

Defendant's Response to Sole Reference

Ref: TTP1546

1 DETAILS OF PARTIES

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

- (a) Freightliner Limited whose Registered Office is at 3rd Floor, 90 Whitfield Street, London W1T 4EZ ("Freightliner") ("the Claimant"); and
- (b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("Network Rail") ("the Defendant").

1.2 Other Train and Freight Operating Companies that could be affected by the outcome of this dispute:

- (a) Greater Anglia (Abellio East Anglia Ltd), MTR Corporation (Crossrail) Ltd, Arriva Rail London Ltd, GB Railfreight Ltd, DB Cargo (UK) Ltd, c2c (Trenitalia c2c 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

(a) Regarding Freightliner's Section 4.1, Network Rail confirms that this is a dispute regarding Network Rail's 'Decision Document Week 39/40 Liverpool Street to Shenfield' issued 29/7/2019. Network Rail clarifies that it believes the dispute is specifically regarding elements of that Restriction of Use (RoU) which impact Freightliner services on 27 and 28 December 2019, and that other elements of the RoU are not part of the subject matter of dispute (in line with Freightliner's Section 6.1).

(b) Regarding Freightliner's Section 4.8, Network Rail clarifies that it interprets Freightliner's dispute to be about Network Rail's application of the Decision Criteria to this Restriction of Use (RoU) as specified by Network Code clause D3.4.4 (b) and the communication of this to Timetable Parties.

(c) Regarding Freightliner's Sections 4.1 to 4.7, Network Rail confirms the general timeline presented.

(d) Regarding Freightliner's Sections 4.2 to 4.7, elements of Section 4.8 and Section 4.9, Network Rail has interpreted these to be generally part of Freightliner's arguments to support its case rather than part of the Subject Matter of Dispute and has therefore addressed these under Section 4 below for clarity.

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

4.1 Issues where the Defendant Accepts the Claimant's Case

(a) Regarding Freightliner's Section 4.2, Network Rail accepts that the proposal for the additional Restriction of Use (RoU) (09 July 2019) was made after the date of issue of the Confirmed Period Possession Plan (CPPP) (09 June 2019). Network Rail confirms that the effect of the RoU on Freightliner's services is that on Friday 27 December only a diesel-hauled route is available via Stratford, and that on Saturday 28 December no route is available via Stratford, therefore requiring freight services to divert via the "cross-country" route - Leicester, Nuneaton, Peterborough and Ely.

- (b) Regarding Freightliner's Section 4.5, Network Rail accepts that Freightliner responded on 16 July 2019.
- (c) Regarding Freightliner's Section 4.6, Network Rail accepts that the Decision Document for the RoU was issued on 29 July 2019.
- (d) Regarding Freightliner's Section 4.7, Network Rail accepts that Freightliner lodged the dispute relating to this RoU on 31 July 2019.
- (e) Regarding Freightliner's Section 4.8, Network Rail accepts the acknowledgement that Network Rail consulted Timetable Participants for this RoU.

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

- (a) Regarding Freightliner's Section 4.2, Network Rail clarifies that the RoU that was proposed covers 5 days (25 December 2019 to 29 December 2019 inclusive) but that the timing of it means that only 2 of these days impact Freightliner's services (25 and 26 December 2019 being a Christmas shutdown, and 29 December 2019 being a Sunday with limited freight operations).
- (b) Regarding Freightliner's Section 4.3, Network Rail qualifies that although Freightliner declined the proposal on 09 July 2019 as noted, the reason provided was only around the timing of the proposal [See Timeline in Appendix A].
- (c) Regarding Freightliner's Section 4.4, while as noted, the essence of Network Rail's response on 11 July 2019 was that in its view, progressing with the RoU in question was the best option available, Network Rail clarifies that in this response it requested Freightliner to confirm if there were any specific issues with the RoU, such as cross-country diversionary route availability or other restrictions in an effort to seek a suitable solution.
- (d) Regarding Freightliner's Section 4.5, Network Rail clarifies that Freightliner had not raised any qualifications on the Colchester Christmas blockade RoU through the Engineering Access Statement process and qualifies that it does not believe that this in itself was a reason to decline the RoU. Network Rail clarifies that while the interface between the Stratford RoU and the Colchester Christmas blockade RoU is

relevant due to its combined impact on the Timetable, this can be accounted for in the application of the Decision Criteria [Appendix C]. Network Rail clarifies that the benefits from having the route available around the Colchester Christmas blockade RoU still apply to freight operators on 30 and 31 December 2019 and to passenger operators on 27 to 31 December 2019 inclusive.

(e) Regarding Freightliner's Section 4.6, Network Rail qualifies that although Freightliner's requests were not accommodated by the Decision Document for the RoU, it was not "completely ignoring" Freightliner's response and referred in the Decision Document to the concerns raised by some operators, and the continued efforts to seek to resolve these. Network Rail aimed to take into account all of the responses received alongside the requirements for the delivery of the work. Network Rail clarifies that the RoU was accepted at this stage (with some caveats) by Greater Anglia, MTR Crossrail, Arriva Rail London, GB Railfreight and DB Cargo. Network Rail clarifies that allowing a (diesel-only) route via Stratford and the North London line for freight on Friday 27 December 2019 in the proposal and Decision for the RoU was a concession aimed at freight operators demonstrating that steps had been taken earlier in the process to accommodate freight as far as possible.

(f) Regarding Freightliner's Section 4.8, Network Rail clarifies that although it has not shared evidence of the application of the Decision Criteria with Timetable Participants, Network Rail made the decision by application of the Decision Criteria in accordance with Condition D4.6. To support this Timetable Hearing, Network Rail has formalised this by preparing a detailed Decision Criteria document. Refer to Appendix C. Network Rail believes that this Decision Criteria document demonstrates that overall, the benefits of progressing with the RoU as per the Decision Document outweigh the disbenefits, including those raised by Freightliner.

(g) Regarding Freightliner's Section 4.9, Network Rail clarifies that although no formal information has been shared with Timetable Participants about the consequences of not progressing the RoU to the delivery of the Crossrail Timetable, Network Rail has organised meetings between the Crossrail Traction Power upgrade team and Timetable Participants to share updates and discuss strategy for the overall Traction Power scheme (eg 23rd Feb, 11th April, 30th May – refer to Timeline in Appendix A). To support this Timetable Hearing, Network Rail has prepared a detailed

Impact Statement document covering specifically the impact of not progressing elements of the RoU that are the subject matter of this dispute - refer to Appendix D. This Impact Statement also supports the Decision Criteria document (Appendix C). As noted in these documents, the Traction Power upgrade work provides an improvement to the capability of the Network in order to support future passenger Timetable increases, introduction of the New East Anglia Trains fleet and the continued operation of electric freight services. The works planned in the RoU in question and specifically on 27 and 28 December 2019 contribute directly to the January 2020 commissioning activity between the new Pudding Mill Lane feeder station and Manor Park, which is followed by a sequence of commissioning activities in the subsequent weekend RoUs through to completion in April 2020. Completion of the work by May 2020 is also a Network Rail commitment monitored by the ORR and would be subject to additional project costs if delayed.

(h) Regarding Freightliner's Section 5.1, in relation to the comments that "Network Rail should not be proposing additional Restrictions of Use for major projects such as Crossrail outside of DPPP & CPPP timescales...", Network Rail confirms that it seeks to avoid such timescales where practical, but qualifies that the timescales at which the RoU was progressed are covered by the conditions of Network Code Section D3. The Timeline (Appendix A) helps to outline the background to the timing of the proposal and Decision for the RoU. Network Rail acknowledges the interface between the Colchester Christmas blockade RoU and the RoU in question due to the combined impact on the train plan, but qualifies that it does not believe the combination of RoUs presents an unmanageable situation for the Timetable Participants.

(i) Regarding Freightliner's Section 5.1, in relation to the comments relating to diesel locomotive availability, including "Network Rail seems to think that Freightliner has an endless supply of diesel locomotives", Network Rail qualifies that RoUs requiring multiple days of diversions of Felixstowe freight services via the diesel-only cross-country route have been implemented in Christmas 2016 (inc Wednesday to Saturday inclusive), 2017 (inc Wednesday to Saturday inclusive) and 2018 (inc Thursday to Saturday inclusive). Network Rail has made allowance for this impact in the Decision Criteria document (Appendix C). Under the terms of Freightliner Ltd's Track Access Contract, Network Rail is contractually obliged to cover additional costs incurred by them as a result of a RoU. This includes compensation for a requirement

to run diesel vice electric traction, or if an additional loco (internally or externally sourced) is required over and above the original base service. Refer to extract in Appendix B8.

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

(a) Network Rail notes that amendment of the RoU in line with the decision sought in Freightliner's Sole Reference would adversely impact the ability to complete the Traction Power works in the period between December 2019 and May 2020 as noted in the Impact Statement (Appendix D), and that this impact needs to be considered in the application of the Decision Criteria. Network Rail acknowledges that Freightliner has not had full visibility of the information contained within the Impact Statement to be able to address this in their Sole Reference.

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

(a) Network Rail believes that the Decision Criteria document prepared for this Timetable Hearing (Appendix C) demonstrates Network Rail's application of the Decision Criteria at the time of issue of the Decision Document for the RoU in question, and that this document demonstrates that progressing with the RoU is more beneficial than amending it as per Freightliner's Sole Reference. This is primarily due to the positive impact of the RoU on the opportunity to progress the Traction Power scheme in the period up to May 2020, and the benefits this has, including to future Network capability, weighed up against the adverse impact to train services in the short term.

(b) Network Rail acknowledges that while the timing of the Variation for the additional RoU meant that it was progressed after publication of the Confirmed Period Possession Plan, the Network Code allows for this and Network Rail has sought to achieve those timescales.

5 DECISION SOUGHT FROM THE PANEL

- 5.1 Network Rail seeks that the Panel uphold its Decision Document Week 39/40 Liverpool Street to Shenfield as regards the elements of the RoU which impact Freightliner services on 27 and 28 December 2019.

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

COLIN SWEENEY

Position

HEAD OF PLANNING : ANGLIA ROUTE

The Appendices

Appendix A - Timeline

Appendix B – Referenced correspondence (from Timeline) and extracts

Appendix B1 – Correspondence from Traction Power meetings

Appendix B2 – Christmas T-30 review meeting output

Appendix B3 – Disruptive access log from Stakeholder Meeting in June 2019

Appendix B4 – Correspondence from internal integration meeting in June 2019

Appendix B5 - Correspondence from internal integration meeting in July 2019

Appendix B6 – Correspondence from Trains Meeting re 27th Dec 2019

Appendix B7 – Correspondence about cross-country route and diesel locomotives

Appendix B8 – Extract from Freightliner from Track Access Contract

Appendix C – Decision Criteria document

Appendix D – Impact Statement

Appendix E – Addresses of Third Parties