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Tel:

Office of Rail and Road
XC Trains Ltd
Abellio Scotrail Ltd
West Coast Trains Ltd

By Email and Post

18th December 2017

Dear Sirs

APPEAL UNDER PART M OF THE NETWORK CODE BY NETWORK RAIL IN RESPECT OF DETERMINATION TTP1174

RESPONSE BY NETWORK RAIL TO LETTER FROM XC TRAINS LIMITED DATED 4 DECEMBER 2017

- 1 We have received and reviewed the letters from the Office of Rail and Road (ORR) dated 5 and 13 December 2017, and from XC Trains Limited (XCT), one of the Respondents to the Appeal, dated 4 December 2017.
- 2 In accordance with the letter from the ORR dated 13 December 2017, Network Rail Infrastructure Limited (NRIL) writes to make the following short representations in respect of XCT's response to the Appeal.
- 3 The purpose of this letter is to ensure that the relevant points made by NRIL in its Notice of Appeal are taken into account when considering XCT's response.
- 4 In the 5th paragraph, 3rd line, on the first page of XCT's letter, XCT claims that there is "*....no further comment on the word "required"*", in the context of comment on D4.6.1 of the Network Code, which states that, "*....where Network Rail is required to decide any matter in this Part D*".
- 5 The requirements are in fact set out as follows:
 - 5.1. in paragraph 4.3 of the Notice of Appeal, which refer to the obligations on NRIL, including establishing a timetable, and conducting the process set out in Part D. They are obligations, and they are also requirements on NRIL.

- 5.2. in paragraph 4.5, where 5 situations are set out where NRIL makes decisions.
- 5.3. in paragraphs 4.6 and 4.7, which set out the WTT revision process, and the general obligation on NRIL to prepare the WTT.
- 6 XCT also overlooks the express wording of D.4.61, which state that NRIL can decide "*any matter*" where required to do so under Part D: see paragraph 4.8 of the Notice of Appeal.
- 7 As to XCT's comments in the 7th paragraph of the first page of XCT's letter, on the obligation on NRIL to "...endeavour wherever possible to comply with all Access Proposals submitted to it...", NRIL does not dispute this wording. It is set out in full and dealt with at paragraphs 4.9 and 4.10 of the Notice of Appeal. As stated in paragraphs 4.10, this wording does not mean, because it does not say, that NRIL can only make decisions about the WTT when Access Proposals have been submitted and are in conflict.
- 8 Finally, NRIL notes that XCT refers to TTP324 on the 5th paragraph of the second page of their letter, and claims that this supports the decision in TTP1174. .
- 9 This case does not support the decision in TTP1174. TTP 324 does not state, as TTP1174 has done, that NRIL can only make decisions where there are conflicts between Access Proposals.
- 10 TTP324 says only that "*...the Decision Criteria only come into force in those circumstances explicitly contemplated by the Network Code, where there is the potential need for [NRIL] to exercise its discretion in relation to possible conflicts of priorities, for example*". Two examples are then given. We have underlined the words which show that NRIL can exercise its discretion not only when dealing with actual conflicts between Access Proposals, but also when dealing with possible conflicts of priorities, and potential needs for the exercise of discretion. This supports the role of NRIL in dealing with matters under Part D, as set out in the Notice of Appeal, in establishing and compiling the timetable, deciding any matter in relation to it, and undertaking initiatives in doing so.
- 11 NRIL does not say, as XCT claim, that NRIL can apply the Decision Criteria "*at will*".
- 12 NRIL says, as set out in the Notice of Appeal, that the extent of NRIL's ability under Part D of the Network Code should not be fettered by a requirement only to make decisions where there are conflicts between Access Proposals.

If any questions arise, please let us know.

Yours faithfully

Network Rail