

**Sole Reference Submission to Timetabling Panel**

**Abellio East Anglia Limited**

**TTP1604 and TTP1622**

**Hearing Date: Tuesday 03<sup>rd</sup> March 2020**

## **1 DETAILS OF PARTIES**

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

- (a) Abellio East Anglia Limited whose Registered Office is at 18-20 St Andrews Street, London, EC4A 3AG "Greater Anglia" ("the Claimant"); and
- (b) Network Rail Infrastructure Limited whose Registered Office is at Eversholt Street, London NW1 2DN "Network Rail" ("the Defendant").

1.2 Freightliner Intermodal, GB Railfreight and DB Cargo may be affected by the outcome of this Dispute, subject to the result, although they themselves do not intend to be a party in this Dispute.

## **2 THE CLAIMANT'S' RIGHT TO BRING THIS REFERENCE**

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition D4.6 of the Network Code

## **3 CONTENTS OF REFERENCE**

This Sole Reference includes:-

- (a) The subject matter of the dispute in Section 4;
- (b) A detailed explanation of the issues in dispute in Section 5;
- (c) In Section 6, the decisions sought from the Panel in respect of
  - (i) legal entitlement, and
  - (ii) remedies;
- (d) Appendices and other supporting material.

## 4 SUBJECT MATTER OF DISPUTE

- 4.1 This is a dispute regarding Restriction of Use (RoU) possessions on the Great Eastern Mainline (GEML) on the weekends of Weeks 11, 12 and 13 during the Engineering Access Statement (EAS) year of 2020, in relation to their dating, and the frequency of GEML RoU possessions during the EAS 2020 year.
- 4.2 This Dispute arises over the interpretation of the Decision Criteria as detailed in Part D Clause 4.6.2 of the Network Code.
- 4.3 Weeks 11, 12 and 13 (June 2020) currently contain two all-weekend all-lines RoU possession and one all-day Sunday all-lines RoU possession between Marks Tey and Shenfield. The three possessions are proposed by Network Rail primarily to carry out High Output Track Renewal System work, with the aim of replacing pre-1976 rail as initiated by the Office of Rail Regulation (ORR) due to the risk of rail breakage.

Greater Anglia has declined these possessions throughout the EAS 2020 process; Week 11 possession 2612238 since Version 3; Week 12 possession 2558519 since Version 1; Week 13 possession 2597422 since Version 2. On all counts, these were objected to at the first point that the possessions were published in the EAS (see **Appendices B and C**).

The basis of Greater Anglia's objection to these RoU possessions was initially due to the Summer dating of the work. Summer weekends see a significant uplift in passenger numbers travelling on the GEML between Norwich and London Liverpool Street. **Appendix E**, sourced from the Greater Anglia Commercial department, details the number of journeys made by passengers using the GEML into London on Saturdays and Sundays during 2018 and 2019. It is evident from this data that June sees one of the highest levels of passenger journeys on the GEML into London when compared to other months across a year.

From Greater Anglia's EAS 2020 Version 3 response onwards, the RoU possessions in question were also objected to on the basis that the frequency of engineering work on the GEML is too high, following some investigation work by Greater Anglia scrutinising the levels of disruptive engineering work on East Anglian rail routes since 2014. This examination found that there has been a significant uplift in the instances of GEML weekend disruptive engineering work over the last few years. **Appendix D** shows the

stark contrast in the level of whole-day disruptive weekend access on the GEML comparing 2014 to 2020; an increase of close to 150%. The result is circa 26 weekends during EAS 2020 when the GEML has at least one whole-day closure requiring a rail replacement journey for customers; in fact, most weekends affected have disruptive possessions on both Saturday and Sunday. The increased levels of disruptive engineering work on the GEML since 2014 is supported by findings by Network Rail, noted in **Appendix G, page 14**.

Much of the significant rise in GEML disruptive engineering work since 2014 can be attributed to the Crossrail project requiring large amounts of access on weekends between London Liverpool St and Shenfield. EAS 2020 does not contain such a significant level of weekend access requirements for the Crossrail project when compared with the years directly preceding EAS 2020, and yet the level of access on the GEML remains very high due to a multitude of other ongoing projects, including (but not exclusive to) High Output Track Renewal and Ballast Cleaning work, Maryland and Colchester Switch and Crossing (S&C) renewal, and Stratford Overhead Line Equipment (OLE) renewal.

Greater Anglia has upheld its objections to these RoU possessions throughout the formal timeline; since the EAS, through to the formal Confirmed Period Possession Plan (CPPP) Dispute process (please refer to dates cited in **Appendix A**).

Network Rail's David Foster from the Controlling Minds Team (CMT) produced a paper that was submitted to Greater Anglia on 24/10/19 giving background information regarding levels of disruptive access on the GEML over the last few years. The paper is shown in full under **Appendix G**. As aforementioned, this paper supports the evidence shown on the graph in **Appendix D** that disruptive access on the GEML has increased significantly since 2014. David Foster demonstrated how Network Rail attempted to compromise after Version 1 of EAS 2020 by removing some of the planned GEML Summer access. Although Greater Anglia does not dispute this fact, and indeed are grateful for Network Rail's efforts to reduce disruptive GEML access, Greater Anglia still believe that having half of EAS 2020 weekends (including the Summer RoU possessions in Weeks 11, 12 and 13) affected by disruptive access on the GEML remains far too impactful on passengers and should be reduced further.

The paper includes a detailed summary of the work to be undertaken during these EAS 2020 Summer RoU possessions and goes some way to supporting and justifying Network Rail's reasoning for these to go ahead.

Greater Anglia reviewed the paper's details between 24/10/2019 and 05/12/2019 (as observed in **Appendix A**). Dean Warner's (Engineering Access Manager for Greater Anglia) response to David Foster can be seen in **Appendix H**, where he notes that Greater Anglia are still not content with the level of GEML weekend disruptive access, or that these RoU possessions are situated in some of the busiest weekends of the year. Dean advises David that Greater Anglia will be contacting the Access Disputes Committee (ADC) to organise a Hearing date, by the end of that week (ending 06/12/2019). However, as noted in the **Appendix A** timeline, Dean then had a verbal conversation with Keith Palmer (Head of Operations and Development at Greater Anglia) on 06/12/2019, and the decision was made to postpone requesting a Dispute Hearing from the ADC. Instead, Greater Anglia opted to keep the line of communication open between Network Rail and Greater Anglia in the hope that a resolution suitable to Greater Anglia could be found.

Conversations continued and resulted in two further face-to-face discussions on 23/12/2019 and 10/01/2020 between the two parties. Greater Anglia set two key challenges to Network Rail: firstly, to investigate finding a way that Greater Anglia could run on one line bi-directionally past the site of work and still provide a level of train service to match demand and, secondly; to provide Greater Anglia with details of the impact on the infrastructure should the High Output Track Renewal not go ahead. These challenges can be seen in the Minutes from the meeting held on 10/01/20 in **Appendix K**.

By 31/01/20, no resolution had been found. The bi-directional option transpired to be far too disruptive, requiring both lines to be blocked for 8hrs on Friday night, 10hrs on Saturday night, and 8hrs on Sunday night. This would require a significant number of train services to be replaced by buses, which Greater Anglia is arguing against in this Dispute. Greater Anglia had also received no definitive information from Network Rail regarding the longer-term effects on the infrastructure if the work doesn't take place<sup>1</sup>. At this point, Greater Anglia viewed that it had no choice but to request a Dispute Hearing from the ADC as the train plan for Week 11 was due to be bid to Network Rail by Friday 14/02/20; Week 12 by Friday 21/02/20, and Week 13 by Friday 28/02/20.

Greater Anglia would ideally have called for a Dispute Hearing by the end of 2019 to ensure complaint bidding with the Network Rail Informed Traveller deadlines, but would like the panel to note that it held out requesting a Dispute Hearing in an attempt to reach a workable solution with Network Rail.

- 4.4 A tabular version of the timeline of key events and communications, with their associated Appendices, is summarised in Appendix A.

## 5 **EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT'S ARGUMENTS TO SUPPORT ITS CASE**

- 5.1 As already established using the data shown in **Appendix E**, June is one of the busiest months of the calendar year in terms of weekend travellers using the GEML into London. In support of the argument against these June-dated RoU possessions, Greater Anglia cites the **Network Code Decision Criteria 4.6.2 (b) 'that the spread of services reflects demand'**. It could be argued that Greater Anglia should procure rail replacement vehicles to match demand, but there are a finite amount of bus / coach operators and vehicles that Greater Anglia can call upon. The rail replacement resource issue is compounded by recent legislation from the Department for Transport (DfT) stating that all buses and coaches used for rail replacement purposes must comply with disability compliance laws (known in the bus industry as Public Service Vehicle Accessibility Regulations, or PSVAR). Greater Anglia therefore believes that Decision Criteria 4.6.2 (b) has not been considered by Network Rail.

Regardless of potential resourcing issues with procuring sufficient rail replacement vehicles to cope with the increased Summer passenger numbers, Greater Anglia refers to the **Network Code Decision Criteria 4.6.2 (i) 'mitigating the effect on the environment'**. Dating these RoU possessions at one of the busiest times of year is juxtaposed with this Decision Criteria and would see a large amount of rail replacement diesel-powered vehicles in operation instead of electric trains. It should also be noted that this is the time of year that Greater Anglia traditionally launches its Summer Marketing Campaign which aims to take advantage of a respite in GEML disruptive access and encourage leisure travellers to use train services. Greater Anglia views that the dating of these RoU possessions is at odds with **Network Code Decision Criteria consideration 4.6.2 (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**'.

Aside from Greater Anglia's core reasoning for Disputing this engineering work on the grounds of Summer dating, there is also a fear that a precedent may be set if these Summer RoU possessions are allowed to go ahead. This would result in the same issues being argued by Greater Anglia in this Dispute recurring year on year.

5.2 With 26 weekends due to feature disruptive access on the GEML during EAS 2020, GA contends that the level of access being requested is in contravention to the following clauses from Part D of the **Network Code Decision Criteria**:

- **4.6.2 (d) – that journey times are as short as reasonably possible**
  - With the GEML experiencing half of EAS 2020 weekends affected by disruptive access, journey times will be much longer than normal for a very unreasonable proportion of the year.
- **4.6.2 (i) – mitigating the effect on the environment**
  - Large numbers of diesel-powered road vehicles moving thousands of passengers instead of electric trains is, without a doubt, more harmful to the environment.
- **4.6.2 (j) – enabling operators of trains to use their assets efficiently**
  - For Greater Anglia to contend with having a large proportion of its train fleet unused for 26 of 52 weekends is highly inefficient.

Greater Anglia would also note that this high frequency of disruptive GEML access seems very much at odds with Network Rail's ethos of 'Putting Passengers First'. Understandably, Network Rail requires access to maintain and develop the network, but Greater Anglia's view is that this level of access is too extreme. Greater Anglia has been willing to show a degree of compromise by accepting an all-day Sunday disruptive possession on the GEML between Ipswich and Norwich in Week 10 EAS 2020 which was also initially part of Greater Anglia's Summer GEML RoU possessions objection (noted in **Appendix A**, dated 10/01/20). Greater Anglia is also considering withdrawing its objection to the Week 22 Sunday (August Bank Holiday weekend) GEML RoU possession between Ipswich and Norwich in support of Network Rail's renewal strategy.

Despite the much-increased GEML disruptive weekend access over the last few years, there is even more disruptive access being discussed for the GEML during EAS 2020 for Colchester S & C work, which would compound the impact on Greater Anglia's business, and on the travelling public.

5.3 These two overarching objections to the GEML Week 11, 12 and 13 RoU possessions are made clear in the EAS responses from Greater Anglia shown in **Appendix C**. The dating of these possessions in particular has been a subject of much debate between Greater Anglia and Network Rail as the High Output (and other) machines are allocated nationally *before* the Engineering Access Statement is first consulted with Train Operating Companies (TOCs) and Freight Operating Companies (FOCs). From Greater Anglia's perspective, this calls into question how much of a consultation process the EAS is, as despite objecting to these possessions from the earliest formal opportunity, Network Rail have yet to produce a convincing solution or compromise that (a) reduces the level of access requirement on the GEML and (b) takes this disruptive work out of the Summer period. Note that at the time of writing, the Week 12 RoU GEML possession has been disputed for more than 15 months (please refer to **Appendix A** for the timeline of events). Greater Anglia strongly believe that EAS issues that have been contested consistently for such a long period of time should be resolved much earlier. There are still many contested RoU possessions between Greater Anglia and Network Rail for EAS 2020. This sometimes makes meeting Informed Traveller bid compliance dates difficult as Disputes remain unresolved until very late-notice.

5.4 Greater Anglia is in agreement with Network Rail to the extent that the work content has been thought through and makes reasonable use of the access being requested; however, Greater Anglia's objection to these possessions is not the justification of the work, but (as aforementioned) the dating and the frequency. Network Rail's main issue with removing the work is that the High Output Track Renewal System, which has been nationally allocated to the Anglia route in these weeks, will be sat around unused because no other suitable sites for the machine to work have been identified. Greater Anglia find this extremely frustrating as the allocation of the High Output machinery is decided by Network Rail at a national level *before* Version 1 of an EAS year is published. This brings into question how worthwhile the EAS negotiation / consultation process is as TOCs and FOCs have no influence on the allocation process.



5.5 Network Rail were given ample opportunity to provide details and evidence on the longer-term effects on GEML infrastructure if the planned track renewals in the weekends of Weeks 11, 12 and 13 do not go ahead. Greater Anglia intentionally gave time to Network Rail by postponing the request of a Dispute Hearing so that Network Rail could collate evidence to help support the urgency of the work, but no further information was forthcoming<sup>1</sup>. Greater Anglia would contest that due to a lack of evidence, **Network Code Decision Criteria 4.6.2 (a) ‘maintaining, developing and improving the capability of the Network’** has not been considered, as there is no proof that this planned track renewal, which is effectively a maintenance task, is actually required or warranted. It can certainly be proven that this task would neither develop nor improve the capability of the Network, as, being a like-for-like renewal, it brings no enhancement to the Network whatsoever.

<sup>1</sup> An email titled “2020: Wk11-13 Track Condition and Risk Information” was received from David Foster at Network Rail on Friday 14th February 2020. This email has 8 attachments of technical data and risk assessment but has been received so late it has not been possible to assimilate the information ahead of submission of this dispute paper.

## **6 DECISION SOUGHT FROM THE PANEL**

- 6.1 Greater Anglia is seeking The Panel to determine that Network Rail has not applied the Decision Criteria correctly, and that they have not considered the detrimental impact on Greater Anglia's business, particularly in relation to customer impact, environmental, commercial, and resource concerns. Greater Anglia asks that Network Rail are directed to withdraw the GEML RoU weekend disruptive possessions in Week 11, Week 12, and Week 13 of EAS 2020 as a result.
- 6.2 Greater Anglia requests that Network Rail is instructed by The Panel to consult Operators on allocation of engineering machinery (including, but not exclusive to High Output machinery) before finalising which Weeks of the EAS it operates, and on which specific routes.
- 6.3 Greater Anglia asks that The Panel instructs Network Rail to desist from applying for disruptive weekend access in Summer weekends on the GEML between the beginning of June and the end of August inclusive.

## 7 APPENDICES

7.1 The Claimant confirms that it has complied with Access Dispute Resolution Rule H21. A tabular version of the timeline of key discussions and communications, along with their associated Appendices, is summarised below:

- **Appendix A** – Timeline of Events
- **Appendix B** – prints of RoU possessions as originally published, and at Version 4
- **Appendix C** – Greater Anglia's EAS responses to Weeks 11, 12 and 13 GEML RoU possessions
- **Appendix D** – 2014 v 2020 GEML disruptive weekend access comparison chart
- **Appendix E** – Month-by-month comparison on GEML passenger journeys
- **Appendix F** – Minutes from GA / NR GEML Summer access discussion held on 19/03/19
- **Appendix G** – David Foster's EAS 2020 GEML Access Challenges paper
- **Appendix H** – Dean Warner's email response to David Foster's paper (Appendix G)
- **Appendix J** – Email correspondence between Dean Warner and Network Rail following GA / NR discussion held on 23/12/19
- **Appendix K** – Minutes from GA / NR GEML Summer access discussion held on 10/01/20
- **Appendix L** – Copy of Network Code Part D Decision Criteria 4.6.2

**8 SIGNATURE**

For and on behalf of Abellio East Anglia Limited

\_\_\_\_\_  
Signed

-----  
Print Name

\_\_\_\_\_  
Position

\_\_\_\_\_