

Office of the PPP Arbiter

Press Notice 01/10

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PPP Arbiter sets final costs for Tube Lines and confirms funding gap for London Underground

Chris Bolt, the Arbiter for the London Underground Public-Private Partnership (PPP) Agreements, today published his final directions and guidance on Tube Lines' costs for the 7½ years from 1 July 2010. He has allowed £4.46 bn, an increase of £65m on his draft directions published in December.

Chris Bolt said: "I have listened carefully to the representations made by both Tube Lines and London Underground, and made a number of changes to my draft directions. Overall, this leads to a small increase in the costs allowed for the next Review Period."

The final assessment of costs exceeds the amounts that London Underground has said that it is able to afford. London Underground has argued that Tube Lines should borrow to cover the gap in the next 7½ years, with its payments to Tube Lines then increased in the remaining 15 years of the contract to cover the additional financing costs. Tube Lines has argued that it would represent poor value for money if it raised additional finance, and that the Arbiter has discretion under the PPP Agreement to set a level of payments higher than that notified by London Underground.

The draft directions on ISC and financing, which are also published today, assume that London Underground meets the efficient level of costs directed by the Arbiter in full over the next 7½ years.

Chris Bolt added: "If I adopted London Underground's preferred interpretation of the contract, this would not remove the problems of affordability resulting from my final directions on costs. Any Tube Lines financing would require additional prudential borrowing approval which the Department for Transport has indicated that it is unlikely to give. It could also mean that the revised terms constitute a material

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change in risk and could make it impossible to raise finance. So I am giving London Underground a further opportunity either confirm that it is able to meet the full costs of its requirements or to revise them.”

The Arbiter proposes to issue his final directions on ISC and financing on 29 April.

ENDS

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Notes for editors

1. The PPP Agreements contain provisions for a Periodic Review to take place every 7¹/₂ years. On 8 December 2008, London Underground issued restated contract terms for Tube Lines and set its Affordability Constraints; Tube Lines responded to this on 30 June 2009 with updated pricing. The contract allows time for a period of negotiation or for a reference to the Arbiter for directions on future pricing, prior to the start of the second 7¹/₂ year review period for Tube Lines on 1 July 2010.
2. The current reference sought directions or guidance on a number of matters including:
 - costs;
 - performance revenues;
 - Infrastructure Service Charge (ISC) payments; and
 - financing requirements

The final directions and guidance published today cover the first two issues. The draft directions published today address the remaining issues. The full text of the Arbiter's decisions and the supporting analysis is published on his website: <http://www.ppparbiter.org.uk>.

3. The dates for the key remaining stages in the Periodic Review are as follows:
 - 9 April: final date for representations on draft directions on ISC and financing
 - 29 April: publication of final directions on ISC and financing.
 4. Directions given by the Arbiter modify the contract unless both Parties agree to set the direction aside. The Arbiter also has powers to make directions on matters which are ancillary or incidental to the matter referred to him.
 5. The PPP Agreements contain a Dispute Resolution Agreement. Claims for breach of contract are resolved, ultimately by the courts, and are not within the scope of the Arbiter's functions.
 6. The remit of the PPP Arbiter is set out in the GLA Act and is supplemented by contractual provisions included within the PPP Agreements. Under the terms of the GLA Act, the Arbiter gives directions on matters specified in the PPP Agreements or guidance on any matter relating to a PPP Agreement, when requested to do so by a PPP Party. The PPP Arbiter's role is principally to ensure that any differences between London Underground and the relevant Infraco about the ISC to be paid to the Infraco or about efficiency and economy can be resolved independently, swiftly and with certainty.
 7. The Arbiter is appointed by the Secretary of State, but is independent of Government and of the PPP Parties. Chris Bolt was appointed as the first Arbiter on 31 December 2002 and his appointment runs until 30 June 2011.
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