

**NOTICE IN ACCORDANCE WITH SECTION 55(6) OF THE RAILWAYS ACT 1993, AS AMENDED, OF THE OFFICE OF RAIL REGULATION'S INTENTION NOT TO MAKE A FINAL ORDER, OR MAKE OR CONFIRM A PROVISIONAL ORDER IN RELATION TO NETWORK RAIL INFRASTRUCTURE LIMITED'S CONTRAVENTION OF CONDITION 9 OF ITS NETWORK LICENCE**

**2 SEPTEMBER 2004**

1. This document constitutes a notice, published in accordance with section 55(6)(a) of the Railways Act 1993, as amended (the "Act"), stating that:

- (a) Network Rail Infrastructure Limited ("Network Rail") has contravened Condition 9 of its network licence, in that it is not planning its renewal, maintenance and enhancement of the network in a timely and efficient manner so as to enable it to specify its requirements for temporary changes to the national timetable (except in respect of changes arising from emergencies or severe weather conditions) so that the procedures to revise the national timetable in respect of such changes can be completed not less than 12 weeks prior to the date of any such change, contrary to paragraph 2(a) of that Condition;
- (b) Network Rail has agreed to restore compliance with Condition 9 by means of the measures set out in the recovery plan it submitted to ORR in its letter of 23 July 2004 and in accordance with the timetable set out in the Annex to this notice and, on that basis, the Office of Rail Regulation ("ORR") is satisfied that, for the purposes of section 55(5B)(a) of the Act, Network Rail has agreed to take, and is taking, all steps as it appears to ORR for the time being to be appropriate for Network Rail to take for the purpose of securing compliance with Condition 9; and
- (c) provided that these measures are implemented, ORR considers that the making of an order at this stage would not provide any more impetus to remedying the problem and risks distracting Network Rail's management from other changes necessary to the transformation of its business. Accordingly, ORR does not consider it appropriate at this stage to make an order for the purpose of securing compliance with Condition 9.

**Background**

2. Condition 9 of its network licence requires Network Rail to:

*"plan its renewal, maintenance and enhancement of the network in a timely and efficient manner to enable it to specify its requirements for temporary changes to the national timetable (except in respect of changes arising from emergencies or severe weather conditions) so that the procedures to revise the national timetable in respect of such changes can be completed not less than 12 weeks prior to the date of any such change".*



3. The ability to access, in advance, accurate information about train services is very important to rail users. This information allows passengers to plan their journeys, and, particularly on longer distance routes, reserve seats and sleeper berths. In addition, it enables them to access the cheaper advance-purchase tickets. The latter has become an important aspect of train operating companies' yield management systems.

#### **Findings on licence breach**

4. It was apparent from reports produced by Railtrack<sup>1</sup> that compliance with Condition 9 broke down entirely following the extensive engineering work undertaken after the Hatfield derailment in October 2000. The Office of the Rail Regulator commenced monitoring of compliance with Condition 9 in June 2001. Railtrack and, subsequently, Network Rail have remained in contravention since that time.

5. The then Rail Regulator decided that enforcement action would not be appropriate because of:

- (a) the consequences of the Hatfield derailment and the need to prioritise recovery of the basic performance of the network; and
- (b) the disruption caused by Railtrack being placed in railway administration, the formation of Network Rail and the recent organisational changes undertaken by Network Rail, in particular the bringing "in-house" of the maintenance of its network.

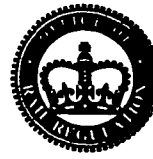
6. Given these circumstances the Rail Regulator did not make an enforcement order as he considered that the statutory exception in section 55(5)(a) of the Act applied - namely that his section 4 duties precluded it. He considered that, whilst the provision of advance timetable information is an important aspect of the protection of the interests of users of the railway network (section 4(1)(a) of the Act), this objective was best achieved if he exercised his functions in such a manner as to ensure that Railtrack and Network Rail restored, as quickly as possible, the basic functionality of the railway network in terms of reliability and journey times.

7. At the beginning of 2004 the ORR decided to reconsider the overall position on enforcement action in respect of compliance with Condition 9, given:

- (a) the greater degree of organisational stability achieved by Network Rail;
- (b) the improved position in relation to performance;
- (c) the continued failure to improve the position; and
- (d) an escalation in public concern at non-compliance with T-12.

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<sup>1</sup> Railtrack here means Railtrack PLC, the former name of the licence holder Network Rail Infrastructure Limited. On 27 June 2002, Network Rail Limited reached agreement with Railtrack Group PLC to acquire its wholly-owned subsidiary Railtrack PLC, which was responsible for the operation of the network. The takeover was completed on 3 October 2002, following which Railtrack PLC was renamed Network Rail Infrastructure Limited.



8. The Rail Regulator wrote to Network Rail on 24 February 2004 stating that it was in breach and requesting a recovery plan and reasons why enforcement action should not be taken. Network Rail replied on 16 March 2004 setting out its proposed recovery plan. The Office of the Rail Regulator replied on 2 April 2004 stating that it did not consider Network Rail's proposal to constitute a sufficient recovery plan. On 2 June 2004, Network Rail made a presentation to officials of the Office of the Rail Regulator setting out in more detail its plan for recovery of compliance. The Rail Regulator responded to this presentation on 28 June 2004. Network Rail then expanded on this in a further submission to the ORR on 23 July 2004.

#### **Assessment of Network Rail's recovery plan**

9. Network Rail has proposed a timetable which projects recovery of compliance with Condition 9 by 24 September 2005. A key aspect of Network Rail's recovery plan is the reorganisation of its Operational Planning department. In addition to the re-organisation Network Rail will be extending the use of the Trainplan software. Other key actions Network Rail has taken or is proposing to take to achieve compliance with Condition 9 accordance with the recovery timetable proposed are:

- (a) the introduction of a new possession planning system;
- (b) the introduction of greater control over requests for possessions disruptive to passenger services within 12 weeks of the day concerned, with sign-off required at senior level; and
- (c) progression of a change in company culture to focus on improved long term planning;

10. Network Rail contends that, based on this plan, enforcement action by ORR would be inappropriate because:

- (a) its current and proposed actions demonstrate that it is taking all appropriate steps for the purpose of securing compliance with Condition 9 of its network licence;
- (b) serving an enforcement notice would not provide any more impetus or serve any purpose, as it does not believe it can do any more at this stage; and
- (c) enforcement action risks distracting management focus from other changes necessary to the transformation of its business.

11. Leaving aside the impact of the West Coast Mainline and Southern Region Power upgrades, (the planning of which is expected to be put on a sounder footing over the next few months), there are two main uncertainties in the Network Rail's proposals as follows:

- (a) the extensive nature of the operational planning reorganisation; and
- (b) the ability of Network Rail to take the management action necessary to regain control of the possession planning process.

12. However, the plan appears to be the result of a thorough investigation and sound understanding of the root causes of the problem, and seems to have the necessary senior backing and resources. ORR's view is, therefore, that it constitutes an



agreement by Network Rail to take all such steps as it appears to ORR to be appropriate for Network Rail to take for the purpose of securing or facilitating compliance with Condition 9.

**Findings under section 55 of the Railways Act 1993, as amended**

13. Section 55(1) of the Act obliges ORR, if it is satisfied that a licence holder is, or is likely to, contravene any condition of its licence, to make a final order requisite to secure compliance. Section 55(2) of the Act provides for ORR to make a provisional order.

14. There are exceptions to the obligation to make an order, as follows:

- (a) section 55(5) provides that ORR must not make an order if it is satisfied that the duties imposed on it by section 4 of the Act preclude making an order;
- (b) section 55(5A) provides that ORR must not make an order if it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998; and
- (c) section 55(5B) requires that if ORR is satisfied that:
  - (i) the relevant operator has agreed to take, and is taking, all such steps as it appears to ORR to be appropriate for it to take for the purpose of securing or facilitating compliance with the condition;
  - (ii) or the contravention or apprehended contravention will not adversely affect the interests of users of railway services or lead to any increase in public expenditure;

it must make an order only if it considers it appropriate to do so.

15. ORR is satisfied that:

- (a) for the purpose of section 55(1) and 55(2) of the Act, Network Rail is in contravention of Condition 9 of its network licence;
- (b) for the purpose of section 55(5) of the Act, the ORR's duties under section 4 of the Act do not preclude it from making an order;
- (c) for the purpose of section 55(5A) of the Act, action under the Competition Act 1998 would not be relevant to addressing this contravention;
- (d) for the purpose of section 55(5B) of the Act, the contravention of the licence condition has adversely affected and will continue to affect adversely, the interests of railway users and may, through the inefficiencies in planning it reflects, lead to an increase in public expenditure, but ORR is satisfied that Network Rail's recovery plan does represent an agreement to undertake all reasonable steps appropriate for securing compliance with the licence condition and provided that Network Rail is taking such steps;
- (e) for the purpose of section 55(5B) of the Act, ORR does not consider it appropriate to make order because it considers that the making of an order at this stage would not provide any more impetus to remedying the problem and risks distracting Network Rail's management from other changes necessary to the transformation of its business; and



- (f) for the purpose of section 55(6) of the Act, ORR should serve notice on Network Rail that it does not intend to make a final order, or make or confirm a provisional order in respect of Network Rail's contravention of Condition 9 of its network licence.

*Chris Bolt*

**CHRIS BOLT**

**CHAIRMAN OF THE OFFICE OF RAIL REGULATION**

**ANNEX**

<b>Target</b>	<b>Milestones</b>
Commencing 20 November 2004, fully revised timetable available four weeks in advance.	10 May 2004 - confirmed possession plan notified to train operators 16 October 2004 - revised timetable offered to train operators 23 October 2004 – full upload of Train Service Database complete
Commencing 26 March 2005, fully revised timetable available six weeks in advance.	30 August 2004 - confirmed possession plan notified to train operators 29 January 2005 - revised timetable offered to train operators 12 February 2005 – full upload of Train Service Database complete
Commencing 21 May 2005, fully revised timetable available eight weeks in advance.	25 October 2004 - confirmed possession plan notified to train operators 12 March 2005 - revised timetable offered to train operators 26 March 2005 – full upload of Train Service Database complete
Commencing 23 July 2005, fully revised timetable available ten weeks in advance.	17 January 2005 - confirmed possession plan notified to train operators 30 April 2005 - revised timetable offered to train operators 14 May 2005 – full upload of Train Service Database complete
Commencing 24 September 2005 fully revised timetable available twelve weeks in advance.	14 March 2005 - confirmed possession plan notified to train operators 18 June 2005 - revised timetable offered to train operators 2 July 2005 – full upload of Train Service Database complete