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## **ACCESS DISPUTES COMMITTEE**

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**By e-mail to:**

West Coast Trains Ltd ("Virgin")

First/Keolis Transpennine Ltd ("TPE")

Network Rail Infrastructure Ltd ("Network Rail")

**From:** Hearing Chair for TTP439 & TTP440  
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**Ref:** ADC/TTP439 & TTP440

**Date:** 29 September 2011

Dear Sirs

**Directions relating to Timetabling Panel hearing of disputes TTP439 and TTP440**

In providing sole reference documents for consideration at the forthcoming Timetabling Panel hearing of these Timetabling Disputes on 10 October 2011, Virgin and TPE have submitted redacted versions for the Panel members appointed from the Timetabling Pool and non-redacted versions for my eye as Hearing Chair. The Committee Secretary has issued the redacted versions to the appointed Panel members and also placed them on the Committee's website.

From my reading of the submissions, the redacted material in both cases relates to passenger loading information.

ORR's recent appeal determination for Timetabling Disputes TTP337/359/382 considered the matter of redacted material being provided to the appointed Panel members but full data only being supplied to the Hearing Chair. Interestingly in relation to this appeal determination, in para. 72, ORR reported that Virgin had put forward argument that "the Panel members, as a result of not being provided with the specific passenger information, were only able to make *"a subjective assessment of the dispute going forward"*." ORR concluded (in para. 77) with the view that "generally speaking, best practice is to provide all members of the Panel with the same information for the purposes of their decision-making".

I am mindful of the commercial confidentiality issues faced by the franchised operators but I also wish to establish some form of quantification which can be openly referred to during the hearing and in the determination which is eventually handed down to the parties then published to all TOCs and placed on the Committee's website.

Accordingly, I now give the following directions:-

Continued....

1. By 15 00 on Tuesday 4 October 2011, Virgin and TPE shall each supply to the Committee Secretary a short supplementary statement setting out what point(s) it is that their company is wanting to establish by means of the redacted information.

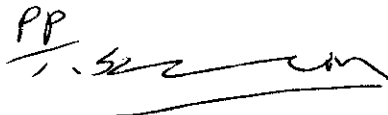
By way of example, a simple formulation might be in terms such as "There is \*\*\*\*\* use of the relevant train services at weekends even in January – and the comparison with the rest of the year is \*\*\*\*\*"; this would be helpful.

2. In its opening submission to the hearing, Network Rail is to:
  - (a) state whether it accepts the points forward by each of Virgin and TPE;
  - (b) make clear whether such information was known by Network Rail at the time that decision was made regarding the possessions under consideration; and
  - (c) if the information was known by Network Rail, explain how it was taken into account when reaching its decision regarding the possessions.
3. The Committee Secretary is to provide all Panel members with a copy of this letter and the supplementary statements from Virgin and TPE, also to place the documents on the Committee's website.

All documents sent to the Committee Secretary in response to this letter shall be copied to the other addressees of this letter. The Committee Secretary will separately issue details of the representatives within each company to whom such documents are to be copied.

Yours faithfully

Andrew Long  
Hearing Chair

PP  
  
Committee Secretary