

Network Rail Infrastructure Limited
Abellio ScotRail Ltd
[By email only]



9 June 2017

Dear Sirs

Appeal under Part M of the Network Code by Abellio ScotRail Limited (ASR) in respect of Determination TTP1064 of the Timetable Panel

1. Further to our letter of 1 June 2017 in which we indicated that we were minded to proceed with the appeal by way of review only, we have considered the representations made by both parties in this regard.
2. As previously stated in our letter, the usual process is that an appeal under Part M of the Network Code will be limited to a review unless ORR considers it would be in the interests of justice to hold a rehearing. The appeals procedure is meant to be a relatively quick process for resolving specific timetabling disputes within the scope of the rules set out in the Network Code. Any wider issues should be dealt with by other industry or regulatory mechanisms.
3. Network Rail has not made any representations that we should proceed by way of re-hearing. ASR has specifically stated in its representations that provided the substance of the issues can be dealt with effectively and efficiently, it has no particular position on whether the matter should proceed by way of re-hearing or review. Having considered the parties' representations, we are not persuaded that it would be in the interests of justice to hold a re-hearing.
4. We have therefore decided that the appeal will proceed by way of a review.
5. ASR has made representations that we should hold an oral hearing. Unlike the higher courts, it is not usual in a Part M appeal for ORR to hold an oral hearing where we have decided to proceed by way of review. We consider we are free to do so, however, if we consider it is necessary to enable us to properly determine the matter in question. Having considered ASR's representations, we do not consider at this stage that it is necessary to permit oral submissions on the general substance of the appeal. We have received extensive representations from both parties and although it is clear there are disagreements between the parties, we are not persuaded that an oral hearing is necessary to enable us to resolve the issues.

6. As indicated in our letter of 1 June 2017 we have reviewed the parties' representations and set out below some further questions. Once we have received answers to these questions, we will consider whether a meeting with both parties (either in person or by telephone) is necessary if the responses are still unclear. If we determine such a meeting is necessary we will contact you to discuss timing and process.

Further information requested

7. It is not clear to us how the information about the evolution of the TPRs provided by the two parties can be reconciled and should be interpreted in the context of the appeal. We would therefore be grateful if the parties could provide brief written responses to the additional following questions (as applicable):

Questions for Network Rail

- a) Please make any representations on the significance of recent TPR changes (see in particular Part 2 (Extent of Dispute) of ASR's representations of 25 May 2017 – paragraphs 2.3 and 2.8 and paragraph 3.1(a) of ASR's representations of 5 June 2017) that you wish us to consider.
- b) In order to provide some context to the process for developing the rules, please briefly summarise the extent of any changes made to version 2 of the TPRs 2018 (Scotland) (**Version 2**) as a result of consultation with other operators in Scotland.
- c) You state in your representations of 22 May 2017 that five TPRs remain in dispute. Please can you explain how this relates to the information given in paragraph 90 of your Respondent's Notice and paragraphs 13 and 51-52 of Andrew Bray's Witness Statement.

Questions for ASR

- a) Does ASR agree with Network Rail that five TPRs remain in dispute?

Questions for Network Rail and ASR

- a) Please provide the total number of TPRs for Version 2 and indicate the extent of the changes proposed from the previous rules (clearly identifying the baseline);
- b) Please show how the number and status of TPRs has evolved between the publication of Version 2 in February 2017 and 9 June 2017, showing in particular the number of TPRs in dispute between Network Rail and ASR

at various dates and the extent to which those disputes have been resolved.

Please provide this information in a table which demonstrates clearly where Network Rail and ASR agree on the factual information and where the facts are disputed.

8. Please provide your response by no later than **4pm on Wednesday 14 June 2017**.

Expedition

9. In its Notice of Appeal, ASR requested expedition while Network Rail opposed it. Given the extensive nature of the representations received from both parties, it has not been possible for ORR to make a determination by 9 June 2017. However, in view of the need to provide clarity for both parties and the wider industry, we consider that this matter should be dealt with promptly. As such we will endeavour to make a determination as soon as possible after the questions set out in paragraph 7 have been satisfactorily answered.

Yours faithfully



Juliet Lazarus
Director of Legal Services