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Dear Jonathan,

APPEAL UNDER PART M OF THE NETWORK CODE

Thank you for your letter dated 30 July 2015 confirming that ORR will now consider the appeal in accordance with Part M of the Network Code, taking into account the information contained in Network Rail's Notice of Appeal (and the attached exhibits) dated 8 July 2015, and DB Schenker Rail (UK) Limited's ("DB Schenker") letter dated 22 July 2015 and that ORR will inform relevant parties of its determination in due course.

DB Schenker notes that Network Rail has provided further comments in respect of its Notice of Appeal by way of a letter to ORR dated 13 August 2015. DB Schenker was unaware that the procedure set out in Part M of the Network Code provides opportunity for further representations from either the Appellant or Respondent. However, on the basis that Network Rail has asked ORR to take account of its further comments, DB Schenker feels bound to respond with further representations of its own in response to those comments.

No link between Parts D and G of the Network Code

Network Rail suggests that DB Schenker has claimed "*....that there is a link between Parts D and G through the shared definition of "Network" in Part A, so that if the Network has not been changed by Part G, then Part D cannot operate on it, so the Part G change needs to be decided and implemented first.*" Whilst DB Schenker admits to the first part of this statement, it does not admit to the last part.

What DB Schenker actually advanced in paragraph 2.6 of its representations to ORR dated 22 July 2015 was the supposition that "*.....the relevant process in Part G (in respect of Network Change) and the relevant process in Part D (in respect of any consequent changes to TPRs that rely on those Network Changes being implemented) need to be carried out in parallel and implemented together (emphasis added) to avoid there becoming in effect two "Networks", one applying to Part D and the other to Part G.*" The belief that the changes should be implemented together was also restated in paragraph 2.9 of DB Schenker's previous representations.

In other words, in practice Network Rail would propose a Network Change in accordance with Part G and would also in parallel develop any changes to the Timetabling Planning Rules ("TPRs") associated with that Network Change in accordance with Part D on the presumption that the Network Change proposal will be established and implemented at the same time as the changes to the TPRs. DB Schenker believes that this is what Network Rail intended in the case of the West Ealing Junction remodelling (i.e. that the Network Change and the associated changes to TPRs were being conducted in parallel with the intention that they were both intended to be implemented in December 2015).

DB Schenker considers that problems would occur if the Network Change is not established and implemented as intended but the associated changes to TPRs are implemented regardless (which is a distinct possibility if Network Rail's 'no Part D/G link' argument is followed). In such a scenario there would be a strong risk that the "Network" that the TPRs relate to and the physical "Network" (subject to Network Change) will diverge if changes to TPRs that relate to Network Changes are implemented when the underlying Network Changes they are dependant upon are not.

Network Rail seeks to explain this by advancing the view in its further representations that *"..it is therefore very clear that references to "the Network" includes whatever changes are being undertaken, at whatever stage those changes have reached...."*. DB Schenker on the other hand considers this is far from clear and can find no justification for such a view in the wording of Parts A, D or G of the Network Code. The notion that changes become part of the "Network" irrespective of whatever stage those changes have reached would cause confusion and uncertainty in DB Schenker's view. DB Schenker submits, therefore, that the reason the definition of "Network" is in Part A is to ensure that there is only one "Network" for the purposes of the Network Code as a whole and not separately defined "Networks" that could be developed under Parts G and Parts D if there was no link between them as Network Rail suggests.

It is interesting to note that Network Rail concludes its further representations on this particular matter by stating that there is no risk of "two networks" despite maintaining the notion that there is no link (either explicit or implicit) between the changes to the Network for the purposes of Part D (through amendments to TPRs) and for the purposes of Part G (through Network Change).

Furthermore, as highlighted by DB Schenker in its previous representations, some changes to TPRs can constitute "Network Change" in their own right, including those associated with the West Ealing Junction remodelling as the changes to the TPRs whether implemented with or without the current associated Network Change have the capacity to materially affect the operation of trains on the Network. Therefore, DB Schenker considers that such changes to TPRs could not be implemented until the Part G process had been successfully concluded in respect of those changes in any case.

Other Matters

DB Schenker notes Network Rail's comments.

In respect of paragraph 2.9 of its previous representations, DB Schenker is fully aware that ORR overturned the first Panel's determination on appeal. Nevertheless it merely wished to make the observation in passing that the Timetabling Panels are populated with specialists who deal with the operation of the Network Code on a daily basis and that two Panels (both of which included Network Rail representatives) had come to broadly the same conclusions in respect of these matters.

DB Schenker hopes that these further comments are helpful. If you have any queries, require any further information or wish to discuss any of DB Schenker's representations, please let me know.

Yours sincerely,



Nigel Oatway
Access Manager

cc.	David Young	Network Rail
	Sian Williams	Network Rail
	Ian Kapur	GB Railfreight
	Rob Holder	First Greater Western
	Jason Bird	Freightliner
	Tony Skilton	ADC Secretary

