| **Joint submission to Timetabling Panel**  **By**  **Freightliner Limited**  **and**  **Network Rail Limited**  **TTP Reference 306** |
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**1                    DETAILS OF PARTIES**

1.1               The names and addresses of the parties to the reference are as follows: -

(a)                 Freightliner Ltd whose Registered Office is at 1 Eversholt Street, London NW1 2FL ("the Claimant"); and

(b)                [Full company name] whose Registered Office is at [Full address] ("[insert short form or abbreviation for Company name i.e. its initials]" ("the Respondent")).

(c)                 Freightliner Ltd Contact: Simon Barrett

Timetable Planning Manager

Tel: 0207 200 3930

Fax: 0207 200 3979

E-mail: [redacted]

**2                    THE PARTIES’ RIGHT TO BRING THIS REFERENCE**

2.1               This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition D5.1 of the Network Code*.*

**3                    CONTENTS OF REFERENCE**

The Parties have together produced this joint reference and it includes: -

(a)                 The subject matter of the dispute in Section 4;

(b)                A summary of the issues in dispute in Section 5;

(c)                 A detailed explanation of the issues in dispute prepared by the claimant with a paragraph by paragraph response from the respondent(s) in Section 6;

(d)                Any further issues raised by the respondent in Section 7;

(e)                The decisions of principle sought from the Panel in respect of legal entitlement and remedies in Section 8; and

(f)                   Appendices and other supporting material.

**4                    SUBJECT MATTER OF DISPUTE**

4.1               Network Rail has issued a Possession Strategy Notice for the implementation of Water Orton Resignalling scheme and associated infrastructure enhancements. Freightliner Ltd and Network Rail are not in agreement with the proposed commissioning possession in Week 35 2011 at Water Orton. This possession requires Freightliner Ltd to divert six Lawley Street FLT services and prevents access to/from Birch Coppice Sidings for five Freightliner services (including one light engine at the busiest time of the year, the autumn peak, prior to Christmas).

4.2               The Part or Condition that the dispute relates to or is associated with is Network Code D2.2.4 (b) whereby in particular, the application by Network Rail of the Decision Criteria.

4.3       A copy of the relevant extract(s) from the document(s) referred to above are attached at Annex 1 Containing:

* + 1. The Final PSN Document for Water Orton dated 15 September 2009.
    2. Freightliner Ltd’s response to Final PSN Document dated 05 October 2009.
    3. Freightliner Ltd’s referral to ADC dated 05 October 2009.
    4. E-mail exchange between Freightliner Ltd & Network Rail dated 24 November 2009.
    5. Network Rail’s reply to Freightliner Ltd PSN response dated 02 December 2009.

**5                    SUMMARY OF DISPUTE**

* 1. Network Rail issued Possession Strategy Notice in accordance with Part D 2.2.1 of the Network Code. Freightliner Ltd has responded to Network Rail in accordance with Part D 2.2.2 of the Network Code. Freightliner Ltd has agreed to most of the possessions. In our response to the PSN we objected to two items, both of the commissioning blockades.
  2. Since our response we have reluctantly agreed to the phase 2 commissioning as Freightliner Ltd has requested some of the changes involved especially in the Lawley Street/Saltley area.
  3. However, Freightliner Ltd cannot accept the phase 1 commissioning blockade of 2350 Friday – 0600 Monday in Week 35. These possessions affect six Freightliner Ltd services to/from Lawley Street FLT and it prevents access to/from Birch Coppice Sidings for five services including one light engine. Freightliner Ltd has identified suitable, but not ideal diversionary routes and paths for the Lawley Street services but there is no diversionary route available for the Birch Coppice services. These services all have Level 1 rights and will convey W10 traffic with the exception of the light engine. Four of the five services to and from Birch Coppice are contract trains with customers and if Freightliner Ltd is unable to operate these trains it will be in breach of contracts with Maersk and Allport respectively.
  4. Freightliner Ltd have asked Network Rail to either start the possession at 1000 Saturday or find a method of working to pass the trains from Water Orton via Whitacre Jn to Kingsbury Jn and onto Birch Coppice and the same in reverse, using for example single line working, Network Rail has stated this cannot be done.
  5. Freightliner Ltd have suggested to Network Rail that in the event of not being able to start the possession at 1000 on a Saturday it needs to be moved to a Bank Holiday weekend, Christmas or Easter. August Bank Holiday was Freightliner Ltd’s preferred weekend for this work but this has been dismissed by Network Rail as they state in their reply to our response that they were asked by operators to move this away from August Bank Holiday. Freightliner Ltd wasn’t one of the operators asked, had Freightliner Ltd been asked we would have declined the offer to move it away from August as this was our preferred weekend.
  6. Freightliner Ltd would have offered Network Rail longer times at any Bank Holiday weekend, but we are told for a variety of reasons that this cannot be done either at August Bank Holiday, Christmas or Easter. As this work is an enhancement scheme Freightliner Ltd is of the opinion that the date of delivery is not critical and could be done at a later date. A “less worse” time would be a weekend in January when overall volumes of business are reduced post Christmas and there may be some capacity on other services to move some of the containers but there would still be services cancelled. This has been verbally suggested to Network Rail.
  7. Freightliner Ltd believes that Network Rail has dismissed the idea of an August Bank Holiday commissioning without considering sufficiently Freightliner Ltd’s contractual rights or the contracts that we hold with customers or the fact that the end of October is Freightliner Ltd’d busiest time of the year, as we move goods to fill the shops prior to Christmas. We have been advised that the passenger TOC’s requested this weekend rather than August Bank Holiday. While Freightliner Ltd has sympathy with passenger TOC’s not wishing to disrupt its passengers over a Bank Holiday they have alternatives (bus substitution and/or diversion) but Freightliner Ltd has no alternative for its traffic to/from Birch Coppice.
  8. Freightliner Ltd believes that in making its decision to impose a blockade commencing 2350 on Friday in Week 34 (and into Week 35), which blocks access to Birch Coppice terminal Network Rail has not adequately taken into account the Decision Criteria laid out in D6 (c), (d) or (o).
  9. The list of Birch Coppice services affected are as follows:

4M50 0216 (SO) Millbrook FLT – Birch Coppice Sdgs

4O14 0639 (SO) Birch Coppice Sdgs – Southampton MCT

4M75 0005 (SO) Felixstowe North FLT – Birch Coppice Sdgs

4G20 0808 (SO) Lawley Street FLT – Birch Coppice Sdgs

0G97 09||07 (SO) Birch Coppice Sdgs – Lawley Street FLT

Also listed below are the Lawley Street services affected:

4M92 1748 (FO) Felixstowe South FLT – Lawley Street FLT

4L69 0120 (SO) Lawley Street FLT – Felixstowe South FLT

4O84 0220 (SO) Lawley Street FLT – Grain Thamesport

4M72 0140 (SO) Tilbury RCT – Crewe Basford Hall SSN (via Lawley St)

4L90 0907 (SO) Lawley Street FLT – Felixstowe North FLT

4M88 0357 (SO) Felixstowe North FLT – Lawley Street FLT

**6                    EXPLANATION OF EACH ISSUE IN DISPUTE WITH RESPONSE**

6.1.1 Freightliner Ltd believes that the loss of these services at our busiest time of the year is unacceptable, and will result in breach of contract with two major customers – Maersk & Allport. These services have to run as close to their booked slots as Freightliner Ltd does not own Birch Coppice terminal and terminal capacity is very limited due the complex layout of Birch Coppice. Freightliner Ltd is unable to divert these services into Lawley Street terminal as this terminal is operating at capacity already. The loss of these services could seriously affect any future business from our customers, as we will be unable to offer our contracted services. Our major competitors in the road transport industry are always able to offer a service.

6.1.2 Response to Issue 1 by Respondent.

**7                    ANY FURTHER ISSUES RAISED**

7.1               None.

7.2               Response by Claimant.

**8                    DECISION SOUGHT FROM THE PANEL**

8.1               The Panel is asked to determine:

1. Freightliner Ltd asks the panel to direct Network Rail to remove the possessions.

Or

1. Freightliner Ltd asks the panel to direct Network Rail to amend the possession times to enable Freightliner Ltd to run its services to/from Birch Coppice.

Or

1. Freightliner Ltd asks the panel to direct Network Rail to find a method of working to pass our services through the affected area.

Or

1. Freightliner Ltd asks the panel to direct Network Rail to move the possessions to a Bank Holiday weekend or Christmas holiday period.

**10                    SIGNATURES**

For and on behalf of Freightliner Ltd For and on behalf of *xxxxxxxxxxxxx* Ltd

Signed Signed

Print name Simon Barrett Print name

Position: Timetable Planning Manager Position:

Date: Date:

***LIST OF APPENDICES, ANNEXES AND SUPPLEMENTARY MATERIAL***