

**Juliet Lazarus**

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18 January 2019

GB Railfreight Limited  
DB Cargo (UK) Limited

Network Rail Infrastructure Limited

**By email only**

Dear Sirs,

**Appeals under Part M of the Network Code by GB Railfreight Limited (GBRf) and DB Cargo (UK) Limited (DB Cargo) in respect of decisions TTP1331 and TTP1376**

1. On 15 January 2019, we confirmed that we were minded to hear the above appeals, subject only to allowing a short period for further representations on one point. We confirm that we have received no further representations objecting to us hearing the appeals and that we have decided to hear both appeals.
2. In reaching this decision, we have had regard to all submissions of the parties. We consider that GBRf's and DB Cargo's notices of appeal establish that the matters in question are of sufficient importance to the industry to warrant these appeals being heard by ORR. We do not consider that any of the other grounds in Condition M4.1 of the Network Code apply in this case. The reasons for this are set out in our letter dated 15 January 2019.
3. I have been appointed by ORR to hear the appeals.

**Process**

4. We propose to proceed as follows:
  - a. We will first consider: (i) whether the TTP was correct in determining that TTP1331 and TTP1376 raised issues which were outside its jurisdiction; and (ii) if not, whether the Hybrid Timetable properly took effect as the New Working Timetable.
  - b. We will consider whether we require any further information from the parties on these issues and will revert to you on this as soon as possible.
  - c. Should GBRf or DB Cargo wish to respond to the submissions in the Respondent's Notices submitted by Network Rail on these issues, they should provide their representations to ORR and the other party by 5pm on 31 January 2019.
  - d. If appropriate, we will make a determination on these issues (in respect of one or both appeals) at this point.
  - e. Depending upon our conclusions on the above issues and if required, we will then consider the issues raised by GBRf in relation to whether particular train slots requested by it should have been given to it in the New Working Timetable. We

will notify the parties and make any appropriate further directions in relation to our procedure for determining these issues at that point and will give you an opportunity to comment on this procedure.

5. Under Condition M7.1 of the Network Code, every appeal will be limited to a review of the decision of the lower tribunal unless ORR considers that, in the circumstances of an individual appeal, it would be in the interests of justice to hold a re-hearing.
6. ORR will commence hearing the appeals on the basis of a review of the TTP's decision. If, at any point, ORR determines that in the circumstances of an appeal it would be in the interests of justice to hold a re-hearing of any part of the appeal, we will communicate this to the parties and make any appropriate directions (after considering any representations you wish to make).
7. Until directed otherwise, we expect any communications from the parties in respect of these appeals to be sent to all parties, unless there is a particular reason for not doing so. Any such reason should be provided to us to consider whether such an approach is justified.
8. Should any party have any comments on the above proposed process, these should be provided to us by 5pm on 21 January 2019.
9. We will reach a determination on these appeals as soon as possible and request the full cooperation of the parties in this process.

Yours faithfully



**Juliet Lazarus**