

**FREIGHTLINER LIMITED AND FREIGHTLINER GROUP LIMITED**

**Commitments Proposed to Address the ORR's Competition Concerns Pursuant to  
Case No. 11/2013**

**RECITALS**

- 1 In order to address the ORR's competition concerns and to assist the ORR in bringing its investigation to a close under Case no. 11/2013, Freightliner Limited and Freightliner Group Limited (together "Freightliner") offer these commitments (the "Commitments") under section 31A of the Competition Act 1998 (the "Act").
- 2 In accordance with sections 31A and 31B of the Act, the Commitments are offered on the understanding that, upon acceptance, the ORR will discontinue its investigation into Freightliner and shall not make a decision within the meaning of section 31(2) of the Act, and shall not give any direction under section 35 of the Act.
- 3 The Commitments, which relate solely to the intermodal business of Freightliner Limited in Great Britain, shall be binding on Freightliner and any other group companies involved in the inland transportation of intermodal deep sea containers by rail in Great Britain.
- 4 The offer of Commitments by Freightliner does not constitute any admission of wrongdoing. Freightliner does not accept that it has in any way infringed competition law and does not consider that it holds a dominant position in any relevant market(s) relating to the inland transportation of intermodal deep sea containers by rail within Great Britain.
- 5 The Commitments set out below shall remain in force from the date on which the ORR formally accepts the Commitments until 31 March 2019 (the "Commitments Period").

**DEFINITIONS**

- 6 "Contracts" refers to contractual agreements entered into between Freightliner and its customers in so far as such agreements contain an obligation to provide or take a number of wagons<sup>1</sup> on the routes between:
- (a) the port of Felixstowe and inland rail terminals in the Northwest;
  - (b) the port of Southampton and inland rail terminals in the Northwest;
  - (c) the port of Tilbury and inland rail terminals in the Northwest;
  - (d) the port of Felixstowe and inland rail terminals in North and West Yorkshire;
  - (e) the port of Southampton and inland rail terminals in North and West Yorkshire; and
  - (f) the port of Tilbury and inland rail terminals in North and West Yorkshire.
- 7 "Inland rail terminals in the Northwest" refers collectively to all rail terminals in this geographic area that could potentially be used by Freightliner, to include Freightliner's inland rail terminals in

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<sup>1</sup> For the avoidance of doubt, this excludes annual tariff agreements which do not include an obligation on Freightliner to make available a given number of contract wagons over a given period.

Manchester (Trafford Park) and Liverpool; the inland rail terminal owned by Eddie Stobart at Ditton; the Trafford Park terminal (owned by DB Schenker); Barton Dock Road; and Port Salford.

8 “Inland rail terminals in North and West Yorkshire” refers collectively to all rail terminals in this geographic area that could potentially be used by Freightliner, to include Freightliner’s inland rail terminal in Leeds and the rail terminals at Wakefield and Selby, but for the avoidance of doubt excluding the terminal at Doncaster and any others in South Yorkshire.

9 In the previous paragraphs “Northwest” refers to DfT’s Modal Shift Revenue Support (MSRS) Zone 11 (see <https://www.gov.uk/government/publications/mode-shift-revenue-support-msrs-scheme-2015-to-2020>) and “North and West Yorkshire” refers to the English ceremonial counties of North and West Yorkshire.

#### **A. Duration of Contracts**

10 Freightliner shall not enter into any Contracts with customers for a duration of more than five years.

11 Where Freightliner already has Contracts in place with customers which are for a duration of more than five years, Freightliner commits to provide these customers with the opportunity to terminate their existing Contracts on the fifth anniversary of the Contract by providing at least six months’ notice in writing to Freightliner (subject to the requirement for the customer to pay all outstanding sums due under the Contract).

12 Freightliner shall remove all clauses in its Contracts (and refrain from including such clauses in any new Contracts) which provide for automatic rollover of those Contracts or which prohibit customers from informing other rail freight operators when those Contracts will or may come to an end.

#### **B. Exclusivity**

13 Freightliner will not enter into any Contracts which:

- (a) require customers to purchase exclusively from Freightliner;
- (b) require customers to purchase any given proportion of their total demand from Freightliner; or
- (c) place any restrictions or conditions on customers reselling unused contract capacity to third parties, save only where such restrictions or conditions are justified by safety concerns.

14 Freightliner commits to write to customers which have Contracts in place with Freightliner confirming that they are subject to no contractual obligations which:

- (a) require them to purchase exclusively from Freightliner;
- (b) require them to purchase any given proportion of their total demand from Freightliner or to prioritise Freightliner in relation to additional or future volumes; or
- (c) place any restrictions or conditions on them reselling unused contract capacity to third parties, save only where such restrictions or conditions are justified by safety concerns.

- 15 For the avoidance of doubt the Commitments in paragraphs 13(c) and 14(c) above shall apply in respect of all contracts and not just Contracts on the routes specified in paragraph 6.

**C. Contractual Volume Commitments**

- 16 Freightliner commits to providing all customers that enter into Contracts with Freightliner for a duration of more than three years (including those already under Contract), with a unilateral and unconditional right to reduce their contracted wagon commitment by:

- (a) 10% on the third anniversary of the Contract; and
- (b) an additional 10% on the fourth anniversary of the Contract,

on the routes set out in paragraph 6 above, for the purposes of switching this volume to another provider of intermodal transport by rail.

- 17 Where Freightliner enters into a Contract with a customer following an open tender for that business (being a tender that is non-discriminatory and advertised), or provides evidence to the ORR that a customer has approached at least one alternative railfreight operator in writing, the commitment described in paragraph 16 above will not apply.

**D. Rebates**

- 18 In relation to the routes set out in paragraph 6 above, Freightliner will not enter into any discount or rebate arrangements which relate retrospectively to volumes already purchased or which require customers to purchase exclusively, or a given proportion of, their wagon requirements from Freightliner.

- 19 In relation to the routes set out in paragraph 6 above, Freightliner will not enter into any discount or rebate arrangements by which the price, rebate or discount in one period depends upon the volume purchased from Freightliner in an earlier period.

**E. Implementation and Reporting Requirements**

- 20 Freightliner will use all reasonable endeavours to ensure that any contractual alterations or other actions required as a result of the Commitments are completed within six weeks of the date on which the ORR formally accepts the Commitments.

- 21 Freightliner will deliver an 'implementation report' to the ORR within two months of the date on which the ORR formally accepts these Commitments.

- 22 Freightliner commits to deliver an annual compliance statement to the ORR, for each period of 12 consecutive months for which the Commitments are in force, within three months after the end of the year to which the annual compliance statement relates.

- 23 In addition to the annual compliance statement, for the purposes of allowing the ORR to effectively monitor the wider impact of the Commitments and the proportions of Freightliner's total volumes carried under contracts with a duration of more than one year, Freightliner commits to deliver to the ORR on a quarterly basis a report in the form set out at Annex 1 (the "Quarterly Report"). The

Quarterly Report will provide the ORR with figures for the volume of containers carried by Freightliner during the relevant quarter under contracts with a duration of greater than one year, both in absolute terms and relative to the volume of containers carried by Freightliner otherwise than under contracts greater than one year.

- 24 The implementation report, annual compliance statement and the quarterly report referred to in paragraphs 21, 22 and 23 above shall each be signed off by a senior executive of Freightliner Ltd duly authorised by the board of Freightliner. Each such report shall be duly presented to, and minuted at, a board meeting of Freightliner.
- 25 If requested to do so by Freightliner, the ORR will consider whether the Commitments may be released on the basis that it has reasonable grounds for believing that its competition concerns no longer arise.
- 26 The obligation to deliver annual compliance statements to the ORR will expire following the delivery by Freightliner of an annual compliance statement relating to the last period of 12 consecutive months for which the Commitments remain in place.
- 27 The obligation to deliver Quarterly Reports to the ORR will expire following the delivery by Freightliner of a Quarterly Report relating to the last full quarter for which the Commitments remain in place.

**Executed on behalf of Freightliner Group Limited and Freightliner Limited**

Signature .....

Date .....

[name]

[position]

On behalf of Freightliner Group Limited

Signature .....

Date .....

[name]

[position]

On behalf of Freightliner Limited