

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



OFFICE OF RAIL AND ROAD

1 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. On 12 May 2017, ASR served a Notice of Appeal on ORR under Part M of the Network Code in respect of a determination of a Timetable Panel (the **TTP**) of the Access Disputes Committee regarding dispute TTP1064 relating to the version of the timetable to be introduced in Scotland in December 2017.
2. The dispute was heard by the TTP on 20 April 2017 and the written determination was issued to the parties on 5 May 2017 (the **Determination**). After hearing the dispute, the TTP determined "...the decision of Network Rail to introduce the New TPRs shall stand".¹ ASR issued its Notice of Appeal to ORR on 12 May 2017 under Part M of the Network Code on the basis that the TTP's Determination was wrong and unjust because of a serious procedural or other irregularity.
3. Following receipt of ASR's Notice of Appeal, on 17 May 2017 ORR sought representations from Network Rail on whether ORR should hear the appeal and whether the process should be expedited. Network Rail replied on 22 May 2017.
4. On 23 May 2017 ASR made representations in response to Network Rail's letter. Subsequently, we requested further representations from ASR in relation to the effect on Network Rail's timetable planning if the entirety of TPR 2017 (Scotland) were set aside in favour of the previous version and about the number of rules that remained in dispute between the parties. ASR responded on 25 May 2017.
5. On 26 May 2017 Network Rail provided its Respondent's Notice pursuant to Condition 5 of Part M. On 30 May 2017 ASR made representations about the TTP's Determination in respect of previously linked appeals. On 31 May 2017 Network Rail provided further representations in response to ASR's submissions.

¹ See paragraph 7.1 of the TTP's Determination.

Decision that appeal should proceed

6. ORR has given careful consideration to ASR's Notice of Appeal, the Determination and the representations made by both parties up to end of 25 May 2017. Having done so, we have decided that the appeal should proceed.

Next Steps

7. Condition 7 of Part M provides that an appeal will be limited to a review of the decision of the lower tribunal unless we consider, in the circumstances of the individual appeal, it would be in the interests of justice to hold a re-hearing.
8. It was not entirely clear from ASR's Notice of Appeal whether it was seeking a re-hearing. ASR subsequently clarified in its letter of 23 May 2017 that it was seeking a re-hearing on the basis that the Determination was wrong and unjust because of a serious procedural or other irregularity. ASR further stated that a re-hearing was appropriate because "*...the issues are detailed and potentially affect the operation of a substantial part of the national network in Scotland.*"²
9. While we agree the issues raised are important to Scotland, the TTP's handling of this dispute at first instance reflected its significance. The issues raised by ASR in its Sole Reference were also dealt with in detail before the TTP.
10. We note that the TTP disputes process is meant to be quick, recognising that the timetable development process is time constrained and must continue alongside any appeal and the parties (and wider stakeholders) need clarity. ORR will not normally give permission for parties to put forward a case that was not argued before the TTP or to submit new evidence not previously put to the TTP unless it is clear that the interests of justice require it.
11. After careful consideration, our view is that the interests of justice do not require ORR to hold a re-hearing in this case and that the usual principle in Part M, that the scope of an appeal should be limited to a review, should apply. We are therefore minded to proceed with the appeal by way of review only. If you wish to make representations in respect of this issue please provide these to Jonathan Rodgers (Jonathan.Rodgers@orr.gsi.gov.uk) no later than **4pm on Monday 5 June 2017**.
12. In its Notice of Appeal, ASR also requested expedition. We agree this matter should be dealt with as promptly as possible. Following consideration of any representations received under paragraph 11, we will confirm how we intend to proceed by close on 9 June 2017.

² See final paragraph of ASR's letter dated 23 May 2017.

Representations on substantive issues

13. As indicated above, we have received extensive representations from both parties. We are in the process of reviewing the representations received after 25 May 2017 and will let the parties know if we have any further questions by close on 9 June 2017. We do not at this stage require any further representations from the parties on the substance of the case.

Yours faithfully

A handwritten signature in cursive script that reads "Juliet Lazarus".

Juliet Lazarus
Director of Legal Services

