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30th October 2020

Dear Gordon.

Representations to the ORR: Proposed 27th and 28th Supplemental Agreements to the Track Access Contract between Network Rail Infrastructure Limited and DB Cargo (UK) Limited ("DB Cargo") and 11th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and GB Railfreight Limited ("GBRf").

I refer to your email of 8th October 2020, where the ORR requested that Network Rail provide its final written Representations in respect of the 27th and 28th Supplemental Agreement applications made by DB Cargo and the 11th Supplemental Agreement application by GBRf, under Section 22A of the Railways Act 1993 (the Act).

Our final Representations to the Office of Rail and Road (ORR) follows herewith and aims to clearly demonstrate the basis for the decisions that have been made, which have been done so in a consistent manner with other Operator Supplemental Agreement applications. Please note that the decisions shown in this letter supersede those decisions made in the previous Network Rail Representation letters.

Upcoming key East Coast Main Line (ECML) Event Steering Group (ESG) May 2022 timetable dates:

- 18th December 2020: Draft ECML May 2022 timetable to be issued for Industry consultation.
- April 2021: Final May 2022 timetable available.
- 23rd April 2021: ECML ESG completes its function and the sale of Access Rights on the East Coast is expected to revert to a 'business as usual' state.

An ESG is in place to develop the May 2022 timetable and is committed to delivering what is in effect a rewrite of the ECML timetable. The ESG is an Industry representative body and is collectively shaping this significant timetable development. Network Rail believes it would not be prudent to commit to some of these paths now when the May 2022 timetable development may change the basis of these decisions. Subsequent to the decision to defer the rewrite of the ECML timetable to May 2022, Network Rail will be issuing a further letter to the industry to extend the ECML policy to May 2022 for the appropriate Rights.

DB Cargo 27th Supplemental

London Gateway to Wakefield Europort

4E08 [TThO], [WFO] and [SO] - *Network Rail supports Contingent Rights*

DB Cargo are seeking new additional 1-hour 'window' Firm Rights to support these services. However, in line with the ECML policy, Network Rail will only support Contingent Rights for these services up until May 2022.

In line with the ECML policy, all Rights applications continue to be reviewed on a case by case basis and Network Rail previously advised that 24-hour 'window' Firm Rights could be supported for these services.

However, following a further review of the validation analysis carried out for these services in the Doncaster station area, it is apparent that there is still some uncertainty in what the final validated train graphs will look like and it cannot yet be demonstrated that there are no conflicts with the future Passenger Operator Access Rights, which were directed in ORR's 12th May 2016 letter. The Doncaster station area, between the start of the morning peak through to the post-evening peak, is the biggest risk for overselling capacity in the ECML ESG May 2022 timetable development. The ECML ESG has not yet produced a detailed timetable for Doncaster because different timetable structures need to be tested first which highlight trade-offs between the ECML train service specification and the capacity available.

Consequently, and in the interests of being fair and consistent with new additional rights, Network Rail are now not able to support the original 24-hour 'window' Firm Rights decision. Network Rail acknowledge that it was previously mistaken and apologise for any inconvenience.

4L08 [SX] - *Network Rail supports a 24-hour 'window' Firm Right*

DB Cargo are seeking a 1-hour 'window' Firm Right to support this service. However, in line with the ECML policy, Network Rail can only support a 24-hour 'window' Firm Right for this service.

Network Rail continue to review all Rights applications on a case by case basis, and a 24-hour 'window' Firm Right can be supported for this service, because a similar 24-hour 'window' Firm Right is being relinquished by DB Cargo, as part of this 27th Supplemental Agreement, and so is a like for like replacement.

Unfortunately, Network Rail cannot support a 1-hour 'window' Firm Right for this service, as it is apparent that there is still some uncertainty in what the final validated train graphs will look like in the Doncaster area and it cannot yet be demonstrated that there are no conflicts with the future Passenger Operator Access Rights, which were directed in ORR's 12th May 2016 letter. Consequently, Network Rail are only able to support a 24-hour 'window' Firm Right for this service.

Annex 1:

Please see the accompanying Annex 1 example, which details in writing some of the validation complexities that Network Rail currently face in determining whether Firm Rights can be supported in the separate DB Cargo 28th Supplemental Agreement. This serves to highlight the various timetable validation issues that Network Rail face at this stage of the ECML ESG

May 2022 timetable development and why Network Rail cannot currently determine whether the sale of Firm Rights can be supported on the ECML right now, whether it be for 1-hour or 24-hour 'window' Rights.

The content of Annex 1 would be very similar in reviewing DB Cargo's 27th and GBRF's 11th Supplemental Agreements, so Network Rail have only included a review of DB Cargo's 28th Supplemental Agreement as an example, in order to aid ORR's understanding of the complexities Network Rail currently face while working on the draft May 2022 timetable.

Felixstowe to Wakefield Europort

4L45 [MO] - Network Rail supports a Contingent Right

DB Cargo hold an existing Firm Right to support a '[MO] Doncaster Belmont - Felixstowe South EWS' service. However, this existing Right is for a 24-hour departure and arrival 'window', for which a specific (non-contractual) 'Train Reporting Number' (headcode) is not shown. With this 27th SA, DB Cargo are seeking to amend this existing 24-hour 'window' Right to become a one hour 'window' Firm Right and amend the origin to Wakefield Europort (vice Doncaster Belmont), through to the end of its current contract in December 2026.

Along with this specific request, DB Cargo are also seeking to assign this Right the 4L45 identity and, among other changes, increase the trailing weight of the Right by 400t (to 1600t) and increase the planned loading gauge from W8 to W10. These are significant changes to the existing 24 hour 'window' Right.

Network Rail can currently only support a Contingent Right for this service, if it is to amend the origin from Doncaster Belmont to Wakefield. This is because the base May 2022 ECML timetable is still in the developmental stage and will not be completed and issued for Industry consultation until 18th December 2020. Consequently, as we are currently in this developmental stage and the flexing of trains to make the best use of capacity is still permitted, this service still needs to be reconciled with other services holding anticipated Firm Rights in the ECML May 2022 Working Timetable (WTT).

Because the service pattern or volume of services on a Monday is somewhat different to that on a [MSX] basis (on weekdays apart from Mondays) in the Doncaster area, this means that Network Rail cannot currently demonstrate that there are no conflicts with existing Operator Firm Access Rights, which were directed in ORR's 12th May 2016 letter.

Network Rail understands that the ORR would like to see evidence of the potential conflicts, including specific headcodes. However, because the draft timetable has yet to be completed, this is not currently feasible. Examples of potential conflicts identified now, may be different conflicts when the draft timetable is issued on 18th December 2020, because trains may have been retimed during this time scale.

Given this, Network Rail do not feel that it would be prudent to support the sale of a Firm Right for this service at this present time, for the duration requested (through to December 2026), as there is a real risk that there may not be sufficient capacity to accommodate it in the ECML May 2022 WTT once any possible necessary retimings have taken place. A Contingent Right provides Network Rail with the flexibility to retime this service, making the best use of capacity.

4L45 [MSX] - Network Rail supports a 24-hour 'window' Firm Right

DB Cargo already hold a Firm Right to support an '[MSX] Wakefield Europort – Felixstowe South EWS' service. However, this existing Right is a for a 24-hour departure and arrival 'window', for which a specific (non-contractual) 'Train Reporting Number' (headcode) is not shown.

With this 27th SA, DB Cargo are seeking to amend this existing 24-hour 'window' Right to become a one hour 'window' Firm Right, through to the end of their current contract in December 2026. Along with this specific request, DB Cargo are also seeking to assign the Right the 4L45 identity and, among other changes, increase the trailing weight of the Right by 400t (to 1600t) and increase the planned loading gauge from W8 to W10. These are significant changes to the existing 24-hour 'window' Right.

Network Rail are agreeing to support the changes requested by DB Cargo, but only on a maintained 24-hour 'window' basis. This is because the base May 2022 ECML timetable is still in the developmental stage and will not be completed and issued for Industry consultation until 18th December 2020. Consequently, as we are currently in this developmental stage and the flexing of trains to make the best use of capacity is still permitted, this service still needs to be reconciled with other services holding anticipated Firm Rights in the ECML May 2022 WTT.

Because the service pattern or volume of services on a Monday is somewhat different to that on a [MSX] basis (on weekdays apart from Mondays) in the Doncaster area, this means that Network Rail cannot currently demonstrate that there are no conflicts with existing Operator Access Rights, which were directed in ORR's 12th May 2016 letter.

Network Rail understands that the ORR would like to see evidence of the potential conflicts, including specific headcodes. However, because the draft timetable has yet to be completed, this is not currently feasible. Examples of potential conflicts identified now, may be different when the draft timetable is issued on 18th December 2020, because trains may have been retimed during this time scale.

Given this, Network Rail do not feel that it would be prudent to support the sale of a 1-hour 'window' Firm Right for this service at this present time, for the duration requested (through to December 2026), as there is a real risk that there may not be sufficient capacity to accommodate it once any possible, necessary retimings have taken place.

4E45 [FSX] & [FO] - Network Rail supports 1-hour 'window' Firm Rights

Following further review, as DB Cargo already hold 1-hour 'window' Firm Rights for these Felixstowe South EWS – Wakefield Europort services, Network Rail will now agree to support the changes requested by DB Cargo, as outlined in the 27th Supplemental Rights Table segment, maintaining the 1-hour 'window' Firm Access Rights.

Network Rail now acknowledge that the nature of the changes being requested are immaterial and pose no significant impact on the timetabling work currently being undertaken.

Network Rail acknowledge that it was mistaken in its original ruling and apologise for any inconvenience caused by this change of decision.

4D10 [M0] - Network Rail supports a Contingent Right

DB Cargo are seeking an additional 1-hour 'window' Firm Right to support this service. However, in line with the ECML policy, Network Rail will only support a Contingent Right for this service up until May 2022.

In line with the ECML policy, all Rights applications continue to be reviewed on a case by case basis and Network Rail previously advised that a 24-hour 'window' Firm Right could be supported for this service.

However, following a further review of the validation analysis carried out for this service in the Doncaster station area, it is apparent that there is still some uncertainty in what the final validated train graphs will look like and it cannot yet be demonstrated that there are no conflicts with the future Passenger Operator Access Rights, which were directed in ORR's 12th May 2016 letter. The Doncaster station area, between the start of the morning peak through to the post-evening peak, is the biggest risk for overselling capacity in the ECML ESG May 2022 timetable development. The ECML ESG has not yet produced a detailed timetable for Doncaster, because different timetable structures need to be tested first, which highlight trade-offs between the ECML train service specification and the capacity available.

Consequently, in the interests of being fair and consistent with new additional Rights, Network Rail are now not able to support the original 24-hour 'window' Firm Right decision. Network Rail acknowledge that it was previously mistaken and apologise for any inconvenience caused.

The base May 2022 ECML timetable is still in the developmental stage and will not be completed and issued for Industry consultation until 18th December 2020. Consequently, as we are currently in this developmental stage and the flexing of trains to make the best use of capacity is still permitted, this service still needs to be reconciled with other services holding anticipated Firm Rights in the ECML May 2022 WTT.

Network Rail understands that the ORR would like to see evidence of the potential conflicts, including specific headcodes. However, because the draft timetable has yet to be completed, this is not currently feasible. Examples of potential conflicts identified now, may be different when the draft timetable is issued on 18th December 2020, because trains may have been retimed during this time scale.

Given this, Network Rail do not feel that it would be prudent to support the sale of a 1-hour or 24-hour 'window' Firm Right for this service at this present time, for the duration requested (through to December 2026), as there is a real risk that there may not be sufficient capacity to accommodate it once any possible, necessary retimings have taken place.

Annex 1:

Please see the accompanying Annex 1 example, which details in writing some of the validation complexities that Network Rail currently face in determining whether Firm Rights can be supported in the separate DB Cargo 28th Supplemental Agreement. This serves to highlight the various timetable validation issues that Network Rail face at this stage of the ECML ESG May 2022 timetable development and why Network Rail cannot currently determine whether the sale of Firm Rights can be supported on the ECML right now, whether it be for 1-hour or 24-hour 'window' Rights.

The content of Annex 1 would be very similar in reviewing DB Cargo's 27th and GBRf's 11th Supplemental Agreements, so Network Rail have only included a review of DB Cargo's 28th Supplemental Agreement as an example, in order to aid ORR's understanding of the complexities Network Rail currently face while working on the draft May 2022 timetable.

DB Cargo 28th Supplemental***Tees Dock to Mossend/Grangemouth – Network Rail supports 24-hour ‘window’ Firm Rights***

Network Rail can agree to sell 24-hour ‘window’ Firm Rights for the freight services listed below, as this offers Network Rail the opportunity to retime the services earlier to provide the optimum fit. Also, because paths have not yet been assessed in detail beyond the core ECML (e.g. Teesport to Darlington / Tursdale, and beyond Millerhill).

The base May 2022 ECML timetable is still in the developmental stage and will not be completed and issued for Industry consultation until 18th December 2020. Consequently, as we are still in this developmental stage and the flexing of trains to make the best use of capacity is still permitted, these services still need to be reconciled with other services holding anticipated Firm Rights in the ECML May 2022 WTT.

While the ESG is keen to keep retimings beyond the core ECML geography to a minimum, Network Rail predicts that the retiming of freight schedules in the Teesside area, and North East of England in general, is unavoidable. The Teesside area still requires a significant amount of validation work to be completed.

Given this, Network Rail cannot guarantee that the ECML May 2022 timetable change will see DB Cargo Train Slots remain as they exist now on the ECML, or that the schedules off the ECML will not change either.

These 24-hour ‘window’ Rights shall be sold at the tonnages the Train Slots are currently timed to operate at in the Working Timetable (TRUST Timing Load in brackets).

- 4S92 [FSX] 19:05 Tees Dock – Mossend (1235t)
- 4S92 [FO] 19:05 Tees Dock – Mossend (1235t)
- 4S99 [SX] 04:22 Tees Dock – Grangemouth (1475t)
- 4E96 [SX] 08:24 Mossend – Tees Dock (1235t)
- 4E98 [SO] 08:50 Mossend – Tees Dock (1235t)
- 4E99 [MO] 16:10 Grangemouth – Tees Dock (1475t)
- 4E99 [MSX] 16:10 Grangemouth – Tees Dock (1475t)

This sale is granted because analysis of the ECML north of Newcastle has concluded that 1 tph freight can be accommodated alongside 4 tph LDHS, 5 trains per day (tpd) East Coast Trains Ltd., plus current ScotRail and Northern services. The East Coast Trains Ltd and Northern services still require validation to be completed for their trains.

Network Rail cannot currently support one-hour departure and arrival ‘windows’ Rights for these DB Cargo services, because it cannot be demonstrated that there are no conflicts with existing Operator Access Rights, which were directed in ORR’s 12th May 2016 letter, whilst also honouring one-hour window contractual commitments with a FOC.

Funders have been advised that, to accommodate all services risks journey time penalties for LDHS services and that freight growth will be suppressed unless investment is committed.

Network Rail understands that the ORR would like to see evidence of the potential conflicts, including specific headcodes. However, because the draft timetable has yet to be completed, this is not currently feasible. Examples of potential conflicts identified now, may be different

conflicts when the draft timetable is issued on 18th December 2020, because trains may have been retimed during this time scale.

Annex 1:

Please see Annex 1 for further detailed written evidence, which demonstrates the various pathing issues associated with the trains associated with this 28th Supplemental.

These services still needs to be reconciled with other services with Firm Rights anticipated to be recast in the ECML May 2022 WTT. Network Rail will work with DB Cargo through the ECML ESG to assess the fit for these services in the draft May 2022 WTT, whilst respecting DB Cargo's commercial and operational needs.

Annex 2:

Please see Annex 2 for supporting evidence in the form of train graphs, which we hope will help to demonstrate the timetabling complexities that Network Rail currently face at this stage of the ECML ESG.

Given the current ECML ESG position, Network Rail do not feel that it would be prudent to support the sale of 1-hour 'window' Firm Right for these services at this present time, for the duration requested (December 2026), as there is a real risk that there may not be sufficient capacity to accommodate them within the specified times once any possible, necessary retimings have taken place.

24-hour 'window' Firm Rights provides Network Rail with the flexibility to retime these services, making the best use of capacity.

Summary

Network Rail have reviewed GBRf and DB Cargo's Supplemental Agreement applications independently and the decisions that have been made are on their own merits.

Network Rail have now confirmed that we will support Firm Rights and Contingent Rights for both GBRf and DB Cargo and we believe that this demonstrates that Network Rail are treating each company fairly and consistently.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Rutter', with a long horizontal flourish extending to the right.

Paul Rutter
Route Director East Coast

CC:

Andy Saunders, Network Rail
Rachel Gilliland, Network Rail
Mike Pybus, Network Rail
Robert Williamson, Network Rail
Georgina Collinge, Network Rail
Simon Leyshon, Network Rail