

**Defendant's Response to a Sole Reference Submission to
a Timetabling Panel in accordance with the provisions of
Chapter H of the ADR Rules effective from 1 August 2010**

Dispute Reference: TTP978

1 DETAILS OF PARTIES

1.1 The names and addresses of the parties to the reference are as follows:-

- (a) Abellio Greater Anglia Limited whose Registered Office is at 1 Ely Place, London, EC1N 6RY 'AGA' ("the Claimant"); and
- (b) Network Rail Infrastructure Limited whose Registered Office is at 1, Eversholt Street, London, NW1 2DN 'Network Rail' ("the Defendant").
- (c) AGA contact details: Dean Warner, Engineering Access Manager, Abellio Greater Anglia, 1st floor, Suite D, The Octagon, Middleborough, Colchester, CO1 1TG
- (d) Network Rail contact details: John Dwerryhouse, Access Planning Manager, Network Rail, 3rd Floor, Willen, The Quadrant MK, Elder Gate, Milton Keynes Central, MK9 1EN

1.2 Third parties that may be affected by the ruling are –

MTR Corporation (Crossrail) Ltd / London Overground Rail Operations Ltd / XC Trains Ltd (CrossCountry Trains) / Govia Thameslink Railway Ltd / Freightliner Ltd / GB Railfreight Ltd / DB Cargo Rail (UK) Ltd.

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This Response to the Claimant's Sole Reference includes:-

- (a) Confirmation, or qualification, that the subject matter of the dispute is as set out by the Claimant in its Sole Reference, in the form of a summary schedule cross-referenced to the issues raised by the Claimant in the Sole Reference, identifying which the Defendant agrees with and which it disagrees with.
- (b) A detailed explanation of the Defendant's arguments in support of its position on those issues where it disagrees with the Claimant's Sole Reference, including references to documents or contractual provisions not dealt with in the Claimant's Sole Reference.
- (c) Any further related issues not raised by the Claimant but which the Defendant considers fall to be determined as part of the dispute;
- (d) The decisions of principle sought from the Panel in respect of

- (i) legal entitlement, and
 - (ii) remedies;
- (e) Appendices and other supporting material.

3 SUBJECT MATTER OF DISPUTE

- 3.1 In response to AGA submission, section 4. 4.1, Network Rail agrees that this is a dispute regarding Restrictions of Use (RoUs) on the Norwich to London Great Eastern Main Line (GEML) at the same time as RoUs on the route via Cambridge but believes that the RoUs on the route via Cambridge themselves are not part of this dispute having been agreed by AGA. Also, NR qualifies that the concept of the “natural diversionary route” is not part of the Rules though is relevant to the application of the Decision Criteria.
- 3.2 In response to AGA submission, section 4. 4.2, Network Rail agrees that this dispute arises over the interpretation of the Decision Criteria as detailed in Part D, Clause 4.6.2 though clarifies that the whole of Part D Clause 4.6 needs to be considered in making a Decision and that the application as well as the interpretation of the Clause needs to be considered.
- 3.3 In response to AGA submission, section 4. 4.3, paragraph 1 - Network Rail clarifies that AGA's belief that “a route should be maintained between Norwich and London during “traffic hours”” is not part of the Rules. Network Rail believes that a decision about whether or not to block both available routes should be made in accordance with the Decision Criteria alone, though Network Rail does not block all available routes lightly.
- 3.4 In response to AGA submission, section 4. 4.3, paragraph 2 & 3 - Network Rail clarifies that the ‘Traffic hours’ as defined by AGA apply to the GEML services only.
- 3.5 In response to AGA submission, section 4. 4.3, paragraph 4 - Network Rail agrees that the primary driver for the access was Crossrail, but that the RoUs were fully optimised to include OLE renewal works, TfL platform works, TfL bridgeworks and High Output Track Relaying.

- 3.6 In response to AGA submission, section 4. 4.3, paragraph 5 - Network Rail agrees to this statement around Cambridge North station.
- 3.7 In response to AGA submission, section 4. 4.3, paragraph 6 - Network Rail agrees to the timeline submitted by AGA but have expanded on this to include key exchanges that highlight that Network Rail has fully consulted with AGA on strategy and dating options as shown in **Appendix A**.

4 EXPLANATION FROM THE DEFENDANT'S PERSPECTIVE OF EACH ISSUE IN DISPUTE

4.1 Issues where the Defendant Accepts the Claimant's Case

In response to AGA submission, section 5. 5.1, "Shenfield Crossrail autumn 2016 weekend RoUs, weeks 25-32", Paragraph 1: Network Rail accepts this.

In response to AGA submission, section 5. 5.1, "Shenfield Crossrail autumn 2016 weekend RoUs, weeks 25-32", Paragraph 4: Network Rail accepts this

In response to AGA submission, section 5. 5.1, "Impact on customers", Paragraph 1: Network Rail accepts this.

4.2 Issues where the Defendant qualifies or refutes the Claimant's Case

In response to AGA submission, section 5. 5.1, "Shenfield Crossrail autumn 2016 weekend RoUs, weeks 25-32", Paragraph 2: Network Rail disagrees; the Sunday morning option was formally proposed on the 19th January 2015 and declined by AGA on 27th January 2015 as captured in the Timeline in **Appendix A**.

In response to AGA submission, section 5. 5.1, "Cambridge North autumn 2016 weekend RoUs – weeks 28, 29, 30", Paragraph 1 & 2: Network Rail agrees with the detail but would highlight that the RoUs for Cambridge North in weeks 28, 29, 30 are not in dispute.

In response to AGA submission, section 5. 5.1, "Shenfield Crossrail autumn 2016 re-proposal, weeks 25-32", Paragraph 1: Network Rail would qualify the comment by AGA that they 'formally declined this re-proposal on the 25th May 2016 on the grounds

of that weeks 28, 29 and 30 *now* clash with RoUs for Cambridge North, blocking both routes between Norwich and London'. NR's re-proposal did not add anything new in terms of both routes being blocked. At the time of the early informal and formal discussions with Operators, the steer from AGA, and the formal proposal, the GEML RoUs and Cambridge North RoUs were always concurrent, and they were not challenged by AGA. Refer to the Timeline in **Appendix A**.

In response to AGA submission, section 5. 5.1, "Impact on customers", Paragraphs 2, 3, 4, 5: Network Rail accepts that extended journey times are inevitable in weeks 28, 29, 30 as a result of the GEML RoUs though notes that the specific number of journeys affected by not having a route via Cambridge available is not quantified. Network Rail would clarify that on the Sunday of week 28 and on the Saturday of week 29, Norwich passengers could have the option of a rail-only journey between Norwich and London via Peterborough.

In response to AGA submission, section 5. 5.1, "Impact on customers", Paragraph 6: Network Rail would qualify that at the meeting on 20th June 2016, although Network Rail took away an action to move the Cambridge North possessions from weeks 28-30 to weeks 34-36, it was made clear at the meeting that Network Rail and AGA needed to be conscious that other operators were involved. NR raised the possibility of moving weeks 28-30 to weeks 34-36 with GTR and CrossCountry Trains at a meeting on 29th June 2016 and it was made clear to Network Rail by both parties that any move would be disputed. This would be as a result of the impact on TW-18 Access Proposals / TW-12 Informed Traveller Timescales, the resourcing implications on those Operators due to the combination of RoUs elsewhere, and (after the meeting) the impact of the Birmingham Christmas Market (**see correspondence in Appendix C**). With the first trains to use Cambridge North planned for May 2017, there would be no other alternative dates for these three RoUs without jeopardising the commissioning date, and/or being in parallel with future GEML possessions. It should be highlighted that the RoUs for Cambridge North in weeks 28, 29, 30 are not in dispute. Furthermore, Operator MTR Crossrail has expressed its support for the GEML RoUs to remain, as shown in **Appendix G** to avoid "introducing an unacceptable risk to the overall Crossrail project and result in an extended period of disruption for rail passengers and freight traffic through Shenfield".

In response to AGA submission, section 5. 5.1, "Impact on customers", Paragraph 7:
Network Rail believes that through our engagement with AGA we have applied the Decision Criteria correctly and our decisions on access are appropriate and justified as captured in **Appendix D**. The dates for the RoUs for Cambridge North have been agreed by AGA and are not in dispute. Network Rail has worked closely with AGA to develop a strategy and a date for the GEML RoUs as per the Timeline in **Appendix A**. AGA suggested dates for these RoUs which conflicted with Cambridge North and it was not until the GEML RoUs were re-proposed that AGA highlighted the issue; neither the initial response or initial dispute highlighted Cambridge North as being a concern. These RoUs are essential to the delivery of the Crossrail project and other key works. The project delivery and financial implications of losing these RoUs at this late stage are significant as captured in the Impact Statements of **Appendix E**.

4.3 Issues not addressed by the Claimant that the Defendant considers should be taken into account as material to the determination

In response to AGA submission, section 5. 5.1, "Shenfield Crossrail autumn 2016 weekend RoUs, weeks 25-32", Paragraph 3:

Network Rail considers it important to note that prior to and post 29th July 2015, a significant number of meetings were held with AGA and other operators to discuss the RoU strategy and explain the volume of work that needed to be completed within the RoUs. AGA acknowledged that there was a significant volume of work to be completed and in correspondence between AGA and Network Rail, AGA expressed the preference for an access strategy based around full weekend RoUs in weeks 27 to 31 (see correspondence in **Appendix B**). Further discussion was to take place about full weekend RoUs in weeks 25 and 26 and a subsequent run of 10hr Sunday RoUs. Subsequently, NR made the proposal for 8no full weekend RoUs without any 10hr Sunday RoUs. In AGA's declination of this proposal on 11th November 2015, the fact that the route via Cambridge was blocked concurrently was not raised as one of the reasons for the proposal being declined, nor was it raised in the Dispute Notice of 23rd November 2015. It was only when Network Rail re-proposed the strategy on 17th May 2016, to accommodate multiple operators' concerns and requests, that the concurrent Cambridge RoUs were raised as an issue by AGA. It should be noted that all RoUs

initially raised by AGA following the 11th November 2015 proposal as conflicting with the GEML RoUs have been eased or withdrawn by Network Rail.

4.4 Why the arguments raised in 4.1 to 4.3 taken together favour the position of the Defendant

Network Rail believes that it has correctly applied all relevant Considerations of the Decision Criteria to the GEML RoUs in weeks 28-30, including but not limited to Consideration 4.6.2(d), as evidenced in the "Decision Criteria for weeks 28-30" **Appendix D** and that in doing so it has achieved "the Objective" in its decision to proceed with these RoUs.

Network Rail's application of these Decision Criteria acknowledges the adverse impact on passengers, including the impact of the concurrent RoUs at Cambridge North but also takes into account the large adverse impact that a decision to allow a Norwich to London route through the GEML in these weekends would have on a number of major infrastructure schemes as evidenced in the impact statements in **Appendix E**. Notable in these is the Crossrail infrastructure work including Shenfield remodelling with major intrusive works planned to take place in all 8no of the RoUs including weeks 28-30 with an overview of the week-by-week works given in the diagrams of **Appendix F**.

Network Rail notes that AGA suggested the dates of the GEML RoUs and that the issue of concurrent RoUs was raised late in the process, reducing the scope for Network Rail to develop alternate options. Network Rail acknowledges that the combination of RoUs in these weeks does mean that an alternative rail-only travel option via Cambridge is not available on some of the days to those passengers wishing to travel between Norwich and London but believes that the application of the Decision Criteria still uphold that taking the access is the best option for the industry.

5 DECISION SOUGHT FROM THE PANEL

(a) Network Rail seeks that the panel rules it has applied the Decision Criteria appropriately and therefore uphold the Network Rail decision to take the Great Eastern Main Line RoUs in weeks 28-30, concurrently with the Cambridge North RoUs.

(b) Network Rail requests that the panel do not rule on TTP968 as this has not been discussed here, however, Network Rail will review our application of Decision Criteria for that particular dispute in light of the ruling on TTP978.

6 APPENDICES

The Defendant confirms that it has complied with Access Dispute Resolution Rule H21.

Extracts of Access Conditions/ the Network Code are included where the dispute relates to previous (i.e. no longer current) versions of these documents.

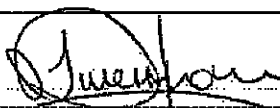
All appendices and annexes are bound into the submission and consecutively page numbered. To assist the Panel, quotations or references that are cited in the formal submission are highlighted (or side-lined) so that the context of the quotation or reference is apparent.

Any information only made available after the main submission has been submitted to the Panel will be consecutively numbered, so as to follow on at the conclusion of the previous submission.

7 SIGNATURE

For and on behalf of
Network Rail Infrastructure Limited

Signed



Print Name
John Dwerryhouse

Position
Access Planning Manager

The Appendices

- **Appendix A: TTP978 Weeks 28 29 30 Access Negotiation Timeline with Network Rail additions**
- **Appendix B: Correspondence dated 6th and 8th May 2015 from AGA regarding preferred weekend RoUs**
- **Appendix C: Correspondence dated 8th July 2016 and 26th July 2016 from CrossCountry Trains and Govia Thameslink Railway**
- **Appendix D: Network Rail Application of the Decision Criteria to Week 28-30 RoUs**
- **Appendix E: Network Rail Impact Statement Summary for Week 28-30 RoUs**
 - **Section E1: NR Crossrail East**
 - **Section E2: NR Great Eastern Overhead Line renewals project**
 - **Section E3: TfL Ardleigh Green Road Bridge**
 - **Section E4: TfL LOCROSE**
- **Appendix F: Network Rail Crossrail Shenfield Week 25 - 32 Staging Diagrams**
- **Appendix G: Letter from MTR Crossrail titled “Network Rail Engineering Access – Weeks 25 – 32 2016/17”**

