

TTP2613 - Freightliner Limited Defence Document

1 DETAILS OF PARTIES

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

Freightliner Limited, whose Registered Office is at The Lewis Building, 35 Bull Street, Birmingham, B4 6EQ ('Freightliner')

and;

Network Rail Infrastructure Limited, whose Registered Office is at Waterloo General Office, London, SE1 8SW ("Network Rail").

2 BACKGROUND TO DISPUTE AND REASON FOR DISPUTE

- 2.1 Following the determination of TTP2540, confirming Network Rail should remove 3 GBRf Train Slots from the WTT, Freightliner submitted a TOVR to utilise the vacated capacity. This TOVR was submitted immediately after the Hearing Chair made his oral Determination.
- 2.2 On 28/02/25, Network Rail formally rejected Freightliners TOVR, on the basis the capacity was already held by GBRf Train Slots (the same Trains Slots that had been subject to TTP2540).
- 2.3 Following discussions, it transpired GBRf had submitted their own TOVR for the same Train Slots that had been subject to TTP2540, on the day prior to the hearing. Network Rail had then prioritised the processing of this TOVR over the Freightliner TOVR.
- 2.4 Network Rail's Decision contradicts the principles outlined in the TTP2540 Determination. The Determination made it clear that the opportunity to bid for relinquished capacity would follow the Hearing Chair's decision to uphold Network Rail's issuance of the D8.5 Notice. Freightliner highlights the following extracts from the Determination (our emphasis):

*"GBRf is, as I have pointed out, free to bid again in the **upcoming round**."* (Para 57)

*"However, given that I have upheld NR's decision as being reasonable in the circumstances, that capacity **will now be released**, and GBRf or Maritime Transport are, so far as I am aware, free to take part in a Part D Train Operator Variation Request to secure the Slots."* (Para 48)

These statements indicate that the bidding process for this capacity was intended to occur after the dispute hearing, following the ruling on the Failure to Use Notice. It was clearly envisaged that the process to bid for the capacity relinquished followed the decision to uphold Network Rail's decision.

- 2.5 Freightliner view the GBRf TOVR accepted by Network Rail is for the same Train Slots that were subject to TTP2540 (sharing the same characteristics as defined in Part D). Accepting a TOVR submitted for a Train Slot which was subject to a Failure to Use Notification at the time of submission undermines the Condition D8.5 process, and the outcomes of TTP2540.
- 2.6 GBRf's actions can also be seen to have the effect of pre-empting the outcome of TTP2540. They have previously been advised against pre-empting dispute outcomes (see ADA50, paras 51-52).
- 2.7 The dispute resolution framework is designed to "(h) avoid the use by any party of any dispute resolution process to delay, frustrate or avoid determination or resolution of the dispute." Freightliner believes that the premature bid submission was an attempt to frustrate the dispute process. Network Rail's decision to accept this TOVR has upheld this behaviour.
- 2.8 The Rules require that: "Dispute Parties shall provide voluntarily, or where reasonably requested, to each other, to the Allocation Chair, the Secretary and to any Forum, all material required for the effective consideration and determination of the dispute...." Network Rail had access to GBRf's bid before the hearing but did not disclose this information. This omission is significant, as it would have been a relevant consideration during the dispute resolution process.
- 2.9 Freightliner asset that, given the above, Network Rail have failed to act in accordance with the Network Code and ADRR Rules when processing the TOVRs submitted to it, and this forms the grounds for this dispute.

3. DECISION SOUGHT FROM THE PANEL

- 3.1 That the panel finds that Network Rail have not acted in accordance with the Network Code, and therefore the rejection of this TOVR constitutes a breach of Freightliner's TAC.
- 3.2 If the Panel believe Exceptional Circumstances do apply, Freightliner request the following:
- That the Panel instruct Network Rail to withdraw the Train Slots offered to GBRf, and reconsider TOVRs in the order they were submitted to them after the Determination of the Hearing Chair in TTP2540.
 - That Freightliner are therefore entitled to damages for the loss of revenue relating to this breach.
- 3.3 If the Panel do not believe Exceptional Circumstances apply, that Freightliner are entitled to damages for the loss of revenue relating to this breach.

4. EXCEPTIONAL CIRCUMSTANCES

- 4.1 Given the pre-emptive behaviour exhibited, and that the actions leading to this Dispute are in breach of the ADRR Rules, Freightliner believe Exceptional Circumstances do apply in this Dispute.

5. SIGNATURE

For and on behalf of Freightliner Limited

Signed

A handwritten signature in dark ink, appearing to read 'Chris Matthews', with a stylized flourish at the end.

Print Name

CHRIS MATTHEWS

Position

Head of Planning (Long Term)