

Michael Dawson Esq
Deputy Director, Track Access
Office of Rail Regulation
1 Waterhouse Square
138-142 Holburn
London EC1N 2TQ

Tel : 0207 200 3912/07793 369583

Date : 12 October 2004

Dear Michael

USE QUOTA AND USE PERIOD : ACCESS CONDITION J

This letter is the response of the Freightliner Group (Freightliner Limited and Freightliner Heavy Haul Limited) to your letter dated 23rd August 2004

Freightliner (FL) has further reviewed its position since previous ORR consultation documents and would like to propose that the use quota is set at 15 days and the use period is set at 60 days.

The reasons for this proposal are set out below :

- 1 in 90 days is too easy to manipulate by the incumbent operator, and it will be difficult for Network Rail (NR) to establish or monitor whether use is manipulated. On what basis could Network Rail establish manipulation had occurred?
- FOCs have been criticised in the past for “over-reserving” capacity by having far more paths than train services actually run. Whilst some commercial flexibility is necessary, the amount of spare capacity currently reserved can cloud route utilisation strategies.
- From a competitive standpoint, there is a particular issue with yard to yard paths on key routes where capacity is scarce and incumbent operators are able to use them when they need to gain advantage in securing spot bid business. If a business is ad hoc it should be a genuine spot bid. The paths should not be held by one operator, potentially preventing other operators with more efficient use of the paths from using the capacity.
- Freightliner has yet to hear a reasonable commercial case for 1 day’s use in 90 days being considered “regular use”. This is particularly pertinent with the scaling back of some of the original ten year plan infrastructure and capacity developments.
- The process of 6 monthly reviews is welcomed but will not be a quick enough process to allow other operators to obtain under utilised paths as there will no doubt be protracted negotiations in the case of some operators following any initial proposals by NR. In any event an operator wishing to obtain the

capacity has no guarantee that NR will request the incumbent to give up that path at such a meeting, this must be dealt with using the process in Access Condition J 5.

- We believe that 15 in 60 represents genuine use of a path whilst still providing commercial flexibility to meet customer need.

FL believes it is in a position to give a balanced view as it has one business which currently has paths that will potentially be lost using this criteria and one business which may be able to gain paths from other operators which are currently under-utilised.

The ORR has not in its letter requested comments on Access Condition J 4.3.2 (b), which enables the ORR to specify the characteristics of train movements that will count or will not count, as applicable towards any Use Quota.

FL has raised this issue in previous responses to ORR and believes it is important that a clear rule is established to prevent endless disagreements between operators and Network Rail.

FL is of the view that the only clear way to establish use is that a path should be used from its origin to its destination to count as use. Use of only part of the path is clearly for a different purpose than the original intention and should be considered as a Spot Bid.

This proposal will make it simple for Network Rail to identify path use, using their billing system; this is much more difficult if part use counts as use.

If an operator regularly wishes to use part of the path, the original paths should be cancelled and a new bid made for the revised requirement.

FL believes that these proposals are the only way that some discipline in use of paths will be introduced, including to its own businesses.

With recent infrastructure cutbacks, it is more important than ever to make this mechanism bite on all operators to even get close to the best use of existing capacity and avoid the anti-competitive “smothering” technique of over-reserving that is permitted under the existing and currently proposed regulatory framework.

FL are prepared to meet the ORR to discuss this proposal if required.

I am copying this letter to Charles Varey of Network Rail.

Yours sincerely

Lindsay Durham
Commercial Executive