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**From:** Anthony Rush [rush\_aj@██████████]  
**Sent:** 07 September 2010 07:31  
**To:** 'Fitchie, Andrew'; Richard Jeffrey; David Mackay  
**Subject:** RE: Tomorrow

Thanks Andrew,

I have made the corrections below. I am sure that David will restyle the presentation – he may for example be more open about “last chance” and “taking in pain” and not underline as I have.

Regarding DRP – good thought – they have mounted a couple since we started with Ed. I suggest that Richard adds to his letter something like. “I would make it clear that any settlement will have to embrace the current crop of DRP’s”.

Tony

Dear Mr Reid/Goss,

I have pleasure in enclosing the various papers which Mr. Ed Kitzman has been working on with Mr Anthony Rush and Mr James Molyneux under the guise of Project Carlisle. Mr Rush and Mr Molyneux tell me that at a meeting last Sunday they and Mr. Kitzman agreed that these papers formed a framework on which the Infraco Consortium and **tie** could reach a commercial compromise recognising that there will be no “winner”. Moreover they consider they cannot materially take matters any further at this juncture. They regard their work as being “Heads of Terms” which may be converted into a binding legal agreement including a revised, but certain, price.

I have no doubts that individual parties within the Infraco Consortium may prefer a more open ended solution. However I have studied the papers and discussed their genesis with Mr Rush and Mr Molyneux and I am happy to confirm that the terms they outline meet our stakeholder requirements for truncating the Infraco Contract.

Given 48 hours notice I would be happy to meet your nominated representatives (I am assuming Mr. Enenkel for Bilfinger Berger and Mr. Wakeford for Siemens) to agree an adjustment (upwards or downwards) to the revised prices offered in the documents as “fair value”. I would make it clear that any agreement reached on my part will be subject to Board Approval and Contract. Please be assured that I will take steps to arrange urgent approval if it proves necessary.

In presenting the product of their work with Mr. Kitzman my two “experienced” colleagues expressed certain overriding views/caveats:

- Bilfinger Berger and Siemens had not as yet reached a settled position with each other.
- Mr. Kitzman is not speaking for both Bilfinger Berger and Siemens.
- They are concerned that this may delay and even prevent us reaching a resolution by this route.
- They advise me that there is a desire on your part to terminate the Infraco Contract at St. Andrews Square (eliminate Part B) and I confirm that if this is the case you should propose that before we meet.
- They also report your wish to re-novate CAF to **tie**, thus eliminating the joint and several responsibilities for integration. If that it so, please formally propose it.
- They are concerned that there are fundamental differences between Bilfinger Berger and Siemens which may even go as far as a desire by the two Consortium members to disengage with each other and/or change the structure of the Consortium relationships.

We have increasingly become concerned at what we have seen as a "fractured" relationship between the Consortium members at site level. This was part of my thinking when writing to you in the New Year. Your responses then, and the letters I have received from you recently, have assuaged any concern that there was disunity at the higher levels in your companies.

A strength your team offered us was the commitment to work together in partnership to deliver an integrated tram system which you were jointly and severally responsible for. You undertook a specific duty of care to manage the design of the Infraco Works, accepting novation of SDS as the designer of the civil engineering works. However, it is now clear to us that the Consortium members do not work together as an integrated team. We are progressively drawing your attention to the matters you need to remedy and look forward to receiving constructive plans from you on these subjects.

The expressed intention of a commercial compromise has to be, amongst other things such as price and time certainty, to rebuild and reinstate the strengths and duties you took on in May 2008. I would urge you therefore to bring out into the open for discussion and to settle any disagreement that may exist between Bilfinger Berger and Siemens as to the way forward. I assure you that **tie** will do all that is necessary to bring about a successful resolution provided it does not prejudice **tie**'s position. I am confident that you will also take steps to make certain that this initiative is given the best chances of succeeding in building a new and better relationship, and settling all outstanding differences.

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**From:** Fitchie, Andrew [mailto:Andrew.Fitchie@dlapiper.com]  
**Sent:** 07 September 2010 06:47  
**To:** rush\_aj@[REDACTED] Richard.Jeffrey@tie.ltd.uk; David.Mackay@tie.ltd.uk  
**Subject:** Re: Tomorrow

Following on from earlier traffic:

Last sentence second para not quite right, Tony.

Otherwise, only remaining comment is the one on DRPs.

Thanks for early work.

A  
A  
Andrew Fitchie  
Partner  
DLA Piper Scotland LLP  
T: [REDACTED]  
M: [REDACTED]  
F: [REDACTED]

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**From:** Anthony Rush <rush\_aj@[REDACTED]>  
**To:** Fitchie, Andrew  
**Cc:** david\_mackay@[REDACTED] <david\_mackay@[REDACTED]>; Richard Jeffrey <Richard.Jeffrey@tie.ltd.uk>; Jim Molyneux <jim.molyneux@gordonharris.co.uk>  
**Sent:** Tue Sep 07 06:28:41 2010  
**Subject:** RE: Tomorrow

Andrew

I hope all is well in Vienna.

Below my second iteration of the letter for David to send – I have reviewed it against your points. I would like it to go this morning.

Thinking over what we discussed yesterday – I am a little thrown with expressions of pleasure that the documents are one-sided and buttons down risk – that was the clear brief we were given. The downside is that the “desperados” in Infraco will go all out to reinstate the S4 advantages by insinuating a high price. The message we have to get over to the higher levels in Infraco is “don’t listen to them”.

Tony

Without Prejudice – Private & Confidential.

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**From:** Fitchie, Andrew [mailto:Andrew.Fitchie@dlapiper.com]

**Sent:** 06 September 2010 20:33

**To:** rush\_aj@[REDACTED]

**Subject:** Re: Tomorrow

Will check out it when it arrives for your dispatch to tie when ready.

Some notions for letter. Ignore all or any.

Much has been achieved where before there was great distance between mindsets. Pleased with progress with EK as point man,

Displeased to suddenly find clear signs of disconnection/disinterest within the consortium, affecting an imperative both sides had signed up to.

Unless it is removed quickly, this echo of BSC dysfunction risks creating stakeholder unease that a solution is deliverable and makes Carlisle more difficult and more vulnerable.

Extremely important that a transparent, engaged and full consortium response is forthcoming as soon as practicable.

Counting personally on the senior executives to have the foresight and control to have their organisation and team put aside their differences and apply resource to reaching an outcome to benefit the Project.

Kind regards

Andrew Fitchie

Partner

DLA Piper Scotland LLP

T: [REDACTED]

M: [REDACTED]

F: [REDACTED]

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**From:** Anthony Rush <rush\_aj@[REDACTED]>

**To:** Torquil Murray <torquilmurray@[REDACTED]>; Glover, Joanne

**Cc:** Michael.Paterson@tie.ltd.uk <Michael.Paterson@tie.ltd.uk>; Fitchie, Andrew

**Sent:** Mon Sep 06 19:06:29 2010

**Subject:** Re: Tomorrow

The three of you can brief me. I had programmed doing something else for tie tomorrow morning but I will do that tonight and let Andrew have it when he arrives in Vienna

So I will be in by 930

Tony

Sent using my BlackBerry® from Orange

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BoW Tel [REDACTED]  
Mobile [REDACTED]  
email rush\_aj@[REDACTED]

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**From:** torquilmurray@[REDACTED]  
**Date:** Mon, 6 Sep 2010 17:38:56 +0000  
**To:** Jo Glover<Joanne.glover@dlapiper.com>; Tony Rush<rush\_aj@[REDACTED]>  
**ReplyTo:** torquilmurray@[REDACTED]  
**Cc:** <Michael.Paterson@tie.ltd.uk>  
**Subject:** Re: Tomorrow

From my findings today I would recommend that Mike concentrates on the cat 2 items prior to any further 34.1 notices being issued  
Can discuss further in the morning  
Regards  
Torquil

Sent from my BlackBerry® wireless device

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**From:** "Glover, Joanne" <Joanne.Glover@dlapiper.com>  
**Date:** Mon, 6 Sep 2010 18:17:48 +0100  
**To:** <rush\_aj@[REDACTED]>  
**Cc:** <torquilmurray@[REDACTED]>; <Michael.Paterson@tie.ltd.uk>  
**Subject:** Tomorrow

Tony - I forgot to ask you, sorry.

Is Mike needed tomorrow morning in Glasgow?

Thinking being that Torquil can brief us on today's findings and Mike could use the time to progress the Category 2s?

Torquil - Tony is aiming for 10am kick off tomorrow.

Thanks,  
Jo.

Joanne Glover  
Solicitor

DLA Piper Scotland LLP

T [REDACTED]  
F [REDACTED]  
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[www.dlapiper.com](http://www.dlapiper.com)

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