1. **Details of parties**
   1. The names and addresses of the parties to the reference are as follows:-
      1. Grand Central Railway Company Limited, Company No. 03979826, whose Registered Office is at 1 Admiral Way, Doxford International Business Park, Sunderland ("GC") ("the Claimant"); and
      2. Network Rail Infrastructure Limited, Company No. 2904587, whose Registered Office is at Kings Place, 90 York Way, London N1 9AG ("NR") ("the Respondent").

This is a single party submission by XC Trains Limited (XC) on behalf of Grand Central and the contact is:

John Cherrington

Track Access and Possession Strategy Manager

Cannon House

Birmingham, B4 6BS

[redacted]

**The Claimant’s right to bring this reference**

* 1. With reference to Network Code Condition D2.2.8, this matter is referred to Timetabling Panel ("the Panel") for determination in accordance with Condition D5.1.2 of the Network Code and Section 3.5.4 of the 2013 Timetable Planning Rules.

**Contents of reference**

This Sole Reference includes:-

* + 1. The subject matter of the dispute in Section 4;
    2. A summary of the issues in dispute in Section 5;
    3. A detailed explanation of the issues in dispute prepared by the claimant in Section 6;
    4. In Section 7, the decisions of principle sought from the Panel in respect of
       1. legal entitlement and
       2. remedies;
    5. Appendices and other supporting material.

**subject matter of dispute**

* 1. This dispute concerns the decision published by Network Rail on 21st December 2012 (Appendix A) to implement an amendment to a Restriction of Use (RoU) affecting the route between Bowes Park and Langley Jn published in the LNE Route Confirmed Period Possession Plan (CPPP) for Week 6 as item 32 (Possession reference P2012/1657683, Appendix B).
  2. As originally published this RoU did not affect GC as none of its services are planned to operate over the route between Bowes Park and Langley Jn. However the change planned to be implemented by NR involves additional RoUs on the route between Woolmer Green and Hitchin South Jn that will place significant constraints on the operation of train services through the affected area and have an extremely disruptive impact on GC’s operations and ability to supply our customers on “competitive terms” (Section 2.21, *Guidance on Appeals to ORR under the Railways Infrastructure (Access and Management) Regulations 2005*, (ORR, 2006)).
  3. GC is the train operating company providing long distance passenger train services, on the route between King’s Cross and Bradford/Sunderland. Significant volumes of GC’s passenger journeys are made at weekends (see Section 4.5 below). The operation of weekend Working Timetable (WTT) services on this route is affected, to the detriment of approximately 2,830 passengers[[1]](#footnote-0) and representing a risk to revenue that disproportionately affects GC as a non-franchised Operator with no guaranteed source of income. This is particularly relevant given the nature of this dispute, which is partially concerned with path allocation during engineering disruption.
  4. Network Rail’s intention to implement the change the RoU published in the CPPP for Week 6 will prevent GC from operating a reasonable service between London and Bradford/Sunderland throughout the day on Sunday 5th May 2013 (Week 6).
  5. The planned RoU currently prevents GC from operating 14 passenger services on Sunday 5th May 2013 (Week 6) which were included within the December 2013 WTT for Period D (Appendix C) and in total comprise 13% of GC’s seven day service, or 100% of Sunday services.
  6. This dispute arises primarily over the lateness of the NR access proposal which meant that it was not possible to comply with the timing requirements of Network Code Section D3.4 and, as NR has failed to demonstrate that this was a circumstance whereby it was not reasonably practical for this to be the case, the procedure set out in Network Code Section D3.5 is not appropriate to this case and the proposal is therefore out of process. There are additional concerns over application of the Decision Criteria as set out in the Network Code, Section D4.6 with regard to the NR decision to amend an engineering access decision published in the CPPP for timetable Week 6, in terms that will have an unduly detrimental impact on GC’s ability to operate a “commercially viable” service under “market conditions” as set out in Section 2.21 of the *Guidance on Appeals* (*Ibid.*), with specific reference to:

a) The addition of RoUs affecting the route between Woolmer Green and Hitchin South Jn.

b) NR’s conclusions regarding the allocation of available capacity.

**summary of dispute**

* 1. Network Rail progressed the consultation for its Engineering Access Statement (EAS) 2013 in accordance with Network Code Condition D2 (Appendix E).
  2. Section 4 of the 2013 EAS Version 1 included RoUs applicable to Period D of the 2013 Timetable Year (including Timetable Week 6) affecting the routes between Bowes Park and Gordon Hill from 01:35 to 05:40 Sun and between Gordon Hill and Langley Jn from 02:00 to 05:50 Sun. As GC does not normally operate train services over these routes it was not affected by the proposals and consequently indicated it’s agreement.
  3. On 2nd October 2012 NR published the LNE Route Draft Period Possession Plan (DPPP) document for Weeks 5 to 8. The proposals for Week 6 included an additional RoU (item 32, possession reference P2012/1657683, Appendix B) affecting the route between Bowes Park and Langley Jn from 02:00 Sunday 5th until 02:00 Monday 6th May 2013 (Appendix B). As there was no impact on it’s services the additional RoU was agreed by GC and subsequently published as item 32 in the LNE Confirmed Period Possession Plan (CPPP) for week 6 published by NR on 2nd November 2012 (Appendix B).
  4. On 30th November 2012, at T-22 weeks, NR submitted proposals for an amendment to item 32 of the LNE CPPP for Week 6 that would provide additional/extended access required in connection with the Hertford North Interface Facility (HNIF) Project (Appendix A). NR intended to use the access to carry out signalling work that had been scheduled during the Christmas 2012 period but which was subsequently deferred because NR had been unable to complete the required enabling works in time.
  5. The NR proposal substantially increased the duration of the original RoU and imposed additional RoUs on the East Coast Main Line (ECML) route between Woolmer Green and Hitchin South Jn. The additional RoUs affected access to the Up and Down Slow Lines from 02:00 Saturday 4th until 08:00 Monday 6th May 2013 and also placed a significant operational constraint on use of the Up and Down Fast Lines due to the requirement for Temporary Block Working (TBW) from 06:00 Saturday 4th until 01:00 Sunday 5th May 2013. During the period of TBW NR indicated that there would be capacity for 3 trains per hour in each direction but made no reference to the allocation of this capacity.
  6. On 11th December XC responded to NR on behalf of GC (Appendix A) and formally declined its proposals to amend Week 6 CPPP item 32 (possession reference P2012/1657683). This was on the grounds that the timetable changes required in connection with the NR proposal would not comply with the timescales laid down in the Network Code Condition D3.4, which specify proposing changes to TOCs no later than T-26 (Network Code, D3.4.7) in order that a request for an amended train bid can be made by T-22 (Network Code, D3.4.10), and that NR had failed to provide sufficient justification for its proposal to deliver the outstanding HNIF work in Week 6. In this respect the proposal did not satisfy the requirements of Condition D3.5 as NR had failed to demonstrate that it was “not reasonably practical” (Network Code, D3.5.2) to comply with the timing requirements of Condition D3.4. In addition NR failed to provide details of the signalling work being done and the method of working during the period of TBW upon which it’s capacity assumptions were based, which is a further requirement of Section D.
  7. On 21st December 2013 NR published its decision to implement changes to Week 6 possession P2012/1657683 including additional RoUs on the ECML (Appendix A). The NR decision differed from the proposal in that the dates and times of the possession would now be 22:00 Saturday 4th to 04:00 Tuesday 7th May 2013. NR justification for the change was so that the most disruptive aspect of the ECML access would now be on Sunday 5th May 2013 as NR believed that fewer passengers would be affected compared to Saturday 4th May 2013. In addition NR confirmed it’s capacity assumptions of 3 trains per hour during the TBW period and indicated that the available capacity would be allocated to First Capital Connect (FCC) (1 path) and East Coast Trains (EC) (2 paths) As a result 100% of GC services would be unable to run between Peterborough and London on Sunday 5th May 2013.
  8. On 27th December 2012 XC registered a formal appeal on behalf of GC with regard to the NR decision to implement amendments to Week 6 CPPP item 32 (possession reference P2012/1657683 (Appendix A).
  9. It is evident to GC that NR was determined to secure access for delivery of the outstanding HNIF works at the earliest opportunity and, having decided that this should be Week 6, it could be considered that this is an abuse of the consultation process as a means to achieve this end.

**explanation of each issue in dispute and the Claimant’s Arguments to support its Case**

* 1. GC’s objection to NR’s decision to change the RoU in Week 6 is made on the basis that the NR proposal is out of process. The Network Code sets out procedures for the planning of RoUs with at least 12 weeks’ notice (Section D3.4) and with less than 12 weeks’ notice (Section D3.5). The NR proposal for Week 6 did not comply with the timing requirements of Section D3.4 and as NR had not demonstrated that this was a circumstance whereby it was not reasonably practical for this to be the case the procedure set out in Section D3.5 did not apply to this case.
  2. GC believes reasonable access should be provided to allow a service to operate on the routes between Sunderland/Bradford and King’s Cross that is consistent with the level of demand for these services. Historical passenger counts for the past four months show GC services operating, on average, at 70% seating capacity upon entering and leaving King’s Cross. This includes 16% of services that were operating at 90% or higher capacity, including those at more than 100%.
  3. Owing to the nature of services run by GC, interchange for customers at Peterborough as offered by NR, would reduce GC’s ability to provide competitive, viable alternatives for customers to Sunderland, Hartlepool and Eaglescliffe, All services would involve interchange at Peterborough, in addition to extended journey time, which have both been demonstrated in internal and external (*Rail passengers’ experiences and priorities during engineering works*, Passenger Focus, 2012)passenger surveys to be unacceptable and act as a deterrent to passengers. With the exception of Hartlepool[[2]](#footnote-1), GC services would be reduced in competitiveness to those on a par with current non-GC services operating from the same station and remove the market conditions that enabled GC to feasibly operate under an Open Access Agreement (figures taken from published timetables for the relevant routes on 16th January 2013). A similar situation exists in the North West, with GC only remaining competitive at Brighouse (1 to 2 additional interchanges, 60 minutes extended journey time). All of these figures are before any engineering time is added to schedules. As an Open Access Operator GC needs to consistently meet and exceed passenger operational expectations to retain commercial viability.
  4. Under Section D4.6.2 (b), (d) and (e) of the Network Code, GC believes travellers have a right to expect a reasonable range of options for travel into London. GC believes, in instances where RoUs severely reduce capacity, paths should be allocated to GC in order that we can satisfy customer demand and retain commercial viability.
  5. As a result of the planned TBW between Woolmer Green and Hitchin South Jn on Sunday 5th May 2013 the capacity available for all services running to and from King’s Cross has been significantly condensed to 3 trains per hour in each direction. GC believes that this is clearly insufficient capacity for that weekend and, due to its impact on passengers, the HNIF signalling work should be deferred until the Christmas 2013 shutdown period and is unaware of any reasons as to why this is not possible.
  6. In it’s decision to take additional access in Week 6 NR has not properly considered the impact of GC being able to “supply customers on competitive terms” (Section 2.21, *Guidance on Appeals* (ORR, 2006)). In the absence of documentation to the contrary, GC considers that NR has failed to examine “all options” for alleviating GC’s concerns (Section 2.16, *Guidance on Appeals* (ORR, 2006)), namely the decision to take the possession to the detriment of GC rather than scheduling work at a less disruptive time.
  7. Further, in its decision to implement additional RoUs affecting the Fast lines between Woolmer Green and Hitchin South Jn in week 6 NR has failed to fulfil its obligation set out within Section 1.0 of the Introduction to the Engineering Access Statement 2013, to have the “aim of achieving the optimal balance between access to the network for train operations and access for maintenance, renewal and enhancement work”.
  8. NR’s subsequent decision to allocate the remaining capacity to Franchised Operators means that GC will be unable to operate through services between Sunderland/Bradford and London with passenger and commercial consequences outlined, in Sections 6.1 and 6.2 in particular, of this document.
  9. In justifying its capacity allocation NR refers to RoUs on the West Coast Main Line between Crewe and Carlisle requiring the use of rail replacement road transport as the reason for its decision to allocate two of the available paths to enable EC to operate services to/from Scotland. This in itself is another reason why GC believes that the NR decision to take the additional access in Week 6, rather than at a less disruptive time for operators and passengers, is flawed.
  10. From NR’s decision to allocate the remaining path to FCC on the basis of that operator’s ability to operate 12 car formations GC infers that the greatest weight in the Network Code Decision Criteria (Section D4.6) has been given to allocating capacity to those who can convey the most passengers through the affected area. Whilst there may be some logic to that argument in this particular case, when applied as a general principle it reduces the choice to ‘big trains vs. little trains’, ignores the complexity and nature of the Decision Criteria (in particular parts (a), (b), (d), (e) and (j) (Section D4.6.2, *Ibid.*) and unfairly discriminates against Open Access Operators who, by their nature, may have more limited access to resources in terms of rolling stock, crew and route capabilities (diversionary signing and restricted scope for station stops).
  11. In adopting the approach outlined in 6.10 NR has failed to take account of the compromise ability of GC to operate 10 car rather than 5 car trains and so provide extra passenger carrying capacity.
  12. The impact of the planned amendments to the RoUs is therefore that no access is available for GC to operate services between Peterborough and London for all of Sunday in Week 6 with subsequent negative impact on GC’s competitive capabilities.
  13. NR has not provided any evidence to demonstrate to GC that they have applied the Decision Criteria in the process of scheduling these RoUs. However, GC believes that the following interpretation would apply to the application of the Decision Criteria to this case:
      1. maintaining, developing and improving the capability of the Network;

GC recognises the need for NR to undertake work in order to achieve the aims of improving the capability of the network.

However, GC has not been provided with any evidence to demonstrate that the proposed RoU could not be re-timed to an alternative instance that would minimise overall disruption from the work. NR has neither invited any dialogue with GC as to the optimum way of packaging these works nor has NR demonstrated any evidence to show that alternative dates for delivery of the work has been considered. GC’s contention is that we have been provided with no evidence to demonstrate why an alternative and overall less disruptive means of scheduling this RoU would compromise NR’s ability to maintain and improve the capability of the Network.

* + 1. that the spread of services reflects demand;

The RoU in the format that it is currently proposed prevents GC from operating a reasonable spread of services between Sunderland/Bradford and King’s Cross to match demand for these services that is evident from historic passenger count data as shown in Appendix D.

From the evidence provided to GC, NR has not adequately considered the extent to which the proposed RoU creates disruption to GC’s commercial viability. From the very limited extent to which NR have made their decision-making process transparent in relation to this RoU, it seems that NR only determined how to allocate the severely reduced level of capacity between the users of the route rather than balancing the Decision Criteria as a whole.

GC’s contention in relation to this criterion is that NR should have undertaken a wider review of the proposed timing of the work involved to identify jointly with all passenger and freight operators whether an alternative date for the RoU could be identified that would allow the spread of train service operated to better meet the passenger and freight demand.

* + 1. maintaining and improving train service performance;

GC does not believe that this criterion is directly relevant to considerations in this case.

* + 1. that journey times are as short as reasonably possible;

As outlined in previous sections, the proposed works would restrict GC to a minimum of terminating services at Peterborough. This would impose a series of arduous interchange penalties and journey time increase on passengers with a minimum of 1 interchange for all passengers, plus wait time, reducing their travel choice considerably and unreasonably.

* + 1. maintaining and improving an integrated system of transport for passengers and goods;

By not allocating capacity to GC to King’s Cross NR has reduced the availability of an integrated system of transport for passengers at the following stations who will no longer have a direct route to London:

| Sunderland | Bradford Interchange |
| --- | --- |
| Hartlepool | Halifax |
| Eaglescliffe | Brighouse |
|  | Mirfield |
|  | Pontefract |

If NR consistently uses the same path allocation priorities outlined in Section 6.10 during engineering access of this magnitude then Open Access passengers will consistently experience a degrading of their rail transport system. GC believes this element of bias towards Franchised Operators is unacceptable given that Open Access Operators are contracted to run services under viable market conditions.

Furthermore the scheduling of this work on a weekend where there are rail replacement buses in place on the West Coast Main Line creates unreasonable and unacceptable restrictions on “viable alternatives” (*Guidance on Appeals* (ORR, 2006) for all Operators and passengers wishing to access London, which represents the largest passenger flow, as a general destination, in Great Britain (*Station Usage 2010/2011* (Delta Rail, 2012)).

* + 1. 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;

The proposed RoUs prevent GC from operating a direct service by rail between Sunderland/Bradford and London King’s Cross for which there is considerable demand as evidenced in Section 6.1. This is to the detriment of the commercial interests and viability of GC as outlined in Sections 6.2 and 6.11.

* + 1. seeking consistency with any relevant Route Utilisation Strategy;

GC does not believe that this criterion is relevant to considerations in this case. We are not challenging the requirement to undertake these works, merely the packaging of the disruption and the principles underlining the subsequent allocation of capacity.

* + 1. that, as far as possible, International Paths included in the New Working Timetable at D-48 are not subsequently changed;

GC does not believe that this criterion is directly relevant to considerations in this case.

* + 1. mitigating the effect on the environment;

GC does not believe that this criterion is directly relevant to considerations in this case.

* + 1. enabling operators of trains to utilise their assets efficiently; and

The proposed RoUs prevent GC from making efficient use of rolling stock and traincrew resources as outlined in various sections of this document.

* + 1. 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.

GC does not believe that this criterion is directly relevant to considerations in this case.

**decision sought from the PANEL**

* 1. The Panel is asked to determine that:

Network Rail has failed to demonstrate that the outstanding HNIF work could not have been rescheduled to a time when it was possible to comply with the timing requirements of Network Code D3.4 and as a consequence should be directed to remove the additional Restrictions of Use on the ECML in Week 6 thus allowing GC to run a normal Sunday service.

GC would appreciate guidance from the Panel regarding NR’s application of the Decision Criteria in the allocation of path capacity.

In addition, GC is seeking to recover full costs for preparing this dispute and damages in relation to time spent negotiating with NR on the timetable, which has necessarily diverted resources away from other work.

**signature**

|  |
| --- |
|  |

**Appendices and Annexes**

**See separate attachments**

1. Figure based on average historical passenger loadings into and from King’s Cross multiplied by the number of timetabled services on Sunday 5th May 2013. [↑](#footnote-ref-0)
2. Non-GC services will always add a 60 minute time increase and at least one additional interchange. [↑](#footnote-ref-1)