount to exceptional circumstances, as detailed in D5.3.1(c).

4 EXPLANATION FROM THE DEFENDANT'S PERSPECTIVE OF EACH ISSUE IN DISPUTE

4.1 Preparation of the New Working Timetable

- (a) Network Rail's explanation is unchanged from that provided for TTP1122, and is contained as Appendix A of this document.

4.2 Application of the Decision Criteria

- (a) Network Rail refutes the statement made by the claimant in paragraph 5.2(c) of their sole reference document.
- (b) Comments on each of the points raised by the claimant, referenced to the relevant Consideration as shown in D4.6.2 (a)–(j):

- a) "Maintaining, developing and improving the capability of the Network"

NR believes that the Network capability will be maintained or improved with the application of a standardised timetable, repeating hourly throughout the day. It is a model used on other rail networks in the world to deliver high levels of operational performance. The specific area cited by the claimant, Uddingston Junction, is an ARS controlled location.

Another area, not cited by the claimant, Glasgow Central (and the approach thereof), is not an ARS controlled location. This is an area of the Network with a high volume of traffic, converging from multiple routes with the potential for significant numbers of conflicting moves to be managed by the signaller. In this situation, NR believes that there is a benefit in having a patterned timetable at both Uddingston Junction and Glasgow Central.

The consideration about platform allocation linked to the presence of ticket gate lines was a minor element of how this consideration was weighted and applied. NR notes the comments made by the claimant in paragraph 5.3(a)i & 5.3(a)ii.

NR maintains that the capability of the Network will improve for the reasons cited in Appendix E, consideration (a) of the claimant's sole reference document. NR believes that Network capability is a broader consideration than a question of whether all train slots in an access proposal can be accommodated in accordance with the Rules.

b) "That the spread of services reflects demand"

NR notes the comments made by the claimant.

c) "Maintaining and improving train service performance"

SRT changes to all passenger operators (except Virgin Trains East Coast & Caledonian Sleepers) will convey the benefit of increased timetable resilience with associated reductions in sub-threshold time loss and more flexible recovery from perturbation, meaning an overall improvement in performance. NR did take the effect of the increase in SRTs for class 221's into account when making this decision. When studying both the average lateness and the instances of right time presentation exhibited by the seven 1Sxx services at Uddingston Junction, NR do not agree with the claimants statement that, *"this change will have a significantly positive impact to the right time presentation of XCTL's 1Sxx service group at Uddingston Jn, effectively removing the impact on ASR's 2Bxx services"*.

This assertion that a 1½ increase to SRT's preceding Uddingston Junction will remove the impact on ASR's 2Bxx services is not something that NR agrees with. The train with the lowest average lateness of the seven trains in question is currently 3½ minutes late at Uddingston Junction and with the SRT uplift only providing an additional 1½ minutes running time, the average lateness, at best, could reduce to 2minutes which NR believes will still have a negative impact on the ASR 2Bxx service. The table below summarises this scenario.

| XCTL train slot | Right Time presentation at Uddingston Jn | Average Lateness at Uddingston Jn (minutes) |
|-----------------|--|---|
| 1S31 (SX) | 16% | 3½ |
| 1S35 (SX) | 5% | 3½ |
| 1S39 (SX) | 8% | 5 |
| 1S31 (SO) | 11% | 3½ |
| 1S35 (SO) | 17% | 3½ |
| 1S39 (SO) | 20% | 4 |
| 1S47 (SO) | 17% | 5 |

SX data is from January – July 2017, SO data is from January – August 2017.

The claimant states in 5.3(c)ii that they, “*can see no evidence of any work carried out to improve performance in other ways*”. All performance improvement activity across Scotland is included in the ScotRail Alliance Performance Improvement Plan which has been shared with all stakeholders/TOCs and is regularly discussed with the claimant at performance review meetings.

The claimant states in 5.3(c)iii that they have identified a risk that if they incur increased sub-threshold delay that this will impact on the xx:16 2Yxx

ASR service to Edinburgh Waverley. The same is true of whichever service occupied the train slot arriving at xx:15, as there is a link between the performance of the arriving train and the ability of the xx:16 to depart right time. NR had already considered this risk, and believes that the risk of delaying the 2Bxx departure from Glasgow Central is most appropriately mitigated by providing the xx:12 arrival slot to the 2Bxx service as the average lateness incurred by the 2Bxx arrival following the 1Sxx service will have a greater impact on the Network, including the interactions at Glasgow Central, than if the trains were in the opposite order.

NR note the comments made by the claimant in 5.3(c)iv. NR is also supportive of a timetable that aims to deliver right time performance. The subject of this appeal isn't influenced by whether individual timetable participants are measured on PPM or Right Time; NR's decision is based on what they believe will deliver the best outcome for Network performance.

d) "That journey times are as short as reasonably possible"

NR understands the aspiration for both Timetable Participants to have the shortest journey times practical whilst maintaining compliance with the Rules. NR does not agree with the claimant's statement that they have not understood nor looked into any benefit from maintaining current journey times for their passengers. NR understand for the claimant that their passengers consider alternative modes of transport when making a decision on whether to use rail, and journey times are a factor in this decision. When comparing road transport times from Newcastle to Glasgow, the claimant's trains are still 15-20 minutes faster than the road alternative even with the increased journey time, so NR don't believe that this will have a significant bearing on whether people choose to travel using rail or not. For Lanark passengers, the M74 provides road users with a faster journey from Lanark to Glasgow than by rail. NR considered the opportunity to accelerate the 2Bxx ASR Lanark services through all hours of the day, as a service group which conveys high volumes of

passengers and with the opportunity to attract more users to the Network by journey times being more competitive with road than they currently are.

- e) "Maintaining and improving an integrated system of transport for passengers and goods"

NR recognises that all the trains involved in this appeal for both the claimant and ASR, convey significant volumes of passengers. NR believe it is an unrealistic expectation that all pre-existing journey opportunities will remain through the development of a new working timetable, and whilst this isn't necessarily desirable, it can on occasions be in the best interest of the overall Network.

NR has demonstrated consideration for how journey opportunities can be maintained or enhanced, and the vast majority of the journey opportunities available to the passengers using the claimants trains, will still be available. NR believes that the data provided by ASR from LENNON demonstrates that the broken connection into the Barrhead train will affect more ASR passengers than the claimant's passengers.

- f) "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.

NR do not believe that there is a binary answer to the question made by the claimant in 5.3(f)i. The weighting of this consideration would be done on a case by case basis.

NR notes the claimant's comments in relation to the methodology used by ASR. In the document provided as Appendix E of the claimant's Sole Reference Document, in part (f) NR outline that the data supplied didn't enable a direct comparison between the operators' respective commercial impacts.

NR note the claimant's comments in 5.3(f)vi about the provision of flexibility in the timetable to strengthen ASR's 2Bxx services. This was a minor consideration in the decision making process.

Looking at the individual services in question in relation to this consideration, two SX trains were favoured towards the claimant; 12:12 & 16:12 arrival slots. This was because of the commercial loss experienced by the claimant, versus the impact on ASR. All SO trains were favoured towards ASR, as the commercial loss to the claimant was outweighed by the impact on significant volumes of ASR passengers.

g) "Seeking consistency with any relevant Route Utilisation Strategy "

NR notes the comments made by the claimant.

i) "Mitigating the effect on the environment"

NR notes the comments made by the claimant.

j) "Enabling operators of trains to utilise their assets efficiently"

NR recognises that there is repetition of factors with several of the considerations, and this is a common feature of applying decision criteria in complex scenarios.

4.3 Weighting of the Decision Criteria

(a) NR does not agree that criterion e has been inappropriately weighted. NR believe that due to the high numbers of passengers using the Network who are using connecting services, that this consideration should be granted a high weighting. With the claimant's passengers only making up a small proportion of this usage, this is why this criterion has gone in the favour of ASR, given the volumes of passengers impacted.

(b) NR believe that criterion (d) is an important factor under consideration when making this decision, but the weighting placed by NR on criterion c in particular, means that criterion (d), journey times, are a product of the overall decision made.

(c) NR does not accept that criterion d should receive a higher weighting than criterion j. In this instance, the claimant does not suffer a loss in terms of their ability to utilise their assets efficiently (j), however ASR would suffer a loss in the way they can

utilise their assets efficiently if the reverse order of trains was implemented (14:15 SX arrival), due to a broken driver diagram. For the four train slots on a Saturday, there is no impact to the claimant by arriving at xx:15 in respect of consideration (j), but it does impact ASR in terms of contingent capacity to strengthen services on a short term basis.

5 DECISION SOUGHT FROM THE PANEL

5.1 Matters of principle:

- (a) That NR has considered and applied the decision criteria in accordance with D4.6.1 and D4.6.2.
- (b) That the panel rejects the claim that the circumstances of this appeal constitute exceptional circumstances.

5.2 Specific conclusions deriving from those matters of principle:

- (a) That the panel uphold the decision of NR to allocate the xx:12 arrival train slot at Glasgow Central to ASR and to allocate the xx:15 arrival train slot to the claimant.

6 APPENDICES

The Defendant confirms that it has complied with Access Dispute Resolution Rule H21.

Extracts of Access Conditions/ the Network Code are included where the dispute relates to previous (i.e. no longer current) versions of these documents.

All appendices and annexes are bound into the submission and consecutively page numbered. To assist the Panel, quotations or references that are cited in the formal submission are highlighted (or side-lined) so that the context of the quotation or reference is apparent.

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

7 SIGNATURE

For and on behalf of Network Rail
Infrastructure Limited

Signed



Print Name

Andrew Bray

Position

Timetable Production Manager [Scotland]

The Appendices

APPENDIX A – TTP1122 DEFENDANT'S RESPONSE