***TTP 2089***

***Network Rail Infrastructure Limited Sole Reference Document***

1. **DETAILS OF PARTIES**
   1. The names and addresses of the parties to the reference are as follows:-
      1. FreightlinerLimited, (Company number 03118392) whose Registered Office is at The Lewis Building, 35 Bull Street, Birmingham, B4 6EQ

Freightliner Heavy Haul Limited (Company number 3831229), whose Registered Office is at The Lewis Building, 35 Bull Street, Birmingham, B4 6EQ

* + 1. Network Rail Infrastructure Limitedwhose Registered Office is at 1 Eversholt Street, London NW1 2DNNetwork Rail ("the Defendant")).

1. **CONTENTS OF THIS DOCIMENT**

This Response to the Claimant’s Sole Reference includes:-

* + 1. 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.
    2. 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.
    3. Any further related issues not raised by the Claimant but which the Defendant considers fall to be determined as part of the dispute;
    4. The decisions of principle sought from the Panel in respect of
       1. legal entitlement, and
       2. remedies;
    5. Appendices and other supporting material.

1. **SUBJECT MATTER OF DISPUTE**

Network Rail does not dispute Freightliner Limited’s right to bring this dispute in accordance with condition 5 of Network code

Network Rail confirms that the dispute relates to Network Rails Decision to publish changes to Anglia Train Planning rules (TPR) for the May 23 Timetable.

The nature of the dispute in section 4 of Freightliner Limited’s sole reference document relates to whether Network Rail operated in accordance with the Guiding Principles for changing TPRs

This Dispute relates specifically to the amendments to the Rules for EA1560

Network Rail has been collaborating with operators to agree Timetable Planning Rule (TPR) changes on the Ely March Peterborough (EMP) route for around 2 years.

The rules required review as the existing headways do not accurately reflect the capability of the infrastructure and local operations staff and operators including Freightliner had requested additional timing points on the Line of Route.

Collectively, the TPR changes are designed to improve the reporting and timing of trains in TRUST and help to plan trains more accurately. The changes will also more accurately reflect the capability of the network.

Prior to May 2023 a generic 4-minute headway applied between Ely North Junction and King’s Dyke in either direction. However, this headway was shown not to be achievable at both locations.

There is currently a range of signalling on the EMP route. At either end of the route there is multiple aspect signalling/TCB (Track Circuit Block) currently controlled from Cambridge PSB or Peterborough respectively. There are islands of Absolute Block (AB) and manual signalling around Manea and Stonea and again from Three Horse Shoes through Whittlesea to King’s Dyke with some semaphores. In between the islands, the route from Stonea through March to Three Horse Shoes is TCB although controlled from manual signal boxes. Manual signal boxes exist at Manea, Stonea, March South, March East, Three Horse Shoes, Whittlesea and King’s Dyke.

Not all of the AB sections are fully track circuited. There is no berth data available from south of Manea to west of King’s Dyke. CCF is also unavailable.

Changes to the planning geography have been agreed with multiple operators with additional mandatory timing points. New tiplocs/timing points have been added at Third Drove Signal CA923 (down direction only); Manea Signal M43 (down) and Manea Signal CA924 (up); March South Signal MS933 (down) and March South Signal MS934 (up); Eastrea Signal THS1 (down) and Eastrea Signal W6 (up). The signal boxes at Stonea, Three Horse Shoes and King's Dyke also became mandatory timing points in both directions. In addition, there were line code changes between Ely North Jn and Ely West Jn.

New headways between CA923/CA924 and MS933/MS934 and between Three Horse Shoes and King’s Dyke reflect the AB nature of the signalling system and align with the agreed additional timing points. As a consequence of introducing additional timing points, new sectional running times (SRTs) have also been agreed.

Some new junction margins have been agreed and proposed at Ely West Jn (1 margin), March (7) and March West Jn (5). At March and March West Jn these new rules reflect specific movements where (in the absence of a more specific rule) a generic 2-minute margin would otherwise apply even if this value is totally unachievable.

It is Network Rail’s position that it has acted in accordance with Part D of the Network Code when publishing the Train Planning Rules for the May 23 Timetable and used the Guiding Principles for changing the TPR’s.

A timeline of events for EA1560 are detailed in appendix 1

Final published headway rules are detailed in appendix 2

1. **EXPLANATION FROM THE DEFENDANT’S PERSPECTIVE OF EACH ISSUE IN DISPUTE**
   1. **Issues where the Defendant Accepts the Claimant’s Case**

**4.1.1** Network Rail accepts Freightliner Limited’s SRD (4.4) the rules prior to changes proposed for May 23 do not reflect the nature of the signalling systems in place, or the time taken for trains to pass each section. This forms the justification for changing rules. Freightliner Limited were one of the operators that requested the rules be reviewed in the first place.

**4.2 Issues where the Defendant qualifies or refutes the Claimant’s Case**

**4.2.1** Network Rail accepts that the due to varying circumstance these rule changes have been ongoing since August 2019 most notably due to the deferral of the ECML rewrite. However, Network Rail does not accept that this has any relevance to the dispute and the dispute should be directed on the basis that Network Rail met the obligations of Part D 2.2.2 to 2.2.5 for the publication TPR’s for May 23 timetable

**4.2.2** Network Rail does not accept Freightliner Limited’s argument that Network Rail must produce a capacity study were requested by operators to provide understanding. (5.2 of Freightliners Limited’s SRD)TPR guiding principles **(**Freightliner appendix 2) 1.2.3The impact of a TPR value change must be considered by all parties concerned and if deemed appropriate, a timetable impact assessment undertaken

It is Network Rail’s view that in this case the guidelines were applied the requirement for an impact assessment was considered by all parties and the decision to defer production on the basis that the ECML timetable would render any such exercise moot was agreed through the TPR forum and it was Network Rails LTP and TPR specialists understanding that the changes have not have a material effect on the capacity. Once the ECML WTT rewrite was deferred Network Rail did conduct some advanced works which resulted in 1 Freightliner service needing to be amended which has now been accommodated by Network Rail and agreed by Freightliner. This vindicates the decision that an impact assessment was not required, there is no obligation for Network Rail to produce an impact assessment simply because one operator continues to demand it, and the Guiding Principles do not create such an obligation.

It is also not the sole responsibility of Network Rail to produce an impact assessment. Freightliner Limited have the option to produce such study but have not offered to do so.

Freightliner have in their SRD (4.5) indicated that they along with other operators are generally in agreement with Network Rail that the changes to planning Geography and headways proposed reflect reality between Ely, March and Peterborough. Also, the TPR forum held on the 27/06/2022 which Freightliner was in attendance notes state that ‘TPR’s are fine’. (See appendix 3)

**4.2.3** Network Rail does not accept point (5.4) of Freightliner Limited’s argument that Network rail failed to comply with published processes. It is Network Rail’s view that is has acted in accordance with Part D of the Network Code when publishing the Train Planning Rules for the May 23 Timetable and used the Guiding Principles for changing the TPR’s.

In regards to the decision criteria it was Network Rail’s understanding that the values were generally agreed and therefore there was no need to conduct a decision criteria review. We make a number of TPR changes per annum many without dispute when consultation concludes that we have identified the right values we would not then do the lengthy exercise of decision criteria application as we felt we had consent for the values being correct.

* 1. **Issues not addressed by the Claimant that the Defendant considers should be taken into account as material to the determination**
     1. Network Rails obligation is to developTPR values to accurately reflect the capability of the Network, ensuring timetables perform to a high standard while also making best use of the infrastructure available and to ensure the safe operation of the railway. Freightliner have agreed that the previous rules did not reflect the capability of the signalling system. Freightliner are in agreement that the new rules reflect the operational running of the railway and have confirmed this in writing as well as through engagement in the TPR forums. The decisions sought from Freightliner indicated in FL SRD (6.4) include that we revert to rules that they agree are not fit for purpose. Network Rail do not accept this request as the original rules do not reflect the capability of the infrastructure.
     2. Networks Rails advanced timetabling work for May 23 using the new more accurate rules showed that 1 existing Freightliner Limited service was impacted by these TPR changes. Network Rail has collaborated with Freightliner Limited to ensure that sufficient accommodation of this service has been found. As of 27/09 there are zero existing Freightliner services not accommodated in the May 23 timetable using the new rules that Freightliner agree reflect the capability of the infrastructure. The May 23 timetable production period started on the 26th September and is set to be offered to operators 09th December. Any new services in Freightliner’s May23 PDNS are subject to this validation during this Timetable development period.
     3. With Regards to TPR changes in March, Freightliner have assumed (as stated in their SRD) that they have not been Quality Assured. Network Rail confirms that Quality Assurance has been conducted by the Capacity and Capability Analysis team. All TPRs were marked as Pass/Suitable Use, with the exception of Junction Margins and Headways. For Junction Margins and Headways a ‘fail’ was caveated by the Capacity and Capability Analysis team that the values had been superseded by the proposed TPR values in V0.3 of the 2023 rules, which are suitable for use (see appendix 4). The junction margins for March, in V0.3 of the 2023 rules were calculated using the principles of 1.6 in the National TPRs (see appendix 5). The March margins were also discussed in TPR forums held on the 6/04/2022, 11/05/22 and 27/06/22. Freightliner did not attend the meetings held on 06/04/22 and 11/05/22.
  2. **Why the arguments raised in 4.1 to 4.3 taken together favour the position of the Defendant**
     1. Network Rail and Freightliner Limited agree that the previous rules are not accurate and that the new rules reflect the operation of the railway in a more accurate way. Network Rail acted in accordance with Network Code Part D for changes to TPR’s for the May 23 Timetable. Network Rail have so far accommodated all of Freightliner’s existing services that were impacted by this change. The May 23 production period continues until the 09th December.

Key milestone dates for Network Code Part D as follows.

* D-64 and D-60, Network Rail shall consult with Timetable Participants in respect of any proposed change4s to the Rules.

May 23 dates - Between 25/02/2022 and 25/03/2022

**Consultation has been ongoing since October 2020**

**TPR Forum held 19/08/2021**

**TPR Forum held 13/01/2022**

* Following consultation in accordance with Condition D2.2.2, and not later than D-59, Network Rail shall provide to all Timetable Participants a draft of the revised Rules (the “Draft Rules”).

May 23 dates – 01/04/2022

Network rail published Timetable planning rules on 01/04/2022 but continue consultation and discussions

* Section 2.2.5 Following D-54 and by D-44, Network Rail shall consider the representations and objections made to it by Timetable Participants pursuant to Condition D2.2.4 and any changes to International Freight Train Slots reflected in the applicable International Freight Capacity Notice and may amend the Draft Rules. Not later than D-44, Network Rail shall issue the final revised Rules to all Timetable Participants.

May dates between 06/05/2022 and 15/07/2022

**TPR forum held 11/05/2/22**

**TPR forum held 27/06/2022 with notes confirming TPR’s are fine (Appendix 3)**

**V4 of Timetable planning rules published on 15/07/2022**

**4.4.2** Network Rail accepts that we have could have followed the TPR guiding principles more effectively and efficiently including improved communication with Freightliner and regrets that these changes have been ongoing for so long. However, it is broadly agreed that the new values accurately reflect the capability of the infrastructure and do not appear to be the in dispute and therefore should remain.

1. **DECISION SOUGHT FROM THE PANEL**

**5.1** Network Rail requests that the panel should uphold the decisions for NR to publish V4 TPR changes to EA1560. Freightliner Limited agree that these rules more accurately reflect the operational railway. Network Rail have already resolved the impact to Freightliner services during our advanced work and seeks that panel enables Network Rail to continue to work collaboratively with Freightliner to resolve any further issues raised by Freightliners May 23 PDNS during the validation process.

1. **APPENDICES**

The following are contained in the appendices at the end of the document

Appendix 1 - Timeline of events for Network Rails adherence to Network Code Part D 2.2

Appendix 2 - V4 5.2 of TT planning rules EA1560 Headways

Appendix 3 - Extract from TPR forum with Freightliner in attendance confirming TPR’s are fine***.***

Appendix 4 - Quality Assurance Output

Appendix 5 – National TPRs 1.6 – Calculation Junction Margins

**7 SIGNATURE**

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| For and on behalf of  *Network Rail Infrastructure Limited*  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signed  -----------------------------------------------------------  Print Name  MichaelDavis \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Position  Timetable Production Manager  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**The Appendices**

Following attachments are provided with this documentTTP 2089 Appendices 1-5 attached separately.