

DESCRIPTION OF BREACH OF LICENCE OBLIGATIONS IN RESPECT OF PORTSMOUTH RESIGNALLING PROJECT (the Project)

The relevant licence condition

1. The relevant licence condition is Condition 7 of Network Rail's network licence which provides a duty for Network Rail to take such steps as are necessary or expedient so as to achieve the purpose to the greatest extent reasonably practicable having regard to all relevant circumstances including the ability of Network Rail to finance its licensed activities.

2. The purpose referred to above is:

“to secure:

- (a) the operation and maintenance of the network;
- (b) the renewal and replacement of the network; and
- (c) the improvement, enhancement and development of the network,

in each case in accordance with best practice and in a timely, efficient and economical matter so as to satisfy the reasonable requirements of persons providing services relating to railways and funders in respect of:

- (i) the quality and capability of the network; and
- (ii) the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the network.”

The breach

3. We have concluded that Network Rail has breached Condition 7 by failing to comply with the duty and achieve the purpose to the greatest extent reasonably practicable having regard to all relevant circumstances including the ability of the licence holder to finance its licensed activities. In particular, between September 2006 and December 2006, it failed to secure the operation and maintenance of the network and the renewal and replacement of the network in accordance with best practice and in a timely, efficient and economical manner, and made decisions about the planning and execution of the Project which put it at material risk of failing to meet the reasonable requirements of its train operator

customers over a significant period of time, without taking all reasonable steps to identify, properly evaluate and mitigate the risks involved.

4. Two particular areas of concern have led us to this conclusion:

- (a) Network Rail's failure to identify risks effectively and to develop adequate mitigation measures, including contingency plans, to address the possibility of extended disruption to services and the potential effect of this on third parties; and
- (b) Network Rail's failure to manage the Project competently. In particular, it failed properly to assess the plans and scrutinise the work of its contractor, to the extent that you would expect of an infrastructure manager striving for best practice, even after it became aware that there was a high level of risk to the Project and given the relative inexperience of its contractor in delivering works of this nature.

Evidence and reasoning

5. We have considered this case in the light of our published economic enforcement policy and penalties statement¹. We state in paragraph 19 of our enforcement policy that we will give priority to enforcing obligations in licences where there is a detrimental effect on passengers, freight customers, funders, and other stakeholders. We have been concerned in particular about inadequate assessment of the risk and the effect on third parties, and about poor management of the Project.

The assessment of risk and the effect on third parties

6. When we met Network Rail on 8 May 2007 to discuss the potential breach, Network Rail explained that there are two broad categories of resignalling project. In a comparatively straightforward resignalling, the work can be divided into smaller stages. In these cases if there are problems after work has started, the situation can usually be retrieved relatively easily, for example by deferring part of the work until later. By contrast, if the resignalling accompanies a track remodelling it is difficult or impossible to reverse the process or reduce the scope once the existing track and signalling has been removed. In these cases there is a greater risk of a significant overrun and extended disruption to services.

7. We consider that Network Rail failed to plan the project adequately and in particular did not identify the risk of such a significant overrun. It has told us that its risk assessment indicated 100% likelihood of completion with a maximum delay of 13 days. Given the

¹ <http://www.rail-reg.gov.uk/upload/pdf/287a.pdf>

nature of the Project, Network Rail's experience of the signalling project at Sandbach-Wilmslow, the inexperience of the main contractor, and the evident problems which had materialised prior to the decision to proceed with the Project, we do not agree that this represents an adequate risk assessment.

8. On the basis of the information presented to us by Network Rail, we understand that it gave significant weight to the impact on itself of deferring the work – in terms of the cost of replacement buses, renegotiating possessions, reprogramming of other work, and the effect on staff resources.

9. However, we believe that Network Rail did not adequately consider the effect of its decisions on third parties. This was compounded by its failure to identify adequately the risks of a significant overrun. We stated in paragraph 31 of our enforcement policy that in our view effective communication with customers and funders about the delivery of outputs and of commitments in Network Rail business plans represents a reasonable requirement under Condition 7. Network Rail does not appear to have understood the effect on train operators or passengers of the risks involved in proceeding as scheduled or the consequences and costs of deferring the work.

10. As a consequence of these failings, Network Rail's mitigation plans were inadequate. This meant that when problems arose with the scheme in mid-January, it was less able to respond quickly and in a way which minimised the impact on train operators customers and their passengers than if it had complied with its licence duty.

Poor project management

11. Network Rail has a demanding programme of signalling renewals. Its own figures for expenditure on signalling renewals show this increasing by a factor of more than three (at constant prices) over the course of CP3. The increase from 2005-06 to 2006-07 was 61%. Certain key resources are in limited supply, both internally and externally. Network Rail must also negotiate the engineering possessions necessary to carry out the work at particular times. Network Rail told us that to postpone the work at Portsmouth would have had knock-in effects on other major resignalling projects, as key resources are fully allocated in advance. Effective project management is therefore very important. At Portsmouth, we consider that it failed to apply best practice in project management.

12. Network Rail decided to use a contractor relatively new to rail in the UK, and thus inexperienced in this country in the delivery of schemes of this nature. Network Rail carried out a risk assessment of the Project in September 2006. This revealed a 58% chance of success. Network Rail then set up regular meetings with the contractor and discussed the position with some of its sub-contractors, with the aim of reducing the level of risk and enabling the Project to proceed at the planned date. However, by 31 October 2006 a

“Commissioning Readiness Review” still showed that there was “Significant Risk” to the completion date of stage 1 of the Project due to insufficient progress having been made by the contractor since September.

13. In November, the contractor notified Network Rail of problems with the first stage of the work. Network Rail factored in an additional four weeks for the work. In its letter of 11 May, it told us that this November risk assessment indicated 90% confidence that the project would be completed with an overrun of not more than six days and 100% confidence that the project would be completed with an overrun of not more than thirteen days. At no point was a significant overrun of more than 13 days identified as a risk.

14. In light of the extensive overrun of the project this year, we are concerned about the accuracy of the risk assessment which formed the basis of Network Rail's decision to proceed with the project in November 2006, and the adequacy of the information from its contractor on which it was based. We do not comment on whether Network Rail's risk assessment figures represented an acceptable level of risk for a best practice infrastructure manager to take. We consider that Network Rail's project management, and its reliance on the project management of a company new to this type of work, failed to identify weaknesses in its contractor's management of its sub-contractors and its preparedness to carry out the work and complete it on time. If Network Rail had understood these weaknesses better, it should have identified, and been better able to plan for, the risk of a significant overrun and extended disruption to services.

Office of Rail Regulation

6 June 2007