

Michael Beswick
Director, Rail Policy
Telephone 020 7282 2030
Fax 020 7282 2118
E-mail michael.beswick@orr.gsi.gov.uk

23 May 2008

To those listed in Annex A

Dear Sirs,

NOTICE REGARDING INTERIM APPLICATION OF NETWORK RAIL CONCERNING TTP210

Network Rail Infrastructure Limited ("Network Rail") served a Notice of Appeal and interim order application on the Office of Rail Regulation on 20 May 2008 in respect of the Timetabling Panel's decision TTP210 dated 19 May 2008.

In Network Rail's interim order application it asked ORR to order that:

- i) pending the final determination of the matter, Network Rail be permitted to proceed with Rugby and Trent Valley Possessions for weeks 10-14; and
- ii) planning in line with the Panel's determination be suspended pending the final determination of the appeal.

By way of e-mail dated 21 May 2008 Network Rail subsequently withdrew the second part of its interim order application as set out in paragraph (ii) above.

Interim Order application

We understand from Network Rail that, although six train operators made the reference to the panel in respect of TTP210, only one of the responding parties, West Coast Trains, was opposing the possessions in weeks 10-14. We received written confirmation on Wednesday 21 May 2008 that West Coast Trains withdrew its objections to the week 10-14 possessions taking place. We then e-mailed all the relevant train operators and asked them to confirm, by 5pm Wednesday 21 May 2008, that the position as explained by Network Rail was correct. We received confirmation from West Coast Trains, EWS, GB Railfreight and First Keolis Transpennine but did not receive any response from Freightliner or London & Birmingham Railway.

Despite West Coast Trains' withdrawal of its objections to the Week 10-14 possessions, Network Rail has asked us, in any event, to make part (i) above of the interim order that it applied for. This is because Network Rail believes that, despite the withdrawal of the objections by West Coast Trains, it is bound, without such an interim order from ORR, to



follow the Timetabling Panel's determination that "...pending compliance with the guidance given above regarding information, justification and agreement of individual proposals, the amendments to the Rules of the Route set out in NAUM-30 do not have the endorsement of the Panel, and therefore, do not have the status to be incorporated into the applicable Rules of the Route."

In the time available we have not reached a conclusion on whether Network Rail's view about the status of the Timetabling Panel's decision is correct but, in any event, consider that because of the urgency of the interim application and the fact that West Coast Trains now consents to the Week 10-14 possessions, we should consider making the interim order so to achieve clarity regarding the position of the Week 10-14 possessions.

Whether to hear the appeal or not

As we explained in our e-mail dated Wednesday 21 May 2008, we had invited all the parties to make, by 1pm Wednesday 21 May, any representations they wished to make regarding whether ORR should not hear the appeal for the purposes of considering the interim order application. We did not receive any representations and therefore, in those circumstances, we were prepared to hear the appeal for the purposes of considering whether or not to make an interim order. This decision is without prejudice to whether we ultimately decide to hear the appeal, on which we will seek representations in the usual way.

ORR's Decision on Interim Order Application

In view of the fact that West Coast Trains has withdrawn its objections to the Weeks 10-14 possessions, we consider that we should grant the interim order sought by Network Rail. This allows the possessions in weeks 10-14 to proceed.

ORR therefore makes the interim order that:

Pending the final determination of this matter, Network Rail be permitted to proceed with the Weeks 10-14 possessions which are covered in the Timetabling Panel's decision in respect of reference TTP210 dated 19 May 2008.

This decision is without prejudice to any of the parties' other legal rights as they may be determined by the Timetabling Panel, or on appeal to ORR or any other body, in relation to reference TTP210 or any other reference.



Going Forward

Despite the withdrawal of objections to weeks 10-14 possessions we are still in receipt of Network Rail's appeal dated 19 May 2008. We are aware that there has been at least one objection to the expedited process for the appeal which we proposed in our letter dated 19 May 2008 and therefore, unless we hear otherwise, we will deal with the appeal under the normal appeal procedures under Part M of the Network Code. Therefore, any revisions Network Rail wishes to make to its appeal notice already filed should be submitted to us, and copied to the respondents, by close of business on Tuesday 27 May 2008. Following that date, we will be in touch regarding the next steps.

Network Rail has also submitted a revised appeal notice to the appeal notice it served on Tuesday 13 May 2008. As this appeal notice is regarding the same Timetabling Panel's decision as the appeal notice dated 20 May 2008 we intend dealing with the two notices together. Therefore the next steps in the process for dealing with the appeal notice dated 20 May 2008 will also cover the appeal notice dated 13 May 2008.

I am placing a copy of this letter on our public register and our website.

Yours faithfully

Michael Beswick

ANNEX A

Ian Marlee, Network Rail Infrastructure Limited

Nick Gibbons, English Welsh and Scottish Railway Limited

Ian Kapur, GB Railfreight Ltd

Simon Barrett, Freightliner Ltd

Roberts Hodgkinson, West Coast Trains Ltd

Mark Haslam, London & Birmingham Railway Ltd

Phillip Hassall, First Keolis Transpennine Ltd

cc. Tony Skilton, Access Disputes Committee

Graham Ward, XC Trains Ltd