

TTP2453, TTP2454, TTP2455, TTP2426 Network Rail Limited Defence Submission

1 DETAILS OF PARTIES

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

- (a) First Greater Western Limited whose Registered Office is at Milford House, 1, Milford Street, Swindon. SN1 1HL ("Great Western Railway", "GWR") ("the Claimant"); and
- (b) Network Rail Infrastructure Limited whose Registered Office is at Waterloo General Office, London SE1 8SW ("Network Rail") ("the Defendant").

1.2 Network Rail agree with the list of potentially affected third parties as listed within the Claimants Sole Reference Document.

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 fail to be determined as part of the dispute;
- (a) The decisions of principle sought from the Chair in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
- (b) Appendices and other supporting material.

3 SUBJECT MATTER OF DISPUTE

Network Rail does not dispute GWR's right to bring this dispute in accordance with Condition D5 of the Network Code insofar as the Network Code and ADRR are applicable.

This is a dispute in relation to the allocation of capacity to account for a series of possessions ("RoU") decisioned by Network Rail to enable the building of the new Great Western Main Line station at Old Oak Common. As with previous

disputes regarding this section of the network (TTP2243, TTP2244, TTP2245, TTP2260 and Elements of TTP2251) it is submitted that there are two issues at play.

Firstly, the holistic capacity of the two-track timetable being implemented. Network Rail submit that the maximum number of trains that can run to ensure a robust timetable is 14.5 trains per hour (tph). In previous disputes, the Claimant argued that this assessment is incorrect, and that the allocation should be 15.5tph. They now seek to argue that Network Rail are in fact contractually prevented from reducing the number of trains that can run per hour to any number that is less than the maximum possible under the Timetable Planning Rules.

Secondly, that if the overall capacity was increased, the Claimant appears to be arguing that any additional capacity should then be allocated to their services. We believe that GWR are seeking one additional tph – but it is noted that their request of the Hearing Chair within their submission is somewhat vague on this front.

The Claimant has not disputed the validity or justification provided by Network Rail for the possession itself, but we believe is unhappy with the potential allocation of capacity. Network Rail have not yet offered the Timetable (for any of the Weeks in question) back to Timetable Participants and as such submit no formal decision has been issued regarding this matter.

The dispute brought by GWR relates to Network Rail's application of the Decision Criteria under D4.6 as well as a what appears to be a general assertion that our actions are outside of those permissible by the Network Code.

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

4.1 Issues where the Defendant accepts the Claimant's Case.

4.1.2 Network Rail accepts that these possessions are being sought to enable the building of the new Great Western Main Line station at Old Oak Common (to act as interchange with the Great Western Mainline at the southern terminus of HS2) and for the progressing of other essential schemes going forward.

4.1.3 Network Rail accepts that the Sunday two track possessions ("RoU") which are in dispute here are very close to London, the key area of the Network essential to GWR operations and viability.

4.1.4 Network Rail agrees that Condition D2.2.9 is not applicable as there is no applicable or relevant Possession Strategy Notice.

4.1.5 There are certain elements contained within the Claimants submission under paragraph 4.3 that Network Rail agree with. These are:

- That there have previously been two track timetables in this area for quite some time and that with only two tracks being available out of four normally available there is bound to be a reduction in the number of trains that can be accommodated.
- There is a facility for a limit to be placed on activity such as minimum turnaround times for incoming trains at terminus stations before they can be planned to go back out. These have contingency time added in case incoming trains are late.
- That the Timetable Planning Rules which are published by Network Rail are through the application of the Decision Criteria whilst reviewing consultation with Timetable Participants.
- That a timetable for 16 trains per hour compliant with the Timetable Planning Rules is available and has been published and validated by Network Rail previously.

- Network Rail accepts that the presence of the Elizabeth Line services (MTR-EL) has changed the landscape and nature of timetabling for this area of the network and as such additional considerations must now be accounted for when making decisions such as these.
- Network Rail agree with GWR's understanding of the decision criteria contained within their para 5.8
- Network Rail accepts GWR's submission that the ORR have completed an investigation into Wales and Western performance.

4.2 Issues where the Defendant qualifies or refutes the Claimant's Case.

4.2.1 Network Rail completely refute the various assertions made by GWR that a 'cap' (their terminology) on the quantum of trains within the timetable is contrary to the Network code or 'illegal'. Network Code Part D provides the industry with clear processes to build and amend a timetable, culminating (if required) in the consideration and application of the Decision Criteria under D4.6. It is submitted that Network Rail could be faced with a request to add a path, or number of paths into a timetable, but having assessed the information available to us at the time, has concluded through the application of D4.6 that, even though there may be paths available that are technically TPR compliant, that accepting those trains is not the right decision. Whilst we accept that Network Code Part D does not explicitly allow Network Rail to limit the number of trains, it clearly provides the framework within which Network Rail can manage timetable changes, ensuring that capacity, safety and performance (amongst other factors) are balanced and met to best achieve the Objective. Network Rail also question the relevance of Condition D2.2.8 being referred to within the the GWR submission and submit that this Condition is not applicable to the scenario being disputed. GWR have not disputed the Rules (as far as we understand from their submission), nor have Network Rail needed to amend any of those Rules.

4.2.2 There are elements of the Claimants paragraph 4.3 that Network Rail do not completely agree with. These are:

- *"The Timetable Planning Rules are designed to cater for all timetabling situations and Sectional Running Times for trains are published to cater for these two track situations, along with junction and crossover timing allowances and headways."* Whilst we accept that the TPRs are designed to cater for this, it is arguable as to whether these can account for 'all timetabling situations'. Whilst this would be an ideal scenario, it is submitted that in reality the Rules cover all *common* timetabling situations. Unusual/uncommon moves may be assessed case by case and then added to the Rules if necessary.
- *"The allowances are not raw allowances such as actual signal stopping distances translated into headway times but instead incorporate an allowance to ensure reliability."* This will depend on the allowance in question. As an example, an SRT is typically based on the fastest time between locations A and B. If (for any reason) the train in question is not undertaking the fastest move permissible, then an adjustment allowance will be required on top of the SRT value. This can be demonstrated using Stratford to Forest Gate on Anglia Route. For freight, the pass-pass move is based on travelling towards Ilford. However, if a train is heading to Woodgrange Park then it needs to slow down for the junction. As a result, the schedule will have the pass-pass SRT in it as well as an adjustment allowance to factor in the need to slow down for the curve in the track. An additional consideration on top of this is that you may then have to account for pathing time to make the schedule TPR compliant with other services around it. Performance time and pathing time are very much related to reliability.

4.2.3 GWR claim (para 4.3) that the proposed capacity allocation for the relevant weeks will severely damage GWR customer journeys, industry revenue and the reputation of both GWR and the industry. They claim that the Network Rail decision is both unfounded and unnecessary. Network Rail submit that no evidence has been provided to explain or substantiate the claim that the decision to not include an additional train causes reputational damage to either GWR or the industry. It is also noted that "reputation" is not strictly a consideration contained within D4.6.2. Network Rail also

reiterate that no formal decision has been taken at this time in relation to capacity allocation which is due to occur at TW-14 in line with Part D. It is at that point that Network Rail would expect an operator to lodge a formal dispute against the timetable offer if they disagreed with it.

4.2.4 Network Rail is not seeking to enhance the chance of a high performing railway, but rather seeks to stabilise performance considering the historic low levels of Two Track Timetable performance.

4.2.5 GWR claim that the services allocated to them under a Two Track Timetable are “insufficient to move the business on offer”. However, the data requested by Network Rail and supplied by GWR does not support this assertion. The passenger demand data (**Appendix B – Commercially Sensitive**) does not demonstrate that GWR have been allocated an insufficient service to move passengers based on a mixture of five and nine-car services. Rather, this suggests that the capacity allocation within the Capacity Studies is accurate and balanced to the demand data supplied to NR. The Capacity Study shows GWR running 80% of their normal Sunday services with Heathrow Express running at 50% and MTR-EL at 60%.

4.2.6 GWR’s Appendix 1 is an attempt to show that a timetable can be created to include an additional path by increasing the proposed quantum of services from 14.5tph to 15.5tph with the additional service being a five-car service running to/from Oxford. This appears to relate to D4.6.2 (b) (The need to spread demand) and D4.6.2 (c) (Performance). It is accepted that performance is an essential criterion for delivering service to customers. Network Rail note that the fully modelled SX timetable operates at 14tph on the relief lines and that here, GWR is seeking to operate service levels above this. Any increase above 14.5tph is not palatable for Network Rail owing to the Wales and Western Region listed on the ORR’s regulatory escalator for performance as well as the need to create sufficient capacity for engineering trains, charter operators and freight to operate in a robust manner. Creating and/or accepting a poor performing timetable is not an acceptable outcome for any Timetable Participant, nor is it acceptable to Network Rail in view of the ORR having completed an investigation into Wales and Western performance finding the region in contravention of licence condition 1.

Furthermore, it is understood that typically, all operators wish to run more services. Often, they wish to run more services than there are existing paths. Network Rail are obligated to make decisions regarding the allocation of capacity in line with the Network Code and submit that is what has happened here. Network Rail agrees that Appendix 1 shows a Timetable which might be able to operate, but there is no evidence supplied by GWR at the point of the Capacity Study being issued which demonstrates that this level of service is neither required to meet passenger demand nor able to operate at a level that is comparable to average Sunday timetable performance. Network Rail does recognise that there is a trade-off between performance and the need to carry the passengers on offer. Network Rail is of the view that 14.5 tph delivers this objective.

4.2.7 GWR’s Appendix 2 is evidence in support of D4.2.6 (b) (Spread of service meeting demand). Passenger data submitted by GWR indicates that passenger numbers can be catered for by the services suggested within the Capacity Studies. It is submitted that this supports 14.5tph as well as the subset allocations within the Capacity Study.

4.2.8 GWRs Appendix 3 is evidence in relation to D4.6.2(f) (commercial interests). In response, Network Rail makes the same comments as in 4.2.7 above.

4.2.9 In respect of GWR’s assertion in para 5.0 that the overall cap on services is contra to the Network Code requirements for the development of the Timetabling Planning Rules, Network Rail makes the same comments as in 4.2.1.

4.2.10 GWR (para 5.2) state that it doesn't believe Network Rail has taken these decisions in accordance with the Decision Criteria. Network Rail refute this assertion, and refer to **Appendix F and Appendix G** to demonstrate Network Rail has provided indicative decisioning.

4.2.11 In respect of GWR's para 5.2, Network Rail makes the same comments as in 4.2.1 above.

4.2.11 GWR have provided opinion (para 5.4) around customer retention and reputation. Whilst Network Rail accept and understands that this is a concern for GWR, the same must be equally applied to all commercial entities such as MTR-EL and HEOC, and not just to GWR. GWR also acknowledge that delivery of a timetable has to be right and that a poorly performing timetable is likely to cause reputational damage. This would seem to agree with the Network Rail position that to exceed 14.5tph is to create a timetable that will not deliver.

4.2.12 GWR (para 5.5) assert that they desire a robust timetable which Network Rail agree with. However, they also assert that in order to meet "the Objective" any such timetable must allow the maximum profit to be gained from that day. Whilst it is understandable that GWR are seeking to maximise their own profit, Network Rail must take a holistic view of the railway. Network Rail are concerned with trying to create a high performing and robust timetable for all Timetable Participants, not just for the commercial gain of GWR. The maximisation of profit for a single operator is not a sole justification or rationale for the allocation of Capacity.

4.2.13 GWR (para 5.6) assert that it has long been practice with two track railways to keep numbers low when demand is low and to increase this when extra trains are required to move customers comfortably. Passenger numbers provided to Network Rail (**Appendix B – Commercially Sensitive**) indicate that this demand has been met. Network Rail has shown via the Capacity Study that the timetable will meet the demands of passenger movements effectively across the whole day.

4.2.18 GWR assert (para 5.7) that their plan to increase to 15.5 tph (with the additional train allocated to themselves) delivers a robust plan that does not damage reputations. It is unclear to Network Rail at this stage why not gaining an additional 1 tph from the number which has been operated for at least five years would cause reputational damage, nor the extent of any such damage. The passenger data provided does not support GWR's assertions here. It is acknowledged that growth is an aspiration of all operators and is a factor Network Rail will keep under review for the two track allocation.

4.2.19 GWR (para 5.8) has provided their interpretation of the Decision Considerations at a very high level and without any detailed explanation of how they interpret this, nor any weighting attached to the Considerations. Network Rail do not consider it acceptable for any operator to submit a response that is akin to 'we don't like the outcome' but rather to present any counter position/ proposal that they may have with the same level of detail and application made by Network Rail. The following comments and questions are raised in relation to GWR's assertions:

(b) Demand – GWR want more services to meet demand. As detailed above, passenger numbers provided to Network Rail indicate that this demand has been met. Network Rail have shown via the Capacity Study that the timetable will meet the demands of passenger movements effectively across the whole day.

- (c) Performance – the existing SX WTT on the relief lines operates at 14 tph. This has been extensively modelled and tested in order to produce an acceptable WTT. Until the evidence demonstrates that further services can operate robustly, Network Rail must create timetables at 14.5 tph which do not import an increased risk of performance degradation. Network Rail would comment that even at a 14.5 tph, the timetable does not perform as well as Network Rail would like it to, but that to ensure that there are sufficient services to meet demand, an element of compromise has been accepted on our part and the number of trains able to run increased up to the 14.5 tph.
- (d) Journey Times – GWR have made an argument in very general terms and seem to conflate the concept of journey times with demand. Network Rail has sought to keep journey times for services in the timetable as low as possible. Adding in additional services imports additional risk of delay incidents leading to longer journey times.
- (e) Integration – GWR claim more people will travel under their plan (one would assume on their additional service). As the passenger numbers do not appear to support the need for an additional GWR service, Network Rail would query the accuracy of this argument. Any additional passengers would have a choice of alternative services. No evidence has been provided to Network Rail to demonstrate that anyone is unable to travel under this timetable.
- (f) Commercial Interest – GWR state ‘viability requires a sufficiently attractive product’. This appears to suggest that GWR consider that their allocation under 14.5tph is not viable, but the addition of 1 train changes this?
- (g) ESG’s – Insufficient information has been provided by GWR for Network Rail to understand how not being awarded an additional train slot for these select Sundays can impact on their growth.
- (i) Environment – Network Rail agree that more passengers on rail vice other transportation types is beneficial to the environment. It is unclear what evidence, if being relied on, that passengers are not utilising the available rail services in favour of other methods of travel, or not traveling at all.

4.2.20 Within their summing up (para 5.9), GWR appear to make the argument that revenue generation for GWR should attract a high priority under D4.6.2. Whilst Network Rail acknowledge the importance of this to GWR, it must be re-emphasised that this is a factor that remains of utmost importance to both MTR-EL and HEOC as well. Passenger demand data shows that there are enough GWR services within the Capacity Study.

4.3 Issues not addressed by the Claimant that the Defendant considers should be taken into account as material to the determination

4.3.1 Network Rail notes that the GWR Appendix 2 is not the same passenger demand data as supplied to Network Rail on 7 December 2023. Network Rail requested on 23 October 2023 from all impacted operators, including GWR, updated passenger demand for weeks 37 to 49 to inform on-going capacity planning for two track operations. GWR provided to Network Rail passenger demand data on 7 December 2023, providing their information on the basis of “information declared with the Secretary of State”. The demand data that GWR has provided relates to a request by Network Rail for GWR to provide passenger demand data that helped inform the decision criteria in Summer 2023. The GWR Appendix 2 appears to be from that period. The 7 December 2023 demand data was analysed and presented back to GWR on 22 May 2024. The analysis of GWR’s data (**Appendix B – Commercially Sensitive**) as well as the Summer

2023 demand data shows that the overall level of passenger demand operated within the seated capacity offered throughout the day.

4.3.2 Network Rail makes reference to **(Appendix C)** 'Western - Sunday Two-Track Performance' and accompanying summary **(Appendix D)**. Following engagement with operators including GWR, the average performance of the four-track railway between May 2023 and October 2023 was used as a baseline for comparison with two track Sundays. The results of the analysis **(Appendix C)** was shared with operators on Friday, 26 April 2024 where Network Rail explained that Operators' arrival performance during two track timetables fell below the four-track benchmark average performance for both On-time and On-time to 3 for most Sunday two track operations. Network Rail has shared its analysis of the operators' data with panel under the basis that the data is commercially sensitive and is therefore not published; this also applies to Network Rail's **Appendix B**. Permission has been sought from the operators to this end.

4.4 Why the arguments raised in 4.1 to 4.3 taken together favour the position of the Defendant

4.4.1 Network Rail submit that while it has not applied the decision criteria under Part D formally at this time, Network Rail has instructed that the Capacity Studies are capped at 14.5tph based upon all the information requested, supplied and available to us at the time.

4.4.2 14.5 tph is a historic high for the quantum of services operated through this area and capacity allocations were increased a few years' ago following the introduction of fully electric train fleets. Network Rail Western Route is currently on the ORR's regulatory escalator for failing to reach performance targets. Creating and / or accepting a poor performing timetable is not an acceptable outcome for any timetable participant. Network Rail is aware of the aspirations of GWR to have an additional path allocated to them and this has contributed to the extensive workstreams to understand the demand and develop a train plan that have been taking place collaboratively for over a year. Network Rail has used the outcomes from this work to make decisions regarding acceptable overall capacity within the Capacity Studies issued to GWR to conclude that one, or a number of trains may not be included into a timetable if the decision is justified by reference to Part D.

Indeed in this respect, Network Rail would also refer to paragraph 91 of the ORR appealed determination for TTP 1174 **(Appendix E)** in which the ORR opined (as binding precedent) that they considered "that the provisions of the Network Code envisage that there will be circumstances where Network Rail may not achieve the Objective by including all requested train Slots in the WTT, even where there are no conflicts with other proposals or the Rules...This might include where requested Train Slots would, if accepted in the WTT, give rise to a clear and substantial safety or performance concern".

4.4.2 Network Rail has demonstrated that it has followed the Network Code Part D throughout. It has requested up to date and relevant information from impacted operators, and where received the information has been analysed and accounted for when considering our next steps. On this basis, it is submitted that the position taken by Network Rail to date is a reasonable one. Indeed, it could be considered unreasonable of GWR to submit up to date information to Network Rail, but then rely on older data as part of its submissions to the Hearing Chair.

4.4.3 The Region is seeking to take steps to "secure the operation and maintenance of the network in accordance with best practice to meet the reasonable requirements of persons providing services relating to railways in respect of the facilitation of railway service performance to the greatest extent reasonably practicable.

5 DECISION SOUGHT FROM THE CHAIR

5.1 Network Rail requests a determination confirming that (as a point of principle) it has the capability and entitlement under Network Code Part D to decide to limit capacity (in this case the number of trains per hour) provided those decisions are justified by reference to the application of the Decision Criteria.

5.2 It is noted that GWR is asking for a direction from the Hearing Chair that Network Rail withdraw its decisions and be required to rework this issue. Network Rail note that GWR is not disputing the possession itself. At this stage of the process, the only decisions issued by Network Rail are those to take the possessions which result in a two-track timetable being required. The possible capacity has been identified via Capacity Studies and Network Rail submit that these outputs are indicative only (**Appendix F and Appendix G**). They are not binding at this stage and nor do they constitute a 'decision' under Part D. Network Rail therefore submit that there is no decision to withdraw but note that as part of the Timetabling Process we consider that consultation is an ongoing process up to and including the date that we offer a timetable back to Timetable Participants.

5.4 Network Rail seek confirmation that it has followed the processes set out within Network Code Part D, and that in doing so it has reached a reasonable decision in terms of taking the possession in question and a reasonable position in relation to the Capacity Study based on the information made available to us at the time.

5.3 Network Rail confirm that no costs are sought in this matter.

6 APPENDICES

- A. Chronology
- B. Passenger Demand Analysis (**Commercially Sensitive**)
- C. Two-Track Timetable Performance Analysis
- D. Two-Track Timetable Performance Analysis commentary
- E. Extract from TTP 1174
- F. Network Rail Indicative Decision Criteria issued with Capacity Studies.
- G. Network Rail Indicative Decision Criteria Commentary
- H. Network Rail Week 25 Ladbroke Grove Capacity Study (Comparison to GWR's Appendix 1)

7 SIGNATURE

For and on behalf of
[insert full company name]

Network rail Infrastructure Limited

Signed
Richard Turner

Print Name
Richard Turner

Position
Customer Relationships Executive
