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Network Rail Final Representations for the proposed 85th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and DB Cargo (UK) Limited dated 11 December 2016.

This letter provides information that could be used as a final representation from Network Rail (NR) for the 85th Supplemental Agreement (SA) submitted under Section 22A of the Railways Act 1993 for the Track Access Application between Network Rail and DB Cargo (UK) Limited (DB Cargo) dated 11 December 2016.

This representation builds upon the representations submitted by Network Rail for this application on the 28 June 2024.

The purpose of this final representation is to provide ORR with Network Rail's final position on this application (and the specific access rights within it) and will do so by providing facts, data, evidence to support our position. Network Rail can confirm that based on the facts, data and evidence outlined in this representation, it is **partially supportive of this application**, subject to any comments, suggested amendments or specific issues highlighted in this representation.

Where there are a number of applications seeking capacity at the locations referred to in this letter, and as detailed in Annex A, the basis of our support of applications either in total, or in part (as can be determined by reading the relevant representations), may have a connection to our position on all other applications at that location. You may wish to wait for final representations on related applications and the information provided therein prior to making your decision.

Background of the Application and Network Rail Representations

In line with ORR's letter of 24 April 2024 to the industry on 'Competing and/or complex track access applications for December 2024, May 2025 and December 2025 timetable changes', DB Cargo submitted this application to the ORR on 20 May 2024 as a S22A application in line with ORR's deadline.

As requested by ORR, Network Rail submitted a High-Level Plan in June 2024, and a further detailed plan was published on Network Rail's website in August 2024 (and updated in January 2025). Network Rail made its initial representations on this application on 28 June 2024 where an initial view of the application was provided.

On 24 October 2024 ORR requested that Network Rail provide further representations for this application. Network Rail responded on 15 November 2024 with a further representation. In that representation we highlighted the following interactions:-

- 10 potential interactions at Acton with the Devon & Cornwall Railway 2nd, Freightliner Heavy Haul 27th, Freightliner Intermodal 28th and GB Railfreight 34th Supplemental Agreements.
- 2 potential interactions at Ipswich with the Freightliner Heavy Haul 27th, Freightliner Intermodal 28th, GB Railfreight 34th and Legge 1st Supplemental Agreements.
- 1 potential interaction at Hoo Junction with the Devon & Cornwall Railway 2nd, Supplemental Agreement.

Following this assessment, Network Rail had identified one opportunity where a Right could be progressed subject to it satisfactorily passing through the normal consultation process. DB Cargo have yet to progress a separate application for this Right so it remains part of this application.

There is nothing outstanding from our initial representations on 28 June 2024 or the follow-up letter of 15 November 2024.

Summary of Access Rights sought in this application

In their application and as a high-level summary DB Cargo is seeking:-

- 10 Firm Access Rights with 1 hour windows to commence on approval until PCD 2026. These trains are currently running under Contingent Rights dated until the end date of the December 2024 timetable and were granted these Contingent Rights in the DB Cargo 100th SA General Approval in line with the Interim Approach taken by Network Rail, but are expected to continue under an interim approach until the end of the May 2025 timetable. The one exception to this is 6V23 MO which was not included in the DB Cargo 100th Supplemental Agreement and subsequently wish to withdraw it from this application by DB Cargo.
- 1 amendment to an existing Firm Access Right (with 1 hour windows).
- 5 relinquishments of existing Firm Rights.

The Rights in this application are not at any of the nine interacting locations but they interact with Rights in other competing applications as detailed in the Background of the Application and Network Rail Representations section above. These Rights all relate to Aggregates traffic in around the London area.

All Rights sought in this application are for train services which operate with diesel locomotives so there are no power supply concerns.

Without reference to those rights sought where we have detailed a rejection, removal, or where we understand rights are being relinquished, we would note the following of the remaining contents of this application:

- Eleven prospective rights do cross into the geography of Western Route but are not at the specific Oxford and Gloucester geographies identified in ORR's initial call for applications at complex and potentially interacting locations.
- Nine prospective rights do cross into the geography of North West & Central Route but are not at the specific Birmingham area, Birmingham to Derby and WCML South geographies identified in ORR's initial call for applications at complex and potentially interacting locations.

Rights supported

Where Network Rail is supportive of firm rights with one-hour arrival/departure windows; this is on the basis of the service being included in the May 2025 Timetable in an area where we have

concluded our considerations of any other applications submitted in response to ORR's letter of 24th April (if they exist) and with characteristics and timings consistent with the application (including where the right for a path extends to an outlying geography).

Where a right application is aligned to a service in the May 2025 Timetable in an area where we have concluded our considerations of any other applications submitted in response to ORR's letter of 24 April (if they exist) and/or in the proposed December 2025 Timetable, with characteristics (e.g. trailing load) consistent with the timetable paths and / or with timings outside of the requested windows, Network Rail is supportive of firm quantum 24hr rights in order to maintain sufficient flexibility to accommodate the request while maintaining the flexibility to accommodate other applications at the relevant locations. If characteristics are different, support may be offered on the basis of either a lesser capacity request or the associated WTT path characteristics.

Where a right sought does not interact with the ECML and seeks to operate on a geography where we are still to finalise our view on any notable volumes of complex and potentially interacting rights, key considerations may remain to be concluded and we are unable to provide a definitive view at this time - unless there is a clear reason for doing so which we have set out (such as the local geography being freight only infrastructure).

We have worked with all freight operators to understand and challenge the rights being sought in their applications and confirm the ongoing need.

Where we are supporting rights relating to existing traffic in this and other applications we would observe that if rights were not awarded by ORR, the paths would have to be removed from forthcoming timetables. Not only would outcome be inconsistent with the regulatory targets to support freight growth, it is likely that the business would not disappear and it could be reasonably expected that the freight operators would re-bid using the provisions in the model freight contract and the Network Code. In such instances freight operators are likely to require access to otherwise constrained capacity and the likely consequence would likely need to be considered by ORR if looking at any further or future interacting aspirations.

Rights withdrawn

Following further consultation with DB Cargo, they have informed Network Rail they wish to withdraw three of the Rights sought from this application. Network Rail understands DB Cargo have not provided an up-to-date application to Network Rail or the ORR. These are being withdrawn by DB Cargo as they are no longer resourced. Network Rail would not look to support a Right where there is no corresponding path in the Working Timetable. These are shown in Annex C.

Assurance / Assessments / Updates

The following section will address specific areas of consideration, opportunity and risk relevant to the application or where applicable to specific access Rights in the application. Where the outputs relate to specific access Rights instead of the application as a whole, this will be highlighted in the relevant section.

Industry Consultation

Industry Consultation for this application commenced on 24 May 2024, and concluded on 24 June 2024. No specific concerns were raised relating to any of the Rights in this application during consultation.

Capacity

None of the Rights sought interact with the East Coast Main Line Event Steering Group geography.

Annex B shows the Rights that Network Rail can support as Firm with a 1 hour window. All these trains have been accommodated into the May 2025 timetable and are in line with the proposed December 2025 timetable. The trains in this category are all running in the current timetable and meet the characteristics and timings consistent with this what is included in this application. This support gives certainty to operators and their customers whose trains are already in the timetable and running.

As set out in the **Background of the Application and Network Rail Representations** section of this letter, Network Rail had concerns over potential interactions at other locations. These have subsequently been reviewed, and any identified conflicts have been set out below.

Rights in the DB Cargo 85th SA present one unresolvable conflict against a service in the Freightliner Heavy Haul Limited 26th Supplemental Agreement. This means that trade-off decisions would be required to support either of the operator aspirations. However, Network Rail are not supportive of the relevant conflicting services, which are aspirational traffic not bid into the May 2025 or December 2025 (D-40) timetables, and therefore, they do not prevent support of the supported elements of this application

Annex C shows the two Rights DB Cargo has informed Network Rail are to be withdrawn from this application.

Annex D shows two Rights that Network Rail can only support as a Quantum Firm (24 hour window) Right at the time of sending this letter. These Rights are proposed Quantum due to their characteristics being different to what was originally submitted and enables Network Rail to have maximum flexibility when developing the timetable:-

- The Right sought for 6V20 (SX) Newhaven Marine – Acton TC is for a 1600t timing load but the Working Timetable path is for an 1800t timing load. Network Rail would support the Firm Quantum Right with a 1600t timing load as requested in the application. DB Cargo have subsequently advised they would prefer an 1800t timing load but Network Rail can only support 1600t at this moment in time as the Rights windows are also changed and Network Rail needs flexibility during the December 2025 Timetable to understand whether this request can be accommodated.
- The Right sought for 6O93 (SX WO-Y) Acton TC – Newhaven Marine is for a 08.08 - 09.08 departure window but the Working Timetable path is an 07.45 departure from Acton TC.

If DB Cargo cannot accept our support for a Quantum Firm Right, then Network Rail cannot support these rights with a 1 hour window as part of this representation. At D-26 on 13 June 2025, Network Rail will have more clarity as to whether these Rights can be accommodated with the characteristics that DB Cargo originally requested.

Network Rail supports the relinquishment of the five existing Firm Rights made by DB Cargo. These can be found in Annex E.

Performance

For all freight applications, Network Rail has assessed the performance of each headcode against the following criteria:

- Right Time Departures - average above 80 % over 13 periods = pass
- FOC on Other Operators delay - less than 5 instances over 13 periods = pass

All of the headcodes in this application passed these criteria, so Network Rail is satisfied that the services perform well and that no further analysis is required.

Conclusion

In this representation letter we have confirmed for reasons outlined above, that we partially support the access rights sought in this application, either with Firm 1 hour windows or as Quantum Firm with a 24 hour window, as shown in Annex B and Annex D, and they are as Network Rail expected in the proposed December 2025 Timetable.

We also support the relinquishment of five access rights in Annex E.

This letter also confirms we do not support the access rights detailed in Annex C as the Operator has confirmed they will be withdrawing them from the application as they have no future requirement but have not yet done so.

Network Rail considers that this final representation letter contains all the information needed for this application to enable the ORR to make a direction.

Yours sincerely

A solid black rectangular box used to redact the signature of Jules Graham.

Jules Graham
Customer Relationships Executive

FLIM 21st SA 22A	Live		x	x	x	x	x	x		
FLIM 22nd SA 22A	Live		x	x	x	x	x	x		
FLIM 23rd SA 22A	Live	x	x							
FLIM 24th SA 22A	Live	x	x	x	x	x	x	x		
FLIM 25th SA 22A	Live	x	x	x		x	x	x		x
FLIM 26th SA 22A	Live	x			x	x	x	x		x
GBRF 25th SA 22a	Live	x	x	x	x	x	x	x		
GBRF 34th SA 22a	Live	x	x	x	x	x	x	x	x	x
GBRF 41st SA 22A	Live						x			
Govia Thames Railway 62nd SA 22A	Live						x			
Govia Thames Railway 63rd SA 22A	Live						x			
Grand Central 24th SA 22A	Directed by ORR						x			
Grand Central 28th SA 22A	Live						x			
GWR 201st SA 22a	Live							x	x	
GWR 202nd SA 22a	Live								x	
Hull Trains 27th SA 22A	Live					x	x			
Hull Trains 28th SA 22A	Directed by ORR						x			
Hull Trains 29th SA 22A	Live						x			
LIS 2nd SA 22a	Live						x			
LNER 34th SA 22A	Live						x			
LNER 35th SA 22A May '28	Live						x			
LNER 36th SA 22A	Live						x			
LNER 37th SA 22A	Rights were being sought until Dec 2025 so not included in analysis						x			
LNER 38th SA 22A	Live						x			
Lumo 11th SA 22A	Live						x			
Lumo 12th SA 22A	Live						x			
Lumo London-Rochdale New Contract S17	Live	x								
Northern 57th SA 22	Directed by ORR (some of the access Rights in this application were withdrawn before direction and added to the Northern 60thSA)				x	x	x			
Northern 59th SA 22a	Live					x	x			
Northern 60th SA 22a	Live					x	x			
Scotrail 49th SA 22a	Withdrawn						x			
Scotrail 50th SA 22a	Live						x			
Scotrail 51st SA 22a	Live						x			
Super Tram 11th SA 22a	Live					x				
TfW 28th SA 22a	Live		x	x					x	x
TfW 31st SA 22a	Live								x	x
TfW 32nd SA 22a	Live									x
TPT 58th SA 22a	Live					x	x			

TPT 62nd SA 22a	Rights were being sought until Dec 2025 so not included in analysis						x			
TPT 63rd SA 22a	Live						x			
TPT 64th SA 22a	Live					x	x			
TPT 65th SA 22a	Live						x			
Varamis 2nd SA 22a	Live	x	x				x			
Virgin New Contract 17	Live	x	x							
WMT 22nd SA 22A	Live		x	x						
WMT 28th SA 22A	Live		x	x						
WMT 30th SA 22A	Withdrawn		x	x						
WMT 31st SA 22A	Withdrawn		x							
WMT 32nd (29th) SA 22A	Live	x	x	x						
WSMR New Contract 17	Live	x	x	x						

Annex B – Rights that Network Rail can support as Firm with a 1 hour window

Train Reporting Number	Days per Week	Departure Window From	Departure Window To	Origin	Destination	Arrival Window From	Arrival Window To
6094	MO	20:38	21:38	LANGLEY RECEPTION SIDINGS	HOO JUNCTION DOWN YARD	01:42	02:42
6V93	SX	15:40	16:40	NEWHAVEN MARINE AG TML DBC	ACTON T.C.	18:48	19:48
6M94	SX	19:30	20:30	ACTON T.C.	NEASDEN ENGINEERS SDGS	19:53	20:53
6V94	TO	04:31	05:31	NEASDEN ENGINEERS SDGS	ACTON T.C.	04:54	05:54
6V94	ThO	04:31	05:31	NEASDEN ENGINEERS SDGS	ACTON T.C.	04:50	05:50
6V94	FO	04:33	05:33	NEASDEN ENGINEERS SDGS	ACTON T.C.	04:49	05:49
6093	SX (WO - Y)	10:01	11:01	CRAWLEY FOSTER YEOMAN	NEWHAVEN MARINE AG TML DBC	10:52	11:52

Annex C – Rights that DB Cargo have withdrawn from the application

Train Reporting Number	Days per Week	Departure Window From	Departure Window To	Origin	Destination	Arrival Window From	Arrival Window To
6L07	MO	03:56	04:56	ACTON T.C.	IPSWICH GRIFFIN WHARF	06:28	07:28
6V23	MO	11:37	12:37	IPSWICH GRIFFIN WHARF	LANGLEY RECEPTION SIDINGS	15:56	16:56
6V94	SO	04:36	05:36	NEASDEN ENGINEERS SDGS	ACTON T.C.	05:52	06:52

Annex D – Rights that Network Rail can support as Firm Quantum with a 24 hour window

Train Reporting Number	Days per Week	Departure Window From	Departure Window To	Origin	Destination	Arrival Window From	Arrival Window To
6V20	SX	22:10 22:56	23:10 23:56	NEWHAVEN MARINE AG TML DBC	ACTON T.C.	01:26	02:26
6093	SX (WO - Y)	08:08	09:08	ACTON T.C.	NEWHAVEN MARINE AG TML DBC	10:52	11:52

Annex E – Rights that DB Cargo originally submitted to relinquish

Train Reporting Number	Days per Week	Departure Window From	Departure Window To	Origin	Destination	Arrival Window From	Arrival Window To
6V20	WO	23:10	00:10	NEWHAVEN MARINE AG TML DBC	ACTON T.C.	02:25	03:25
6V20	ThO	23:10 22:13	00:10 23:13	NEWHAVEN MARINE AG TML DBC	ACTON T.C.	02:42 01:58	03:42 02:58
6V16	MTO MTFO	23:15	00:15	NEWHAVEN MARINE AG TML DBC	ACTON T.C.	02:45 02:48	03:45 03:48
6V16	ThO WThO	22:09 23:02	23:09 00:02	NEWHAVEN MARINE AG TML DBC	ACTON T.C.	02:00 01:28	03:00 02:28
6V16	FO	23:15	00:15	NEWHAVEN MARINE AG TML DBC	NEASDEN ENGINEERS SDGS	06:53	07:53