

TTP2613: Network Rail's summary of the matter in dispute

1. DETAILS OF PARTIES

This matter is between Freightliner (Claimant) and Network Rail Infrastructure Limited (NR) or (Defendant). Other possible interested parties in this matter include GB Railfreight (GBRf) and Victra Railfreight (Victra).

2. CONTENTS OF THIS DOCUMENT

A summary of the matter in dispute is contained within, as requested by the Access Dispute Committee.

3. SUBJECT MATTER OF DISPUTE

This dispute is brought by Freightliner on the basis that they disagree with NR's decision to accept some GBRf Train Operator Variation Requests (TOVRs) into the Working Timetable which resulted in Freightliner TOVRs – for substantially similar capacity – being rejected. The capacity in question was previously occupied by GBRf Train Slots 4L24 and 4M24.

NR were in receipt of TOVR submissions from three separate Timetable Participants (GBRf, Victra and Freightliner), all of which sought to utilise the same (or substantially similar) Train Slots into or out of London Gateway. NR was aware of these competing aspirations at the time and understood all to be related to Maersk's decision to transfer traffic from the Port of Felixstowe to London Gateway.

When assessing and processing TOVRs, NR rely on Network Code Condition D4.3.

In the first instance, NR will seek to accommodate all TOVRs using its Flexing Right under D4.3.1(a). We will also ensure that we utilise the Decision Considerations when we are accepting, modifying or rejecting a TOVR (both D4.3.1(b) and D3.3.3).

Condition D4.3.1(b) also specifies that NR "shall not accept..." a TOVR if to do so would give rise to a conflict with any Train Slot already in the New Working Timetable (D4.3.1(b)(i)), or the Rules (D4.3.1(b)(ii)).

Condition D4.3.1(c) specifies that in the event that "two or more requests..." (i.e. TOVRs) "...would give rise to conflict were they to be accepted, they shall be prioritised in the order in which they were submitted and any conflict resolved accordingly".

In this matter, the order of submission of the TOVRs is clear – GBRf, followed by Victra, followed by Freightliner and NR has processed in this order. The chronology enclosed in this submission confirms this (see Appendix A).

The Network Code is silent regarding the timings of any such submission and there appears to be no existing precedent (persuasive or binding) that comments on this matter. The Network Code is also silent regarding the processing of a TOVR which may relate to an ongoing Failure to Use Notification and associated Timetable Dispute, and its Determination. NR finds no distinction in the Network Code between the treatment of TOVRs and TOVRs which are subject to an ongoing Failure to Use Notification under Condition D8.5 and any associated Timetable Dispute.

For the record, NR do consider whether any TOVRs relate specifically to the removal of Train Slots under Condition D8.5 of the Network Code, and NR do pause any action to remove Train Slots until the processing of those related TOVRs, or any bid earlier in the queue which might seek to use the relinquished capacity. In this way, NR assists Freight Operating Companies by minimising as much as reasonably possible any mishandling of associated bids.

The relevant bid containing Freightliner's (subsequently rejected) TOVRs acknowledges the aforementioned approach, whereby it stated: *"This bid is in relation to the outcome of TTP2540 which has been determined today."*

NR assess TOVRs against the state of the timetable at the moment in time that they are processed. Due to significant work volumes, NR do not (and cannot) process all TOVRs on the day that they are received. The Network Code recognises this position by allowing differing response times under Condition D3.3.6 and also allows for extensions to response times via consent. Allowing these timescales vice requiring an immediate response means that TOVRs are assessed against the timetable state at the point of processing.

In the event that a TOVR were to be processed out of order to the detriment of those earlier in the 'queue', it could be argued that NR had not followed correct process and were in breach of Part D.

There appears to be no explicit mechanism within Part D that provides NR with a legal entitlement to disregard a TOVR unless it were the equivalent of a defective or incomplete Access Proposal (i.e. there is missing information). It is submitted that none of the TOVRs submitted could be considered as incomplete or defective.

At the point of processing all TOVRs in this matter, NR was in receipt of relevant confidential information from Maersk's procurement department concerning the sought-after capacity and how the end user envisaged continuity of business through the process of its freight volumes moving from the Port of Felixstowe to London Gateway. This is available to the Hearing Chair upon request.

4. DECISIONS SOUGHT FROM THE CHAIR

The outcome sought in this matter is for the Hearing Chair to uphold NR's decisions regarding its acceptance and rejection of the relevant TOVRs. In the event that NR's decision is not upheld, NR seeks additional direction and guidance regarding its application of the relevant aspects of the Network Code.

NR would welcome direction and guidance on the bearing, if any, that the application and / or completion of a Condition D8.5 Failure to Use matter should have on NR's decisions concerning TOVRs under Condition D4.3. This request bears in mind the Determination in dispute reference TTP2540, where Network Rail notes the Hearing Chair's view that a Timetable Participant is *"free to take part in a Part D Train Operator Variation Request to secure the Slots"* (paragraph 48) and *"free to bid again"* for Train Slots previously held (paragraph 57).

5. EXCEPTIONAL CIRCUMSTANCES

NR submit that exceptional circumstances are not applicable in this matter.

6. SIGNATURE

For and on behalf of
Network Rail Infrastructure Limited



Nick Coles
Timetable Production Manager (Freight)
Network Rail

APPENDIX A: Chronology of events

NR considers the following chronology of events relevant to Freightliner's Notice of Dispute:

1) GBRf bid to occupy the capacity of GBRf Train Slots 4L24 / 4M24	Sunday 2nd February 2025, 09:20
2) Victa bid to occupy the capacity of GBRf Train Slots 4L24 / 4M24	Monday 3rd February 2025, 09:12
3) TTP2540 takes place concerning the removal of GBRf Train Slots 4L24 / 4M24	Monday 3rd February 2025 AM
4) Freightliner bid to occupy the capacity of GBRf Train Slots 4L24 / 4M24	Monday 3rd February 2025, 11:50
5) TTP2540 outcome is advised to NR Timetable Production and Dispute Parties by NR Freight Team	Monday 3rd February 2025, 12:56
6) GBRf confirm the TTP2540 outcome and NR's authority to remove GBRf Train Slots 4L24 / 4M24	Monday 3rd February 2025, 13:31
7) TTP2540 Determination is issued by ADC	Friday 14th February 2025, 11:36
8) NR remove GBRf Train Slots 4L24 and 4M24 paths from the Dec 24 WTT	Tuesday 25th February 2025, 13:45
9) NR remove GBRf Train Slots 4L24 and 4M24 paths from the May 25 WTT	Tuesday 25th February 2025, 15:18
10) GBRf Train Slots 4L24 / 4M24 show as removed from the WTT in downstream systems	Wednesday 26th February 2025, AM
11) NR offer Trains Slots to GBRf in Dec 24 WTT to occupy the capacity left by 4L24 / 4M24's removal	Wednesday 26th February 2025, 15:18
12) NR issue non-compliance information to Victa for their Dec 24 bid to utilise the capacity left by 4L24 / 4M24's removal	Wednesday 26th February 2025, 15:18
13) NR issue non-compliance information to FL for their Dec 24 bid to utilise the capacity left by 4L24 / 4M24's removal	Wednesday 26th February 2025, 15:21
14) NR offer Trains Slots to GBRf in May 25 WTT to occupy the capacity left by 4L24 / 4M24's removal	Thursday 27th February 2025, 14:11
15) NR issue non-compliance information to Victa for their May 25 bid to utilise the capacity left by 4L24 / 4M24's removal	Thursday 27th February 2025, 14:14
16) NR issue non-compliance information to FL for their May 25 bid to utilise the capacity left by 4L24 / 4M24's removal	Thursday 27th February 2025, 15:19
17) NR issue Freightliner with a Dec 24 WTT rejection for their bid to utilise the capacity left by 4L24 / 4M24's removal	Friday 28th February 2025, 08:01
18) NR issue Freightliner with a May 25 WTT rejection for their bid to utilise the capacity left by 4L24 / 4M24's removal	Friday 28th February 2025, 08:01
19) Freightliner issue NR with a Notice of Dispute regarding their relevant bids	Thursday 6th March 2025, 16:54
20) NR issue Victa with a Dec 24 WTT rejection for their bid to utilise the capacity left by 4L24 / 4M24's removal	Monday 10th March 2025, 11:26
21) NR issue Victa with a May 25 WTT rejection for their bid to utilise the capacity left by 4L24 / 4M24's removal	Monday 10th March 2025, 11:26

This chronology of events has unfortunately not been agreed with Freightliner due to the expedited nature of this dispute and the time constraints involved in preparing this submission.