

Note from the Hearing Chair setting out the decision reached following the Hearing on 19 March 2025

This note is issued, in accordance with the ADC's process for very short notice TTP appeals. It is issued for the assistance of the Parties pursuant to the powers conferred on the Hearing Chair by Rules H16 and H20 of the Access Dispute Resolution Rules.

This note does not constitute the formal determination. Its purpose is to summarise the outcome of the hearing on 19 March 2025, so that before the formal determination is issued the Parties will be left in no doubt as to what was determined and can start taking appropriate action, as required. The decisions set out in this note summarise the decisions which will be reflected in the determination. This note also offers some preliminary reasoning for those decisions, but unlike the decisions, the reasoning in the formal determination may differ from the preliminary reasons as they are expressed here.

This note does not invite further submissions from the Parties on the decisions set out. However, if this note contains any factual or typographical errors, the Hearing Chair would welcome suggested corrections from the Parties, emailed to the Secretary and copied to the other Parties.

The Hearing Chair has 10 Working Days to publish his determination from the final submission of all relevant information, which was on 19 March 2025, being the date of the hearing.

The determination shall also include full answers to the guidance scenarios requested by the Parties. Partial guidance is provided here to assist NR with the immediate steps it needs to take.

Issue One - the immediate determination of the issue under appeal

Decision on Issue One

1. NR did not act in accordance with the Network Code (in particular A1.5 and ADR Rules A3(h), & A9 (a) & (b))
2. Exceptional circumstances applied
3. NR to withdraw the train slots offered to GBRf and reconsider TOVRs in accordance with the guidance below
4. Request for Guidance: Item One - What should NR's course of action have been following the hearing of TTP2540
 1. After a TTP decision/determination is notified to the parties either:
 - a. Orally at the conclusion of the hearing; or,
 - b. If no oral decision is given following the conclusion of the hearing, and the TTP decision is notified in writing to the Parties.
 - c. Then within 10 working days of the decision being so notified (consistent with D8.5.5) NR shall inform the Involved Parties that an opportunity to bid has arisen and shall set a date and time for the opening and closing of such a bidding opportunity/window; and,
 - d. That bidding opportunity/window shall be for a period of not less than one week.
 2. Thereafter NR shall decide on the allocation of capacity with reference to D4.3.1 (b) & (c);
 3. D4.3.1 (b) & (c) require NR to apply in the first instance the Decision Criteria when allocating the capacity.
5. Request for Guidance: Item Two - What should have taken place following NR's receipt of GBRf's appeal under D8.5.3

Because of the “good faith”, “principles” and “Duties of the Dispute Parties”, clauses in the TAC, the Network Code and in the ADRR Principles:

1. If NR receives an objection under D8.5.3, then any Access Proposals received for that capacity are put in “limbo”/ “stayed”/ “frozen” until the objection under D8.5.3 is determined. If NR receives an Access Proposal in the intervening period between the objection under D8.5.3 and the date of the hearing, it should put that Party on notice that it should consider itself an Involved or Dispute Party for the purposes of that TTP, and attend the hearing. NR should take no action with those Access Proposal(s) until the TTP is determined. If NR’s decision is overturned, then no action is needed; NR would reject any TOVRs, as they would clash with the D8.5 incumbent, which retains its Train Slots. If NR’s decision is upheld, then the guidance (from this hearing TTP2613) on what to do post-dispute applies, and any Party which has already made an Access Proposal should be required to re-submit their bid in accordance with the guidance which accompanies this decision under ‘Guidance for Issue One’ above, should they wish to proceed with their bid.
 2. In the exceptional circumstances applying here NR should await the full written decision before activating the bidding opportunity/window described above at 4.
6. FL is entitled to damages, which can include FL costs in these proceedings, at the discretion of the Hearing Chair who will decide the issue of damages, absent agreement between the Parties, for the loss of opportunity to earn revenue arising from the breach. Such damages to be assessed. It will be open to NR to seek a contribution in separate proceedings from GBRf towards any such damages as may be assessed, as I am of the view that GBRf made a material contribution to the breaches NR has been found guilty of.

[Signed on the original]

Matthias Kelly KC SC
Hearing Chair TTP2613

21 March 2025