
TIMETABLING PANEL of the ACCESS DISPUTES COMMITTEE

Determination in respect of dispute reference TTP978

(following a hearing held at 1 Eversholt Street, London on 16 August 2016)

The Panel:

Andrew Long Hearing Chair

Members appointed from the Timetabling Pool

Peter Warhurst elected representative for Franchised Passenger Class, Band 1
Robert Holder elected representative for Franchised Passenger Class, Band 1
Robin Nelson elected representative for Non-Passenger Class, Band 1
Toby Patrick-Bailey appointed representative of Network Rail

The Dispute Parties:

For Abellio Greater Anglia Ltd ("AGA")

Dean Warner Engineering Access Manager
Charlotte Bindley Head of Train Planning & Resources
Keith Spalding Senior Revenue & Demand Forecasting Manager
Sharon Arnold Assistant Engineering Access Manager

For Network Rail Infrastructure Ltd ("Network Rail")

John Dwerryhouse Access Planning Manager - Anglia
Mark Sleet Timetable Production Manager - Anglia
Tony Brennan Crossrail East Integration Planning Manager
Robert Lines Anglia Route Project Manager
Pauline McFarlane Anglia Route Possession Planner (Crossrail)
David Foster Anglia route Project Manager
Nichole Ledwith Customer Manager (AGA)

For XC Trains Ltd ("XC")

Andrew Danson Possession Strategy Manager
Tamzin Cloke Head of Track Access and Possession Strategy
Raj Sandhu Track Access Assistant

For Transport for London ("TfL")

Paul Richardson Service Delivery Manager, Crossrail

For Govia Thameslink Railway Ltd ("GTR")

Robert McCarthy Head of Train Planning
Michael Kempster Short Term Planning Manager

Interested parties:

For MTR Corporation (Crossrail) Ltd ("MTR")

Maureen Dominey Head of Performance and Planning

For London Overground Rail Operations Ltd ("LOROL")

Andy Roberts Senior Train Planning Manager

In attendance:

Tony Skilton Secretary

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1 Introduction, Substance of Dispute and Jurisdiction

1.1 On 10 June 2016 AGA notified dispute with Network Rail in relation to Network Rail's decision dated 9 June 2016 regarding engineering access in the Shenfield area in Weeks 25 to 32 of 2016/17. The dispute was brought under Condition D5.1.2 of the Network Code (13 July 2015 version) and related to the "Procedure for Altering Engineering Access Statement or Timetable Planning Rules other than through the Twice-Yearly Process Having Effect from a Passenger change Date". The Secretary registered the dispute as TTP978.

In notifying the dispute, AGA indicated its intention to work with Network Rail in the hope of resolving the issues without requiring a Timetabling Panel hearing.

1.2 In summary, AGA's issue was that Network Rail was seeking engineering access primarily for Crossrail East project work at Shenfield along with other works on the four track section of railway between Forest Gate and Shenfield additional to and compounding with previous proposals to which AGA had objected. AGA's key concern was that the engineering access arrangements would leave AGA without a route available between Norwich and London on certain weekends.

1.3 Network Rail had included access proposals for the area concerned in Version 4 of the Engineering Access Statement for 2016, which AGA had placed into dispute (registered as TTP859) on 30 July 2015. Following discussions with operators, Network Rail had issued amended arrangements – which included additional engineering requirements - in a decision notice dated 18 November 2015, which AGA had also placed into dispute (registered as TTP899). The arrangements set out in the decision notice issued on 9 June 2016 effectively superseded the previously disputed items.

1.4 On 14 July 2016 AGA informed the Secretary that Network Rail was unable to find a way to revise the arrangements to AGA's satisfaction so a Timetabling Panel hearing was necessary in order to resolve the matter.

1.5 I am satisfied that the matters in dispute raise grounds of appeal which should properly be heard by a Timetabling Panel convened in accordance with Chapter H of the ADR Rules to hear an appeal under the terms of Network Code Condition D5.

1.6 In its consideration of the Parties' submissions and its hearing of the dispute, the Panel was mindful that, as provided for in ADR Rule A5, it should "reach its determination on the basis of the legal entitlements of the Dispute Parties and upon no other basis".

1.7 The abbreviations used in this determination are as set out in the list of parties above and in this paragraph 1.7.

"ADR Rules" means the Access Disputes Resolution Rules

"GEML" means Great Eastern Main Line

"RoU" means Restriction of Use

"Secretary" means the Secretary appointed by the Access Disputes Committee

2 Background, history of this dispute process and documents submitted

2.1 I was appointed as Hearing Chair on 15 July 2016 and 16 August 2016 was then set as the date for the hearing. At my request, the Dispute Parties – who at that time were AGA and Network Rail – were required to provide Sole Reference Documents. The proposed Panel hearing was duly notified by the Secretary direct to parties which clearly might wish to become involved in the dispute proceedings and also generally by means of the Access Disputes Committee's website.

2.2 On 18 July 2016 XC notified its wish to become a Dispute Party and LOROL notified its wish to attend the hearing as an interested party.

- 2.3 On 21 July 2016 GTR notified its wish to attend the hearing as an interested party.
- 2.4 AGA served its Sole Reference Document on 28 July 2016.
- 2.5 On 2 August 2016 TfL notified its interest in the dispute, having the status of an Access Option Holder through being the Option Holder of the Crossrail Track Access Option. As TfL wished to make representations to the Panel regarding the proposed possessions, TfL became a Dispute Party.
- 2.6 On 3 August 2016 MTR notified its wish to attend the hearing as an interested party.
- 2.7 Response statements were served by Network Rail and XC on 9 August 2016. TfL served a statement on 10 August 2016.
- 2.8 In accordance with ADR Rule H18(c), following receipt of the Dispute Parties' submissions I reviewed them to identify any relevant issues of law raised by the dispute. On 15 August 2016 the other members of the Panel and the Dispute Parties were advised that I did not consider there to be any issues of law arising out of the submissions received.
- 2.9 As indicated above, GTR attended the hearing as an interested party. However, as the opening statements by AGA, Network Rail, XC and TfL made it evident that there was likely to be a shift of focus towards examination of the possession arrangements at Cambridge North instead of those at Shenfield, GTR elected to become a Dispute Party.
- 2.10 I confirm that I have taken into account all of the submissions, arguments, evidence and information provided to the Panel over the course of this dispute process, both written and oral, notwithstanding that only certain parts of such material are specifically referred to or summarized in the course of this determination.

3 Relevant provisions of the Network Code and other documents

- 3.1 The Version of the Network Code Part D dated 13 July 2015 was applicable to the issue to be determined in this dispute, particularly Condition D4.6 – The Decision Criteria. This Condition is reproduced as Annex “A” to this determination document.

4 Submissions made by the Dispute Parties

- 4.1 The statements served by AGA, Network Rail, XC and TfL are published on the Access Disputes Committee's website; it is accordingly only necessary to set out the decisions which these four Dispute Parties were seeking from the hearing.
- 4.2 By the time that AGA served its Sole Reference Document, the situation had been discussed further between operators such that AGA only asked that the Panel direct Network Rail to adjust the combination of RoUs between Norwich and London on Saturday/Sunday 8/9, 15/16 and 22/23 October 2016 (Weeks 28, 29 and 30) so that a through rail route is available to customers travelling between the two cities.
 - 4.2.1 AGA did, however, also note in its Sole Reference Document that a similar disputed situation existed for the weekend of Saturday 31 December 2016 and Sunday 1 January 2017 (Week 40), where Network Rail had proposed an additional RoU for Cambridge north at the same time as a 10 day “blockade” for Crossrail work at Shenfield (registered as TTP968). AGA invited the Panel to consider this separate dispute, which was raised in the interests of efficiency.
- 4.3 In its response statement, Network Rail asked the Panel to rule that Network Rail had applied the Decision Criteria appropriately and to therefore uphold the Network Rail decision to take the GEML RoUs in Weeks 28 to 30 concurrently with the intended Cambridge North RoUs.

- 4.3.1 Network Rail requested that the Panel would not rule on the Week 40 dispute (TTP968) as it was not discussed in Network Rail's statement. Network Rail did, however, undertake to review its application of the Decision Criteria in the light of the determination of this dispute TTP978.
- 4.4 In its statement, XC asked the Panel to determine, regardless of the matter of principle over a route from Norwich to London, that the work at Cambridge North remain in the access plan for Weeks 28 to 30 as it would be too disruptive to passengers and planners to move such a complex train plan at this late stage and also due to the alternative Weeks proposed being far too disruptive for passengers, clashing with the Birmingham Christmas Market.
- 4.5 In its statement, TfL asked the Panel to determine –
- 4.5.1 As matters of principle–
- 4.5.1.1 - That a single Decision Criterion cannot be used in isolation to justify a particular outcome;
- 4.5.1.2 - That the availability of a potential alternative rail route cannot be the sole factor in considering whether it is appropriate to block the principal route between two points; and
- 4.5.1.3 - That the benefits arising from the complete package of work being undertaken should be considered together with the implications for the journeys and reliability of train services for all operators – passenger and freight – and the scale of the implications if elements of the work are delayed through possessions being declined.
- 4.5.2 And a specific determination that the possessions at Shenfield for Weeks 28 to 30 should proceed as planned by Network Rail.

5 Oral evidence at the hearing

- 5.1 The opening statements made by AGA, Network Rail, XC and TfL were effectively summaries of the key points in their respective statements of case.
- 5.2 GTR, having elected to become a Dispute Party, made the following opening statement:

In light of AGA's opening statement and the change of focus of this dispute from being brought regarding the RoUs at Shenfield to now being about the RoUs at Cambridge North, GTR feels that it now has to become a Dispute Party rather than be an interested party.

The RoUs at Shenfield are on the GEML, which is not a route over which GTR operates and therefore GTR was not party to the Part D consultation process for those RoUs and consequently GTR does not have the right to pass judgement on whether Network Rail's decision to publish those RoUs was based on a correct application of the Considerations to reach the Objective within Condition D4.6 – The Decision Criteria.

Noting the outcome being sought by AGA in paragraph 6.1 of its Sole Reference Document that Network Rail should be directed to withdraw the RoUs at Shenfield, what GTR would seek from this hearing is a clear confirmation from the Panel that any RoUs already agreed between operators and Network Rail and not therefore subject to the dispute in question should not be altered or cancelled as a way of solving a dispute in regard to the separate RoU in question.

This being our view, we do not consider it necessary to outline to the Panel the importance of the RoUs and works taking place at Cambridge North and why those arrangements should remain in place.

It is clear that in this case AGA only decided that these Shenfield RoUs clashed with another location after much consultation with Network Rail and indeed did not raise the issue in its declination of the original Shenfield RoUs. However, it could also be said that Network Rail has always been fully aware of AGA's view that a rail route between Norwich and London should be available. Hence whilst AGA must accept that this is not one of the Considerations, Network Rail must also accept that it would have been aware of AGA's reluctance to agree, even if no response was actually forthcoming!

GTR would contest AGA's view that the route between Norwich and Kings Cross via Cambridge is a diversionary route. It is GTR's view that a diversionary route is one that is used to physically divert customers, either by retiming train services via the diversion or by altering the booked train services that normally operate on the diversionary route in order to increase capacity. AGA intends to do neither of these. As a result, GTR's view is that rather than being a diversionary route, it is more an alternative travel/journey opportunity.

The new Cambridge North station needs to be ready for train services with the May 2017 Timetable. Our Priority Date Notice Statement was sent to Network rail last Friday and it is significantly changed from the present service to reflect the opening of the new station as well as our increased train fleet and other service changes. Also, there are other works taking place on our operating network so we simply cannot accept any change to the Cambridge North plans.

6 Consideration of issues and submissions

6.1 The principal issue

In its opening statement AGA described the issue for decision as –

'This is a dispute regarding RoUs on the Norwich to London main line at the same time as RoUs on the Norwich to London route via Cambridge, meaning that our customers have no choice but to endure an unacceptably long journey including the inconvenience of changing for rail replacement road transport on either route.'

Therefore the question for this Panel is whether either the Shenfield or Cambridge North RoUs should be removed.

- 6.1.1 Network Rail had understood the thrust of AGA's case to be about Shenfield. This was a product of how the dispute had emerged; the Cambridge North possessions for Weeks 28 to 30 had been agreed by AGA and confirmed a long time ago (in 2015 and March 2016). Although Shenfield had been under discussion for a long time (see below), it was only after the re-proposal in May 2016 that the clash with the Cambridge North possessions was highlighted by AGA as a problem.
- 6.1.2 In fact, after the AGA objection to the May 2016 re-proposal Network Rail had sought to accommodate issues raised by operators. There had been a meeting; other objections from AGA were resolved. Network Rail had taken away for consideration the possibility of moving the Cambridge North possessions to Weeks 34 to 36. However subsequently Network Rail concluded that this would not be appropriate (as discussed below at paragraph 6.2.1).

- 6.1.3 At the hearing AGA helpfully confirmed 'Being practical, delivery of the Shenfield works to timescale has to be recognised as a priority and we believe Network Rail has gone as far as it reasonably can in adjusting the RoUs towards meeting our aspirations, so the focus for today probably needs to be on Cambridge'.

6.2 The Shenfield possessions

- 6.2.1 The concession by AGA about Shenfield was appropriate. The case against moving the Shenfield possessions was overwhelming. As Network Rail said in its opening statement –

'In May 2015, during the negotiations that led to Network Rail making the decision to take the GEML RoUs in question, it was AGA that guided Network Rail towards using Weeks 27 to 31. AGA had agreed in April 2015 to RoUs on the Cambridge route in two of these Weeks – Weeks 29 and 30. The Week 28 RoU at Cambridge North followed later and it was agreed in March 2016.

Network Rail planned its work around these Weeks during the period May to October 2015 which is when the strategy for weekend RoUs was proposed by Network Rail to affected operators. Then, during the period October 2015 to May 2016, Network Rail applied a number of easements to address the various issues raised by operators against the October 2015 proposal. It was only when Network Rail re-proposed the RoUs in May 2016, and only in order to address issues raised by operators, that AGA raised the concurrent blocks as being a reason to decline and then dispute the access, which is -

- 12 months after AGA's steer towards using these same full weekends;
- 7 months after the original proposal for the full weekend RoUs in question and to which AGA's response made no mention of concurrent RoUs at Cambridge being a reason to decline them;
- and crucially, 5 months before the tranche of RoUs was due to start.

By this time, plans were well advanced for the works to be undertaken in the RoUs including:

- Major Crossrail works at Shenfield and along the GEML between Liverpool Street and Shenfield;
- overhead line equipment renewal works at Gidea Park;
- A127 road bridge demolition works by TfL at Gidea Park;
- station access enhancement works by TfL; and
- High Output Track Relaying.'

- 6.2.2 Network Rail's position on this was evidenced in the material before the Panel. Appendix E to the Network Rail defence is an impact statement with supporting figures, showing the potential costs running into the tens of millions of pounds.
- 6.2.3 Network Rail's position was supported by TfL. TfL reported that the possession programme that is the subject of the dispute is the result of more than four years of discussions. The complexity of the changes had resulted in the longest planned blockade undertaken on the GEML with a total closure of the route through Shenfield for 10 days over the coming Christmas and New Year and the continuing blockade of the electric lines between Brentwood and Shenfield continuing right through to May 2017. It was said that a construction project of this magnitude and complexity requires extensive preparatory works to be undertaken. Inevitably the removal of several of these key stages in advance of the main works has a domino effect on the whole scheme. It is inevitable therefore that if the possessions in Weeks 28 to 30 do not go ahead the workplan due to be delivered will either fail completely or will be subject to a considerably extended duration.

- 6.2.4 Network Rail's position on Shenfield was not substantively challenged by AGA. It was straightforward for the Panel to conclude that the Shenfield possessions should not be removed. Attention should, as AGA conceded at the start of the hearing, focus on Cambridge North.

6.3 The impact on passengers

- 6.3.1 AGA's submission stated that on a Saturday approximately 3,700 journeys are made between Norwich and London and on a Sunday approximately 2,500. These are single journey legs. Many are customers undertaking a day or weekend return.
- 6.3.2 AGA's case is that closing the GEML at the same time as the alternative route via Cambridge puts unnecessary disruption and inconvenience on AGA's passengers including longer journey times. The normal Saturday direct rail journey between Norwich and London (Liverpool Street) is 1 hour 49 minutes or 1 hour 52 minutes depending on the stopping pattern.
- 6.3.3 A sketch map of the relevant routes is provided as Annex "B" to this determination document.
- 6.3.4 Bus. The alternative rail replacement service involves a change at Witham for a bus to Newbury Park Underground station on the Central line and then underground train to Liverpool Street. The time involved is an increase of over an hour to 2 hours 53 minute or 2 hour 56 minutes.

AGA placed reliance on a Passenger Focus survey of September 2012 entitled "Rail passengers' experiences and priorities during engineering works". This found that only 44% of customers would travel if a replacement bus was involved. The same survey also found that passengers would accept a 40 minutes longer train journey if they could avoid a replacement bus journey. This is useful empirical evidence of the anecdotal view that many rail passengers dislike a bus services as a rail replacement, beyond the impact of a journey of extended duration.

- 6.3.5 Train via Cambridge. The rail alternative which AGA wished to have available is on the Cambridge route. Average journey times are said to be around 2 hours 26 minutes. It is to be noted that the suggestion is that passengers would use existing AGA services, involving a change at Cambridge. In response to a specific question as to whether AGA ever ran additional services via Cambridge when the GEML was not available the answer was 'passengers are generally put onto existing services, which are run with some strengthening. We are working on developing a business case to justify the running of through trains, perhaps 5 or so per day'. AGA indicated that overcrowding was in any case beginning to occur on Norwich departures towards Cambridge, which it was aiming to address. (AGA pointed out that some journeys can be as quick as 2 hours 7 minutes using other operators' services – on the example given this involved two changes at Ely and Cambridge).
- 6.3.6 Train via Ely and Peterborough. As Network Rail highlighted, there was (sometimes) a further available route between Norwich and London (but which involves services of other operators). The average journey time via Ely and Peterborough is 2 hours 40 minutes on a Saturday and 2 hours 58 minutes on a Sunday.

- 6.3.7 The Panel also explored with the parties some other possible rail routes between Norwich and London. A route is available via Newmarket after reversing at Stowmarket (see sketch map). However AGA said it did not have the diesel rolling stock to run such a service. Although not canvassed at the hearing, it also appears that that a passenger determined to travel from Norwich to London by rail could do so by legs of Norwich-Ipswich-Cambridge-London.
- 6.3.8 Days of unavailable train services. There had been some misunderstanding between the parties as to when it was said trains could not run between Norwich and London due to the Cambridge North possessions. In its original submission AGA said that services would be possible on the Saturdays of Weeks 28 and 30, but not possible on the Saturday of Week 29, nor on any Sunday of Weeks 28 to 30, so four days are affected. However, after exploring the possibility of travelling via Peterborough and Ely, that would be possible on four dates including Saturday of Week 29 and Sunday of Week 28.
- 6.3.9 The hearing established that availability of rail only routes between Norwich and London when the GEML would be closed over the weekends of Weeks 28, 29 and 30 could be summarised in the following table:-

		Via Cambridge & Hitchin	Via Peterborough	Via Cambridge & Harlow	A route available?
Week 28	Sat	Yes	Yes	Yes	Yes
Week 28	Sun	No	Yes	No	Yes
Week 29	Sat	No	Yes	No	Yes
Week 29	Sun	No	No	No	No
Week 30	Sat	Yes	Yes	Yes	Yes
Week 30	Sun	No	No	No	No

As shown, under the current engineering access plans, passengers not wishing to use a rail replacement bus journey for the journey around the Shenfield area could choose to travel by train throughout except on the Sundays of Weeks 29 and 30.

- 6.3.10 In comparing the alternative courses of action one important comparison is with what AGA are contending should happen, i.e. that there should be a train route available via Cambridge which normally takes 2hours 26 minutes. (N.B. Although the normal journey time is under two hours, by definition and on anybody's case, this will not be available).
- 6.3.11 Comparison (for passenger journeys) of between respectively the Cambridge North possessions proceeding and being removed is as follows:-
- On two days, Saturdays of Weeks 28 and 30, there is a route via Cambridge available as requested by AGA at an average time of 2 hours 26 minutes.
 - On two further days (Sunday in Week 28 and Saturday in Week 29) the Cambridge route is not available, but passengers have the option of either train via Ely/Peterborough or bus and via Newbury Park Underground. On the Saturday 3,700 potential journeys are affected and their train journey would on average be 14 minutes longer (2 hours 40 against 2 hours 26 via Cambridge). On the Sunday there are 2,500 potential journeys affected and the train journey option would be 32 minutes longer (2 hours 58 via Peterborough/Ely).
 - On two Sundays (in Weeks 29 and 30) there is no apparent rail alternative on offer. On AGA's case, of the 2,500 potential single leg journeys on each Sunday where passengers choose to travel, they will face both a bus ride as part of the journey and an increased travel time of around half an hour (2 hours 53 or 2 hours 57 minutes by bus against 2 hours 26 minutes by train).

- 6.3.12 AGA said that it would expect a drop off of some 30% to 40% of passengers on the assumption that there was only an alternative bus service. Sending passengers via Peterborough would cause a drop more than via Cambridge but AGA does not have any data about it. AGA said that going via Cambridge has become more popular recently; it is a good service to Cambridge when things are normal and the public has realised that. However AGA does not advertise it because the trains would need strengthening.

6.4 Cambridge North

- 6.4.1 *Network Rail's view.* Network Rail objected to and was against the idea of moving the Cambridge North possession into Weeks 34 to 36. Cambridge North is a new station currently being built between Cambridge and Waterbeach. Network Rail is working towards finishing the station and infrastructure alterations in time for the opening from the start of the May 2017 Timetable. Network Rail confirmed that the Cambridge North station was included in the 'Hendy Review' programme.
- 6.4.2 Weeks 34 to 36 were identified as a possibility by Network Rail after AGA's objection to the Shenfield possessions because the GEML is open on those weeks. However the new station at Cambridge North is a third party funded project from Cambridgeshire County Council and it is has Department for Transport funding and a milestone date to which Network Rail has committed publicly. The critical path of the new station building work includes fabrication and steelwork, then overhead electrification and bridge works. These are covered by stageworks at Christmas 2016 and it then leads through to use in time for May 2017. Moving work from Weeks 28 to 30 to Weeks 34 to 36 would bring additional cost and there is the added issue that the timeline is restricted by the availability of signalling resources.
- 6.4.3 Network Rail also said that the possessions footprint for deferring the work into Weeks 34 to 36 would need to be bigger because the situation differs from Weeks 28 to 30 because of other works around the Network. Moving things at this late stage would import risk – including safety risk – even if all the operators were happy about it. Network Rail said it would also have real difficulty in swapping teams and subcontractors about at this late stage. Moving work to Weeks 34 to 36 does not meet the criteria Network Rail would usually apply for planning a job. To weave and deconflict changes now in a safe and reliable manner would mean accelerating track surveys and asset condition surveys. Network Rail normally works to a 47-week plan for such matters. It is for those reasons that Network Rail had not proposed to the operators that the Cambridge North possessions be moved to Weeks 34 to 36.
- 6.4.4 Network Rail also, in response to questions, set out the alternative weeks that it had looked at as the possibility for moving the Cambridge North possessions. In Weeks 41 to 44 there were to be West Anglia track renewals and also GEML work which is asset-driven, plus overhead electrification work and Crossrail work; the access opportunity on the West Anglia lines was already being used for essential track renewals. Weeks 45 to 52 is the traditional time for West Anglia possessions so to do Cambridge then would leave no route at all from Norwich to London. There then comes Easter 2017, when there is major activity at Ilford Depot and various other works. Then in Week 4 of 2017/18 there is the London Marathon. There are also other sporting events in the calendar which Network Rail has to take into account and there remains the requirement to accommodate freight operators' requirements.

None of those alternative Weeks seemed to offer realistic, feasible alternatives, thus to defer the Cambridge North works would imply a lengthy delay to opening of the new station.

- 6.4.5 XC's view. XC set out its 'sole concern' in becoming a Dispute Party as being the retention of the Cambridge North access in the existing Weeks planned for, namely Weeks 28 to 30. XC had three principal points. First, T-12 compliance – XC had recently been proud to celebrate 100 weeks of T-12 compliance. It was said that if the Cambridge North access is removed at such short notice that this compliance will be lost and passengers will suffer as their journeys will be subject to changes at late notice. If the Cambridge North work is moved into Weeks 34 to 36 then the complicated nature of the plan means that XC cannot meet its Network Code obligations in relation to T-18, T-14 and T-12.
- 6.4.6 Secondly, the access requests for the Cambridge North project were agreed by XC in good faith. The combination of access on the XC network in these Weeks is extremely disruptive and has resulted in a very complicated train plan, particularly for Week 29. A considerable amount of planning effort had gone into making these Weeks (28 to 30) work and the traincrew diagrams have been completed. It will be a sizeable task to unpick all the separate possessions.
- 6.4.7 Thirdly, Weeks 34, 35 and 36 coincide with the German Christmas market in Birmingham city centre. If the Cambridge North access is moved into Weeks 34, 35 and 36 then XC will have five Class 170 units trapped in Cambridge. Because the German Christmas market is a major attraction it results in a large amount of additional passengers. It is necessary to strengthen existing services and provide additional services. Even when doing that (as the XC logs for 2015 show), trains are overcrowded, full and standing and on occasions passengers are left behind.
- 6.4.8 In summary XC said that it would be too disruptive to passengers and industry planners to move such a complex train plan at this late stage; and that the alternative proposed Weeks would be far too disruptive for passengers, clashing as they did with the Birmingham Christmas market.
- 6.4.9 GTR view. When first consulted about moving the Cambridge North possessions GTR had highlighted three issues in an e-mail to Network Rail dated 26 July 2016. First of these was that the RoUs for Cambridge North had already been issued by Network Rail and an amended train service published to downstream systems. Secondly, the move to Weeks 34 to 36 would also clash with Hertford Loop diversions on the East Coast Main Line; this would lead to issues with resourcing of traincrew and rolling stock and the two RoUs in combination would also cause major restrictions on stabling locations and capacity across GTR's network. Finally, GTR was concerned about possessions taking place in Weeks 34 to 36 in the build up to Christmas, a period in which GTR tries to avoid having RoUs.
- 6.4.10 As to the impact of changing the date for Cambridge North, GTR said that its Priority Date Notice Statement which had been submitted includes some trains to Cambridge North from May 2017. With the associated train and resource plans developed, GTR would be very inconvenienced. The change from the present service reflected both the opening of the new station, GTR's increased train fleet and other service changes. There is also a cross-industry train unit cascade intended which any slippage would cause to be put back to December 2017.

6.5 The Decision Criteria

- 6.5.1 Despite apparent differences in their respective submissions, the parties were in agreement as to the principles to be applied in this case. AGA accepted that it had no specific legal entitlement over and beyond the Decision Criteria. Any practice of avoiding simultaneous possessions over the two routes from Norwich to London had been more the result of applying common sense rather than due to any agreement or entitlement. Accordingly the Decision Criteria set out in the Network Code, Part D as Condition D4.6 apply (reproduced at Annex "A" to this determination document). By Condition D4.6.1, Network Rail's 'Objective' is 'to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services'.
- 6.5.2 By Condition D4.6.2, in achieving the Objective, Network Rail shall apply any or all of the listed 'Considerations'. By Condition D4.6.3, Network Rail must identify and apply relevant Considerations and, where necessary, decide between conflicting considerations and must apply appropriate weight.
- 6.5.3 Unsurprisingly AGA relied heavily on Consideration (d) 'that journey times are as short as possible'. AGA had asserted 'Network Rail has failed to apply Part D4.6.2(d) that journey times are as short as reasonably possible'. AGA's emphasis on journey times was such that some parties thought that AGA was seeking to elevate that Consideration to a primacy that is not contained within the Decision Criteria. Fortunately, in fact, this was not AGA's case as presented to the Panel. The parties were (correctly) agreed that the Decision Criteria should be applied as set out in D4.6 of the Network Code, in which journey times as set out in Condition D4.6.2(d) is a Consideration (and potentially an important one) – but it is only one of the Considerations, all of which must be considered as is appropriate.
- 6.5.4 Network Rail had produced a schedule showing its application of the Decision Criteria at Appendix D to its submission. This, however, was prepared at a time when Network Rail thought that the substance of AGA's case was about removing possessions at Shenfield rather than Cambridge North. Accordingly, that document was of limited assistance to the Panel.

7 Analysis

- 7.1 In applying the Decision Criteria to this case and whether the Cambridge North possessions should proceed as planned it is necessary to consider the key relevant factors both in favour and against.
- 7.2 The impact on passengers of having RoUs in place at both Shenfield and Cambridge North in Weeks 28 to 30 is set out in section 6.3 above. The conclusion is that a) for the two Sundays in Weeks 29 and 30 where it appears no rail service is available some 5,000 single leg journeys are affected involving an extended journey time (compared to Cambridge North possessions being postponed) of 30 minutes *and* the inconvenience of a bus journey. When services are available via Ely and Peterborough then b) for Saturday in Week 29 some 3,700 single leg journeys are affected with a (train) journey 14 minutes longer than via Cambridge and for Sunday in Week 28 some 2,500 single leg journeys are affected with a (train) journey 32 minutes longer than via Cambridge (passengers who prefer a bus element would also have that option via changing at Witham). These effects are sufficient to deter travel for a proportion of potential passengers depending on the particular rail impact that day.

- 7.3 The preceding paragraph (at a) above) proceeds on the assumption that no service can be made available via Ely and Peterborough on the Sundays of Weeks 29 and 30. The Panel explored this at the hearing. The reason for unavailability of that route on those days was said to be plain line track renewals work at March. Network Rail was asked if it was possible to move those works to another date. At an adjournment the Network Rail representatives checked with the Route Asset Management Director for the work at March. It was reported that the work had been deferred several times previously; further deferral could lead to performance impact and speed restrictions. It was said that the best available engineering strategy involved access for maintenance work in spring and autumn. It was not possible for the Panel to make a definitive ruling on this at the hearing. However, AGA did indicate in closing that if a route had been available via Ely and Peterborough on all otherwise affected dates, then it would have considered withdrawing its dispute of the Shenfield/Cambridge North possessions.
- 7.4 In terms of inconvenience to passengers of using alternative routes, there are factors beyond mode of transport and journey time. These include the number of changes (two via Ely and Peterborough), ticketing arrangements (arrangements would have to be made by AGA with other operators for 'any permitted route' tickets to be used), comfort (passengers would be joining existing, perhaps well used, services – but similarly AGA was also intending that such passengers via Cambridge would join existing well used services) and the extent to which some passengers might find convenient alternative dates.
- 7.5 The overall conclusion therefore is that there is some inconvenience, as set out above, to passengers, to weigh against other factors. It is better to avoid simultaneous blocking of lines between the same destinations, but this also has to be measured against other factors. Of course, ordinarily if there are routine engineering works which are not time critical they should be planned for dates which do not clash with each other.
- 7.6 *The nature of the Cambridge North work.* The Cambridge North station works are part of a significant project. The possessions in Weeks 28 to 30 are part of a structured, inter-dependent, long planned series of works. The possessions were planned and agreed a long time ago. The Panel accepts that moving the possessions at this stage (in August for RoUs in October) carries risks to the project's timescales, many of which are important.
- 7.7 The issue of RoUs at Cambridge North has (in this context) only been raised at a comparatively late stage. The difficulty in moving work at this juncture is not Network Rail's fault. It was AGA itself that in 2015 guided Network Rail towards using Weeks 27 to 31 for Shenfield. AGA had accepted and agreed the Cambridge North possessions. AGA accepted the criticism that it would have been better if it had raised the issue of the conflict between the Shenfield and Cambridge North possessions at a much earlier stage.
- 7.8 It is also necessary to look at the nature of the alternative Norwich to London route sought by AGA. There was some debate in the submissions about whether it is properly to be called a 'diversionary route'. Irrespective of the label or word used, the nature of what was proposed by AGA is relevant. It was not an alternative route in the sense of passenger trains from the blocked line being transferred to a line not normally used for the relevant journey. Instead the main focus for AGA was using existing alternative services. Those services principally involve a change at Cambridge instead of the direct service on the GEML. As a generality few (if any) additional services are provided. AGA does not promote or advertise the route via Cambridge. AGA also did not appear to have exhausted all other alternatives (the Stowmarket/Newmarket route for example, but which would probably have

involved hiring in rolling stock, possibly also with traincrew staff). These factors are by no means decisive, but give an impression that if bus journeys must be avoided AGA itself might be able to do more.

- 7.9 Also for noting is that when this dispute was notified, there were a whole series of issues. Fortunately all the other issues have been resolved. This demonstrates that Network Rail was taking issues seriously and trying to resolve them constructively – genuine attempts were made to resolve all issues raised by AGA.
- 7.10 The positions taken by the other operators – XC and GTR – are also relevant. In essence the main point made by both of them is that, in a complex engineering environment, with a key project with interlocking schedules, where there are other RoUs, it is too late to be disturbing long planned arrangements. Those points are well made. In relation to the XC concern as to the Birmingham German Christmas market, it might have been possible, with more notice, to devise alternative plans (such as hiring in rolling stock). But this would be to impose on XC obligations and efforts beyond those which AGA itself has considered/undertaken to improve the position of its own customers.
- 7.11 In summary, and applying the Decision Criteria, the Panel's conclusion is that the Cambridge North possessions should not be removed from Weeks 28 to 30. The principal reason is that the consequences of moving the work to Weeks 34 to 36 has too many adverse consequences and contains too many risks to the important and time critical delivery of the Cambridge North project. The effect on other operators is also relevant. Together these factors outweigh the inconvenience to passengers (and deterrent to travel) for over 10,000 single leg journeys on the weekends of Weeks 28 to 30. This is the case even if it is not sensible (as appears to be the case) for Network Rail to move the work at March on the two days when (it appears) a journey involving a bus will be necessary. However, even at this late stage, the Panel invites Network Rail to look carefully again at removing (or reducing) those possessions at March (which, it appears, might have been sufficient to satisfy AGA and resolve this dispute during the hearing).
- 7.12 *New Year's Eve/New Year's Day.* AGA asked the Panel also to consider (for efficiency reasons) a similar dispute which had been registered for the same issues on Saturday 31 December 2016 and Sunday 1 January 2017. The Panel only has very limited facts and no formal submissions about this dispute. The Panel therefore will not make a ruling or determination. However, to assist AGA and Network Rail in hopefully coming to an agreed conclusion, the Panel sets out some key features. The parties will of course have to apply the Decision Criteria as set out in the Network Code. The first key fact is the likely level of passenger demand on those days. Those dates are very unusual – being New Year's Eve and New Year's Day both falling on the weekend and there being a Bank Holiday on the Monday (2 January). AGA indicated in this dispute that part of its reasoning about possessions was that passengers needed to set off reasonably early in the day to make Norwich to London journeys (especially a day return) worthwhile. Most passengers (and many train companies!) are likely to have an early finish on New Year's Eve and a late start on New Year's Day. Instinctively the likely level of demand would seem to be low – to counter that impression figures from the last time New Year's Eve fell on a Saturday would be useful. Secondly, the extent to which work can sensibly be done on alternative dates – as this decision (TTP978) indicates there is a significant and important difference between routine, non- time critical maintenance on the one hand and key milestones in a key project with interlocking features on the other. Thirdly and finally, whether alternative possibilities have been considered (including, as in this decision, the availability of other train routes such as via Ely and Peterborough).

8 Determination

- 8.1 Having considered carefully the submissions and evidence, and based on my analysis of the legal and contractual issues, my determination is that the Network Rail decision to take the Great Eastern Main Line RoUs in Weeks 28 to 30 concurrently with the Cambridge North RoUs, is upheld.
- 8.2 No application was made for costs and I do not consider there to be any reason to make any such order.
- 8.3 I confirm that, so far as I am aware, this determination and the process by which it has been reached are compliant in form and content with the requirements of the Access Dispute Resolution Rules.



**Andrew Long
Hearing Chair**

30 August 2016

Annex "A" to Timetabling Panel determination of reference TTP978

EXTRACT FROM THE NETWORK CODE, PART D (13 July 2015)

4.6 The Decision Criteria

- 4.6.1 Where Network Rail is required to decide any matter in this Part D its objective shall be to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services ("the Objective").
- 4.6.2 In achieving the Objective, Network Rail shall apply any or all of the considerations in paragraphs (a)-(k) below (the "Considerations") in accordance with Condition D4.6.3 below:
- (a) maintaining, developing and improving the capability of the Network;
 - (b) that the spread of services reflects demand;
 - (c) maintaining and improving train service performance;
 - (d) that journey times are as short as reasonably possible;
 - (e) maintaining and improving an integrated system of transport for passengers and goods;
 - (f) the commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant of which Network Rail is aware;
 - (g) seeking consistency with any relevant Route Utilisation Strategy;
 - (h) that, as far as possible, International Paths included in the New Working Timetable at D-48 are not subsequently changed;
 - (i) mitigating the effect on the environment;
 - (j) enabling operators of trains to utilise their assets efficiently; and
 - (k) avoiding changes, as far as possible, to a Strategic Train Slot other than changes which are consistent with the intended purpose of the Strategic Path to which the Strategic Train Slot relates.
- 4.6.3 When applying the Considerations, Network Rail must consider which of them is or are relevant to the particular circumstances and apply those it has identified as relevant so as to reach a decision which is fair and is not unduly discriminatory as between any individual affected Timetable Participants or as between any individual affected Timetable Participants and Network Rail. Where, in the light of the particular circumstances, Network Rail considers that application of two or more of the relevant Considerations will lead to a conflicting result then it must decide which of them is or are the most important in the circumstances and when applying it or them, do so with appropriate weight.
- 4.6.4 The Objective and the Considerations together form the Decision Criteria.

Annex "B" to Timetabling Panel determination of reference TTP978

SKETCH MAP SHOWING LINES AND LOCATIONS OF SIGNIFICANCE

