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Peter Ruback, Esq.,  
Head of Network Regulation,  
Office of the Rail Regulator,  
1 Waterhouse Square,  
138 – 142 Holborn,  
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EC1N 2TQ.

Dear Mr Ruback,

This is the response of the Freightliner Group to the draft conclusions on local output commitments and the provision of information you published in December 2002.

### **Local Output Commitments**

The response on local output commitments is ordered by reference to the “questions for consultees” in paragraph 3.63 of the document.

#### **(a) Network Code**

The network code draft part L appears to be clear and adequate in its coverage.

#### **(b) Core format/content**

As a national freight operator we have an interest in the operational performance of a large part of the network. Information about, and monitoring of, this network must be done on a basis which can be managed by a user of our size, running relatively small numbers of trains over relatively long distances; the format of such information must be one which is of use to us, and should be agreed between us and Network Rail.

The capability of the network in terms of speed, loading gauge, weight capacity and the availability of electric traction current supply is of prime concern to us. It is not clear to us that there is any effective contractual way of safeguarding our requirements on these issues, and we consider that they should be fully incorporated into local output commitments for the routes over which we have access rights; in addition, we may require to monitor these parameters over routes on which we do not at present have rights in the light of our knowledge of potential flows of business.

#### **c) Appeal Criteria**

We consider that the Regulator's proposed appeal criteria are clear in intent. However, we consider that in addition to the listed criteria the Regulator should have regard to the consequences of poor operational performance by Network Rail on any individual operator and the liability provisions in such an operator's Track Access Agreement. In this respect we would draw attention to our comments in paragraph (d) below.

**(d) Operational Performance**

We assume - it is not entirely clear to us - that the proposed delay minutes per 100 km would be measured for the purpose of the local output commitment over the period of a year. We consider delay minutes a sufficient measure of operational performance but only if they are measured much more frequently (for instance, every three periods) so that the operator has the ability to seek a performance order for failure to meet the local output commitment over such a twelve week period. We also contend that variation should be measured from the Working Timetable and not any varied timings introduced as a result of Alternative Train Slots or Diverted Services. If an operator could only seek a performance order if the local output commitment is breached on an annual basis we would view the commitment by Network Rail to operational performance to be largely valueless.

We would wish to have in the local output commitment for freight operators some commitment with regard to possessions sought outside the Rules of the Route which are not in connection with Network Change.

We are also concerned that there should be a commitment on Network Rail to provide electrified diversionary routes when possessions are sought in circumstances where we have limited (or no) specified equipment capable of running on non-electrified routes and where such specified equipment is not available for hire or purchase. In this context we would further propose that local output commitments for freight should contain some commitment regarding cancellations arising from Network Rail failing to offer electrified diversionary routes.

**(e) Timescale**

We would wish to see local output commitments for freight operators established as soon as possible.

**(f) Operational Commitment**

Setting the "floor" level at 20% on a blanket basis will not, we believe, adequately reflect the risks to operators arising from dramatic deteriorations in service quality over certain routes. In the light of the significant permanent loss of rail traffic between the English deep sea container ports and Scotland as a result of the Hatfield catastrophe, we believe that it should be possible for operators to negotiate a range of "floors", perhaps on the basis of specific routes.

**Other Concerns**

We are concerned that a performance order may not be granted by a court, arbitrator or disputes committee in circumstances where it is apparently clear that Network Rail could not meet the terms of such a performance order, or that the court etc. may order performance different to that required to deliver the local output commitment. We consider that there should be entitlement to compensation once a declaration is

obtained that there has been a breach of the local output commitment and that compensation should not be dependent on Network Rail failing to comply with any performance order.

### **Provision of Information**

Our response on provision of information is ordered by reference to the questions for consultees in paragraph 4.24 of the final conclusions document.

#### **(a) Periodicity and content**

We agree with the proposal

#### **(b) Stewardship measures**

We believe that it should be possible for the operator to request information about the capabilities of routes under this provision, especially with regard to those matters of greatest concern to freight operators – loading gauge, speeds, weight characteristics, availability of electric traction supplies and any other restrictions. In addition, operators should be able to require Network Rail to produce its management plans for each route section in a comprehensible form, indicating its long term intentions for the management of the route assets.

#### **(c) Practical application**

Information in a sensible format will be used by Freightliner to safeguard its present business and in seeking opportunities to increase the volume of goods carried by rail.

#### **(d) Format**

Operators will all have different needs and we believe that Network Rail should be required to present information to each operator in an individually-agreed format; we accept that operators should not unreasonably seek bespoke arrangements.

#### **(e) Derogation**

We agree that the Regulator should have powers to grant derogations as suggested, but feel that thought should be given to the question of an appeal mechanism in the event of any party receiving unreasonable requests for information.

#### **(f) Drafting**

We believe that care needs to be taken in the definitions of material and requested information to prevent parties having to devote unreasonable resources to unreasonable requests – see the point about an appeal mechanism above.

Please do not hesitate to let me know if you would like any further information on the matters covered by this letter.

Yours sincerely,

Robert Goundry  
Director of Strategy