



Our ref
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Dear Tim

Periodic Review 2008 - Compensation from Possessions

This is the response of Freightliner Group Limited (incorporating Freightliner Limited and Freightliner Heavy Haul Limited) to the consultation dated 8th April 2008 entitled: Periodic Review 2008: Train Operator Compensation from Possessions - consultation on changes to the compensation regime for passenger operators and Part G of the Network Code for all operators.

The review of compensation arrangements for possessions is a serious business issue for Freightliner Group Limited (FL) as it will directly affect our bottom line with no future opportunity to renegotiate a new franchise deal, unlike passenger operators.

Proposed Changes to Part G

We are concerned by the Office of Rail Regulation's (ORR) proposals to amend Part G of the Network Code before any solutions on a revised freight operator compensation scheme has been found. Freightliner is unable to properly assess the changes proposed before a revised freight compensation regime is agreed. It may be the case that freight operators, Network Rail (NR) and the ORR are unable to agree a satisfactory regime by July or indeed at all and it is therefore not appropriate to amend the Network Code until this is known.

We also have a comment with regard to the last sentence proposed paragraph G9(e). The proposed obligation on Network Rail to consult with train operators is vague. Freightliner would be unable to assess if a Network Change materially affected our business if we were unsure whether any compensation was available. Such uncertainty would mean that we were unable to reasonably plan our business. We suggest that a more suitable sentence to be: "Network Rail shall advise Train Operators at the time of consultation over the proposed Network Change of the outcome of its negotiations with the Competent Authority or Government Body over what level of compensation is available"

Revised Possessions Compensation Arrangements for Freight

FL is participating in the meetings with NR and ORR to establish revised compensation arrangements for freight operators. FL supports in principle a revised approach to compensation that does not discriminate between Network Change possessions and non Network Change possessions, particularly as FL would like to see NR incentivised to make improvements to the Network wherever possible instead of replacing like with like.

Freightliner Group Limited (Reg. No. 05313119) is the ultimate parent company and controlling entity of Freightliner Acquisitions Limited (Reg. No. 05313136), Management Consortium Bid Limited (Reg. No. 02957951), Freightliner Limited (Reg. No. 03118392), Freightliner Heavy Haul Limited (Reg. No. 3831229), Freightliner Maintenance Limited (Reg. No. 05713164) and Freightliner Railports Limited (Reg. No. 05928006).

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Progress in finding a revised model has been slow and has proved more complicated than envisaged at the outset. FL is concerned that the route the review is going is to compensate for more possessions by means of liquidated costs rather than the larger disruptive possessions by means of actual costs and losses. FL is worried that this would leave it with unacceptable business risk. A combined regime of liquidated costs for smaller possessions and actual costs and losses for larger possessions is probably the most appropriate.

Freight operators have never paid an access charge supplement for possessions compensation and have never expected compensation for standard and pre-planned maintenance possessions on mid-week nights where diversionary routes are available. However we are concerned by proposals to substantially increase mid-week night possessions and we could not accept such changes with no compensation (see paragraph below on 7 day railway).

The costs and losses that FL currently claim for under Part G of the Network Code tend to be very "lumpy" with few but major possessions forming the majority of claims. One reason for this maybe that FL concentrates its efforts of collating claims when the costs and losses are considerable. When Network Rail propose possessions they do not indicate whether the work being undertaken is Network Change or not and it is difficult for operators to then try and match Network Change proposals (which may have been made several years before) to possession proposals.

FL has no wish to cancel services even if lost revenue can be recovered. FL will always try and find a way of running a service by another route if a line is closed. It is important in order to retain business to rail to offer customers a consistent and reliable service. It is always possible at anytime 24/7 to move freight by road and this is what we are competing against. When services have to be cancelled it is because there is no alternative available. In this cases we ask that we can be kept cost neutral for the direct losses (consequential loss of business due to poor customer service not being included). We do not wish this ability to claim losses to be replaced with a liquidated regime as it would neither keep us cost neutral in the case of possessions where there is no alternative or provide any incentive to Network Rail to plan possessions in a manner that avoided cancellation of freight services. Recovery of lost revenue can also occur when services are diverted via a route which is not gauge cleared or a route with length restrictions. Recovery of such lost revenue is also vital to freight operators who only make a return out of the last couple of wagons on any train.

Similarly other costs such as hiring locomotives can be disproportionately expensive and the charges can vary from £2500 per day to over £7500 per day and we would not wish these charges to be rolled into a liquidated regime either depending on supply and demand.

We note in the review of the passenger regime that the band between Band 2 and Band 3 has been set at 5 days (120 hours). In the view of FL 5 days is too high a threshold before bespoke compensation would kick in. The passenger regime does not appear to discriminate depending on days of the week or Bank Holiday periods. Freightliner would like to see NR incentivised to take as many major disruptive possessions at Bank Holidays (including Christmas and Easter). A 5 day disruptive possession on normal business days on a key route could be disastrous. We would suggest that a possible regime for freight should be that NR are incentivised to take possessions that would be disruptive to freight during Saturday evenings and nights and on Sundays. However care needs to be taken not to prevent or discourage a 7 day freight railway in the future by means of single line working and diversionary route. Such a regime would at least reflect a base line of where we are now.

7 day railway

We note that there are 2 different projections for the costs paid to passenger operators with and without the 7 day railway proposals, though it is unclear which routes it is assumed will be operating a 7 day service and whether this is running the existing WTT Sunday services more regularly or a Saturday style service.

FL is very keen to operate freight services 24/7 but accepts that routes can not be open 24/7 without any possessions to undertake maintenance and renewal of the railway. However we would like to see Network Rail planning to keep key freight corridors open 24/7 by a combination of single line working and diversionary routes. Such a policy should reduce the compensation paid

to freight operators for loss of business.

FL is very concerned however by NR's proposals to increase single line working to 8 hours a night, particularly on key freight routes (such as the Great Eastern). This will result in increased journey times, reduced capacity and lower reliability for freight services. We suggest that the effects of the 7 day railway are a separate measurement in the calculation of a new possession regime for freight. It is vital that the damage caused to freight services is cost reflective and properly recorded (such a suggestion is in no way an indication that we will accept 8 hour single line working on key freight routes). The figures shown in the ORR consultation indicate a benefit to passenger operators but do not take into account the dis-benefits to freight.

Yours sincerely

Lindsay Durham
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