

**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: TTP1306**

## **1 DETAILS OF PARTIES**

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

- (a) Abellio East Anglia whose Registered Office is at 18-20 St Andrew's Street, London, EC4A 3AG "Greater Anglia" ("the Claimant"); and
- (b) Network Rail Infrastructure Limited whose Registered Office is at 1, Eversholt Street, London, NW1 2DN 'Network Rail' ("the Defendant").
- (c) Abellio East Anglia contact details: Dean Warner, Engineering Access Manager, Greater Anglia, 1<sup>st</sup> Floor, The Hub, Colchester North Station, North Station Road, Colchester, CO1 1JS
- (d) Network Rail contact details: Julie Houghton, Head of Asset Protection, Network Rail Anglia Route, One Stratford Place, Montfichet Road, London E20 1EJ

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

Transport for London (Structures and Tunnels Investment Portfolio) / MTR Corporation (Crossrail) Ltd / Freightliner Ltd / GB Railfreight Ltd

## **2 CONTENTS OF THIS DOCUMENT**

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

In this response, we set out the evidence that demonstrates that Network Rail has acted in a timely manner, interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately. The key document that evidences that we worked in a timely manner is Appendix A (Timeline). The key document that evidences that we interpreted the Decision Criteria correctly and applied them appropriately is Appendix B (the Decision Criteria Table).

The remainder of this section 3 addresses Greater Anglia's submission on a paragraph by paragraph basis.

- 3.1 In response to Greater Anglia submission, section 4.1, Network Rail confirms that this is a dispute regarding the dating of a Restriction of Use (RoU) on the London to Norwich Great Eastern Main Line (GEML) for demolition works to a road-over-railway bridge, and qualifies that this dispute relates specifically to the week 14 RoU to facilitate Phase 2 demolition of Ardleigh Green Bridge replacement project which is part of TfL's Structures and Tunnels Investment Portfolio (TfL STIP), with details in Appendix O. As noted, this is a high profile project with an ongoing significant effect on the local area which would be prolonged by delays to the scheme.
- 3.2 In response to Greater Anglia submission, section 4.2, Network Rail qualifies this section in that it is Network Rail's understanding that this dispute arises over Network Rail's application of the Decision Criteria as detailed in Part D Clause 4.6.2 of the Network Code to its Decision to take a RoU in week 14 of the 2018 Timetable Year to allow TfL STIP to undertake the Phase 2 demolition, along with the interpretation of the Decision Criteria.
- 3.3 In response to Greater Anglia submission, section 4.3, paragraphs (1) and (2), Network Rail confirms the statements around the details of the Ardleigh Green Bridge and Phase 1 demolition timing.

3.4 In response to Greater Anglia submission, section 4.3, paragraph (3), Network Rail confirms the statements around the planned timing of the Ardleigh Green Bridge Phase 2 demolition. Network Rail confirms that the Week 9 72hr Spring Bank Holiday RoU was proposed through a Proposal Notice and clarifies that this was withdrawn following discussions about the proposal with Greater Anglia and MTR Crossrail at which it was agreed with these parties to re-propose the RoU in the Draft Period Possession Plan, with amendments. Network Rail clarifies that this RoU was subsequently published in the Draft Period Possession Plan and went on to be published in the Confirmed Period Possession Plan (Appendix C) and that this is not part of the subject matter of the dispute. Network Rail clarifies the statement that “as discovered seven months later on 28<sup>th</sup> March 2018, the work cannot be completed in this RoU” that this statement relates to the date of a meeting with Greater Anglia and MTR Crossrail at which the requirement for an additional RoU was discussed. Prior to this, the TfL STIP project team had raised to Network Rail that there was a risk that not all required demolition could be completed in the Week 9 72hr Spring Bank Holiday RoU. Network Rail subsequently undertook reviews of the programme with TfL STIP as well as assessments of the impact of accommodating an additional RoU alongside existing and evolving plans before the meeting on 28<sup>th</sup> March 2018, as reflected in the Timeline in Appendix A.

3.5 In response to Greater Anglia submission, section 4.3, paragraph (4), Network Rail confirms that the 28<sup>th</sup> March 2018 meeting took place as stated, noting Greater Anglia’s comment that they considered the TfL STIP presentation “acceptable justification” for the RoU. Network Rail clarifies that it was an oversight that Freight representatives were not invited and has attempted to redress this through communication via Network Rail’s Customer Relationship Executive. Network Rail confirms that suitable dates for a 52 hour RoU were discussed but qualifies that there were actions from this meeting circulated by Graham Carter (TfL STIP) on 29<sup>th</sup> March 2018 (Appendix D), though they are not verbatim notes of the discussions. The notes include actions relating to submitting the ACT (Access Change Tool change request form that prompts the development of a proposal for a new RoU) by 6<sup>th</sup> April and TfL STIP’s contractor confirming resource availability by 12<sup>th</sup> April. The actions distributed are based around progressing a Week 11 (9<sup>th</sup> and 10<sup>th</sup> June 2018) proposal. These action dates would be very challenging to achieve Week 11, since the proposal,

decision and bid would need to be completed by 13<sup>th</sup> April to meet the Informed Traveller Recovery Plan.

3.6 In response to Greater Anglia submission, section 4.3, paragraph (5), Network Rail confirms that Greater Anglia's preference for the additional RoU was Week 11. Network Rail confirms that discussions had previously taken place about the Week 11 Ipswich RoU and those discussions likely covered that the main pieces of work identified for that RoU had been deferred or replanned. Network Rail clarifies that following the 28<sup>th</sup> March 2018 meeting, work plans were checked and it became apparent that the Ipswich Maintenance Delivery Unit had planned heavy maintenance work into this RoU – see Appendix K for details. Network Rail confirms that there were benefits to the Week 11 option as stated by Greater Anglia, though qualifies that these were subject to the train planning work being able to be undertaken.

3.7 In response to Greater Anglia submission, section 4.3, paragraph (6) and (7), Network Rail agrees with the statement about the number of working days (10no) between the 28<sup>th</sup> March meeting and the bidding date to achieve a Week 11 RoU. Network Rail qualifies that Greater Anglia's belief that this was achievable is subjective, and that the lack of availability of key Network Rail staff around the Easter holiday time meant it was not achievable. Network Rail clarifies that although no minutes were provided for this meeting, key actions and timescales were circulated the following day by Graham Carter (TfL STIP) (Appendix D), and that these timescales were very challenging to achieving 13<sup>th</sup> April for Week 11 RoU.

3.8 In response to Greater Anglia submission, section 4.3, paragraph (8), Network Rail qualifies that a representative from the Network Rail Controlling Mind Team telephoned Greater Anglia (rather than Greater Anglia contacting Network Rail) on 10<sup>th</sup> April. This followed having drafted the proposal for the Week 11 RoU and shared the draft with the System Operator team to confirm the bidding timescales. Network Rail confirms that 13<sup>th</sup> April was the bid date confirmed by the System Operator team, with the response- "no flex as this is the National Recovery Plan so can not accept late change between TW-08 and TW-06". Greater Anglia stated on the telephone that 3 days would be required for them to undertake the work for the revised bid. It was concluded that there was insufficient time between 10<sup>th</sup> April and 13<sup>th</sup> April for a proposal, decision and bid.

- 3.9 In response to Greater Anglia submission, section 4.3, paragraph (9), Network Rail confirms the statement about Network Rail seeking comments for the 6 weeks after Week 9, though clarifies that comments were also sought from Freightliner on a separate email (Appendix E). Network Rail clarifies that discussions were progressing with Ipswich Maintenance Delivery Unit and the CP5 OLE Renewal team about the withdrawal of the Week 11 Ipswich RoU with the intention to consolidate work into the Week 10 Ipswich RoU.
- 3.10 In response to Greater Anglia submission, section 4.3, paragraph (10), Network Rail confirms that the meeting took place as stated, and clarifies that the lack of invitation to Freightliner was an oversight and has attempted to redress this through communication via Network Rail's Customer Relationship Executive.
- 3.11 In response to Greater Anglia submission, section 4.3, paragraph (11), regarding the statement about Network Rail Asset Protection being in discussions with Network Rail RAP "for months" over additional access, Network Rail qualifies that the TfL STIP project team had raised to Network Rail that there was a risk that not all required demolition could be completed in the Week 9 72hr Spring Bank Holiday RoU. Network Rail with the TfL STIP project team subsequently undertook reviews of the programme and assessments of suitable weeks for an additional RoU prior to the meetings with affected Timetable Participants, as shown in the Timeline (Appendix A). Network Rail qualifies that although there were earlier opportunities to engage with Timetable Participants over this additional access, there had been obstacles to new RoUs in this period, including a track renewal in Week 11, as shown in the options assessments in Appendix F.
- 3.12 In response to Greater Anglia submission, section 4.3, paragraph (12), Network Rail confirms the approach from Infrastructure Projects to Greater Anglia to seek to accommodate other work by extending the limits of the Week 11 Ardleigh Green Bridge RoU option and Greater Anglia's support for this.
- 3.13 In response to Greater Anglia submission, section 4.3, paragraph (13), Network Rail confirms that the statements around the Late Change Conference Call align with recollections of those involved and the output repeated in Appendix G. Network Rail clarifies that the lack of support for a Week 11 proposal to date meant that Network

Rail had started looking at other options again (hence the communication with Timetable Participants referenced in section 3.9), and that based on the information available and ability to meet the Informed Traveller Recovery Plan, Week 14 was most favourable of those.

- 3.14 In response to Greater Anglia submission, section 4.3, paragraph (14), Network Rail confirms this statement of events about the Week 14 Proposal Notice.
- 3.15 In response to Greater Anglia submission, section 4.3, paragraph (15), Network Rail confirms that Greater Anglia declined the Week 14 RoU proposal. Network Rail qualifies the statement that “Timetables for Week 14 were also already in the public domain”, in that this would have been the case for a Week 11 RoU proposal as well, but that with Week 14, Informed Traveller Recovery Plan timescales could be met and therefore avoid tickets being sold for trains subsequently cancelled.
- 3.16 In response to Greater Anglia submission, section 4.3, paragraph (16), Network Rail confirms this statement of events.
- 3.17 In response to Greater Anglia submission, section 4.3, paragraph (17), Network Rail qualifies the statement about the email to Network Rail RAP in that the wording of the email was interpreted that if Network Rail were to positively respond to Greater Anglia’s requested amendments then Greater Anglia would accept the Week 14 proposal. Along with the acceptance already received from MTR Crossrail (Appendix H), the email from Greater Anglia described positive progress towards reaching a mutually agreeable solution with the Week 14 proposal.
- 3.18 A negotiation process was ongoing with Freightliner (through Rita Handley Network Rail Customer Relationship Executive for Freight & National Passenger Operators – see Appendix J), with a conference call taking place on the Decision date. The cross-country freight diversionary route was available, subject to validation.
- 3.19 In response to Greater Anglia submission, section 4.3, paragraph (18), Network Rail confirms the statement that Timetable Participants were obliged to submit bids in accordance with the Decision Notice but qualifies that Network Rail was not aware that Greater Anglia’s intention was to appeal the decision. Network Rail felt a solution had been met with the Week 14 proposal as noted in section 3.17.

3.20 In response to Greater Anglia submission, section 4.3, paragraph (19), (20) and (21), Network Rail confirms these statements of events.

3.21 In response to Greater Anglia submission, section 4.4, Network Rail qualifies and clarifies the timeline provided by Greater Anglia 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**

Not applicable.

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

In response to Greater Anglia submission, section 5.1, Network Rail refutes that the Week 11 RoU option was not progressed in a timely manner but clarifies that it was a challenging timeframe to achieve the Informed Traveller Recovery Plan outside of standard industry timescales. Network Rail qualifies that the Informed Traveller Recovery Plan was a relevant consideration in not progressing with the Week 11 RoU, since impacting it adversely could have significant negative consequences - circa £4m by delaying it one week.

In response to Greater Anglia submission, section 5.1 paragraph (2) including bullet points, Network Rail refutes that it has failed to apply the Decision Criteria as stated by Greater Anglia when it decided to progress with the Week 14 RoU. See Appendix B for Network Rail's assessment of the Decision Criteria as applied to this case. Network Rail's view is that application of the Decision Criteria does support the decision to take a Week 14 RoU for the Ardleigh Green Bridge.

In response to Greater Anglia submission, section 5.1, paragraph (4) Network Rail refutes the Greater Anglia belief that Network Rail is picking and choosing how and when it complies with the Informed Traveller Recovery Plan and believes that this view is not relevant to the specific RoU in question. Network Rail seeks to assess each RoU amendment individually to find the least disruptive solution that meets the needs of its customers, delivery partners and passengers.



In response to Greater Anglia submission, section 5.1, paragraph (5) Network Rail refutes Greater Anglia's belief that "Network Rail have forgotten what the industry is trying to do – provide a service to 'our' industry's customers". Network Rail has attempted to progress with a solution to an industry problem and in a way that meets the needs of the customers by not adversely impacting the Informed Traveller Recovery Plan. Network Rail has sought to work within the required processes, while bringing flexibility to support delivery of key work.

In response to Greater Anglia submission, section 5.2, Network Rail qualifies that although progressing a Week 11 RoU would have had benefits, it was not possible to progress this without adversely impacting the Informed Traveller Recovery Plan and this is reflected in the Decision Criteria (Appendix B). In addition, by retaining the Week 11 Ipswich RoU, key maintenance work in that area can be undertaken with lowest risk – details of which were not available at the time of the 28<sup>th</sup> March 2018 meeting.

In response to Greater Anglia submission, section 5.3, Network Rail qualifies that it has been made aware of this marketing campaign but has limited details to date.

In response to Greater Anglia submission, section 5.4, Network Rail qualifies that the usual Schedule 4 compensation would apply.

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

Greater Anglia's interpretation of the Decision Criteria does not address the need for work to assets that could affect the capability and operation of the railway, but that are not railway assets. Network Rail believes that such work that involves the benefits to the wider integrated system of transport does have to be addressed in the application of the Decision Criteria. Network Rail has addressed this as evidenced within Appendix B Decision Criteria table.

**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 applied the Decision Criteria suitably to the Week 14 RoU for Ardleigh Green Bridge demolition work as per Appendix B.

Progressing with week 14 RoU in preference to delaying as proposed by Greater Anglia benefits the delivery programme of TfL STIP, the users of this bridge, the local residents, local economy and the long term condition of the road over rail bridge.

Network Rail acknowledges that a Week 11 option was discussed and preferred by Greater Anglia and did initially seek to progress this, but efforts to do so were not successful.

## 5 DECISION SOUGHT FROM THE PANEL

(a) Network Rail seeks that the panel rules that it has acted in a timely manner, interpreted the Decision Criteria correctly and applied the Decision Criteria appropriately and therefore uphold the Network Rail Decision to take the Great Eastern Main Line 52hr RoU in Week 14 for TfL STIP Ardleigh Green Bridge demolition work.

(b) Network Rail requests that the Hearing Chair does not order costs.

## 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.

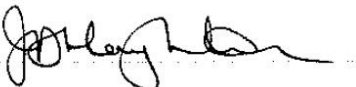
All appendices and annexes are bound into the submission and consecutively page numbered. To assist the Panel, quotations or references that are cited in the formal submission are highlighted (or side-lined) so that the context of the quotation or reference is apparent.

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  
Julie Houghton

Position  
Head of Asset Protection, Anglia Route

## The Appendices

- Appendix A: Timeline
- Appendix B: Decision Criteria table
- Appendix C: Confirmed Period Possession Plan Excerpt
- Appendix D: Email correspondence from 28<sup>th</sup> March 2018 meeting
- Appendix E: Email correspondence regarding need for RoU
- Appendix F: Options assessment
- Appendix G: Excerpt from Late Change Conference Call submission
- Appendix H: Email support from MTR for week 14 RoU Proposal
- Appendix J: Email correspondence involving Freightliner
- Appendix K: Summary week 11 Ipswich RoU work content
- Appendix L: Draft week 11 RoU Proposal
- Appendix M: Week 14 RoU Decision 26<sup>th</sup> April 2018
- Appendix N: QSRA programme 5<sup>th</sup> March 2018
- Appendix O: TfL STIP Ardleigh Green Bridge Replacement Update
- Appendix P: QSRA output 5<sup>th</sup> March 2018
- Appendix Q: QSRA programme 13<sup>th</sup> March 2018
- Appendix R: QSRA output 13<sup>th</sup> March 2018
- Appendix S: Anglia Route Map showing Ardleigh Green location