

Edd Marston
Executive, Access & Licensing

22 August 2025

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Dear Jules and Quentin

86th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and DB Cargo (UK) Limited (DB Cargo) dated 11 December 2016

1. Today, we issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail and DB Cargo (jointly the parties) to enter into the above supplemental agreement. This letter explains the reasons for our decision.

ORR's approval of this application contributes to supporting significant ongoing investment in equipment, staff and infrastructure from both DB Cargo and its customers. DB Cargo has worked to assist its customers in realising a modal shift from road to rail. The train paths in this supplemental agreement are core to that work, increasing reliability, reducing road haulage traffic and delivering environmental benefits. These directions provide DB Cargo certainty for the purposes of planning its business and its ability to deliver further benefits through future investment.

Background

2. On 24 April 2024, ORR wrote to industry setting out a process for access applications for December 2024, May 2025 and December 2025, given our expectation (as confirmed by Network Rail) that we would receive numerous complex and competing applications across that period. Applications were submitted to ORR for direction as "unsupported" applications, as Network Rail was not able to agree that there was sufficient capacity and therefore submit agreed applications for our approval.

3. [DfT wrote to us](#) on 20 June 2025 referring to “the cumulative scale and impacts of abstraction when [ORR] assesses Open Access applications” and asking ORR that this should be “factored into all future decision-making”. To ensure that we were able to proceed with decision making for relevant public service operators in light of this, we had to clarify the DfT letter before finalising our decisions.
4. As we were already at an advanced stage in the decision-making process for this and many other applications by this point, [we wrote to DfT](#) stating that we intended to proceed with our established approach to access applications for the East Coast Main Line (ECML) in order to support the major timetable change coming up in December 2025 and to avoid risk to that timetable’s implementation. As we did not receive a response by Monday 7 July we have proceeded with decision making in line with our published policy.

Application

5. The purpose of this supplemental agreement is to amend 3 existing one-hour window firm rights, add 12 new one-hour window firm right, withdraw 2 existing one-hour window firm rights and relinquish 1 firm right.
6. The contingent rights in this application were seeking firm rights in DB Cargo’s 58th SA but were made contingent at Network Rail Anglia Route’s request due to the planned Great Eastern Mainline (GEML) Event Steering Group (ESG), which was subsequently cancelled.
7. All rights in this application have been running in the timetable since December 2023. The amendments reflect a combination of changes to timings to align with the December 2025 timetable, and amendments to reflect changing business needs since approval of the 58th SA.
8. The rights are to commence on a firm basis upon the date that the supplemental agreement is entered into by the parties and will expire when the contract expires at Principal Change Date 2026.
9. Since assessment of this application in Network Rail’s Final Representations, there have been further amendments, Network Rail have confirmed they are content to support these changes as they are either reversion to existing firm rights already held, or amendments to align with paths in the East Coast Mainline (ECML) ESG timetable. DB Cargo and Network Rail have produced an updated Schedule 5 rights table to reflect this final position. We have assessed these amendments and are content they are consistent with ORR’s amendments policy.

Industry consultation

10. The initial industry consultation took place from 24 May to 24 June 2024. Industry was then invited to comment on Network Rail’s final representations from 29 April to 14 May 2025.

11. In the initial consultation, comments in support or raising no objections or concerns were received from Northern Rail, Transport Focus and GB Railfreight, First Trenitalia West Coast, Grand Central Trains.
12. London North Eastern Railway Ltd (LNER) raised concerns about addition of rights running on or intersecting with the ECML, prior to the completion of work by the ECML ESG. As the work of the ECML ESG has now concluded and implementation of the timetable agreed, this should offer a reasonable level of reassurance to LNER. LNER restated its concerns in May 2025 in response to Network Rail's final representations, in particular performance and capacity concerns for services that Network Rail support with mitigation plans in place, but that have not met the performance criteria. These are not new to rail services, having run for several years and the mitigation plans detailed in Network Rail's representations are based on real-world operational information. ORR has reviewed the plans and found that they appear appropriate and offer a reasonable level of reassurance.
13. MTR Elizabeth Line (MTREL – operator of the Elizabeth Line at the time of consultation), Govia Thameslink Railway and London Travelwatch, requested further time or additional information before being able to definitively support or not support the application.
14. No further comments were received on this case when Network Rail's final representations were shared with industry in May 2025.

Statutory Consultation

15. As required under the Act, on 30 May 2024, we sought Network Rail's representations on the application, and it replied on 28 June 2024. We forwarded these representations to DB Cargo on 4 July 2024 and asked for its comments. DB Cargo provided comments on 22 July 2024.
16. Following the completion of Network Rail's capacity analysis on the East Coast Main Line (ECML) 14 March 2025 and the other interacting locations associated with this application, namely the Sheffield to Derby area, it sent its final representations on 17 April 2025. Again, we forwarded these to DB Cargo and asked for its comments, which it provided on 16 May 2025.

Network Rail's representations

17. In its initial representations dated 28 June 2024, Network Rail stated that it was unable to support the application because it requested new and amended firm rights that pass through 2 of the interacting locations identified by Network Rail as containing competing aspirations and subsequently listed by ORR in its letter of 24 April 2024.
18. The representations highlighted that the application seeks new and amended rights in the case of the ECML ESG being implemented on the ECML and that it *"will only be in a position to assess this application post a decision on ECML ESG implementation and ECML Taskforce recommendations as to what Timetable the ECML ESG will be implemented."*

19. DB Cargo was concerned at likely delays in processing this application due Network Rail's position that it had *'not yet had an opportunity to fully consider it's position on this application and whether it can eventually support the proposed access rights'*. DB Cargo also noted concerns around a potential solution of continued contingent, time-limited rights for freight traffic over ECML infrastructure. Going on to say *'The uncertainty and risks around timetabling and allocation of capacity will continue to influence investment decisions adversely.'*
20. Following the ECML taskforce recommendation to implement the ECML ESG timetable towards the end of last year, ORR contacted Network Rail requesting an update on its position. Network Rail responded that there was still much analysis to do as the rights contained in the application are cross-route and *"Hence, any decision concerning the ECML will have an impact on how those services run and their performance resilience"*. It concluded that *"To ensure consistency across applications (and to avoid any prejudicial decision that could unduly favour one party where aspirations interact), the process outlined in NRs high-level plan of August 2024, continues to be the approach by which we are assessing applications for upcoming timetable periods.'*
21. In its final representations, Network Rail stated that it was now in a position to support the access rights sought in this application with some minor changes relating to withdrawal of rights that had either been removed from the timetable or were no longer resourced. It went on to note 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.'*
22. Following the Network Rail final representations, DB Cargo confirmed it had a contractual requirement for Train Reporting Number 6L55 and wished to retain it. It had originally been in the application as two rights, with amendments to align the timing windows and destination to the timetable.
23. The proposed amendment of 6V73 to run Monday, Wednesday and Friday Only was withdrawn and DB Cargo have retained their existing weekday firm right. The relinquishment of 6L01 weekday was also withdrawn, and the firm right was retained.
24. Network Rail confirmed that they would support these amendments, and an updated Schedule 5 Rights Table was provided to reflect those changes on 30 July 2025. This concluded all the information required to assess this application.
25. In its response DB Cargo noted concerns with the governance arrangements for the 'interacting locations', with the way the locations are specified. In particular, that the definition of the area of geography had led to freight flows passing in adjacent areas had been considered in the scope of the geographies.

ORR review

26. We carried out a full review of the application, taking into account issues that were being considered in relation both to this application and to the competing demands on capacity on the wider network.

27. The rights in this application have been running in the timetable since 2023. Network Rail has assessed the performance of each Train Reporting Number against the following criteria:

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

One of the services, 4M34 running on Tuesdays to Fridays inclusive, initially failed this assessment but has shown improvement and will be supported with additional performance monitoring. Our review noted that performance is on an improving trend, and additional monitoring is in place. There are a number of general performance improvement activities in place, and these appear appropriate and offer a reasonable level of assurance.

28. Since 2019, Network Rail has offered operators only contingent or time-limited rights, providing limited certainty for businesses. The ECML ESG was set up to transparently develop a timetable which considered the service specifications and aspirations of timetable participants for implementation. This process was cross-industry, involving public service, freight and open access operators.

29. For these reasons, in reaching our decision we have placed weight on reducing or ending the uncertainty of this period, in line with our duty of enabling operators to plan their businesses with a reasonable degree of assurance.

30. As referred to in the Network Rail representations, in late 2024, the Secretary of State and Department for Transport (DfT) accepted the recommendation to start the timetable in December 2025. This follows investment by the DfT in rolling stock and infrastructure to enable faster and more frequent services on the ECML. We consider directing the rights in this application supports our duty to have regard to guidance from the Secretary of State in terms of the value for money from public investment as well as the funds available to the Secretary of State.

31. Network Rail expects that implementing the ECML ESG timetable will lead to a limited reduction in train service punctuality. Network Rail is assuring us of the operational and timetable alterations it is leading with industry, to mitigate this reduction. It expects to be able to identify and implement further improvements following the introduction of the timetable.

32. In weighing all of our duties, reviewing the capacity and performance on the ECML and wider network, we consider directing rights which can be used to implement a longer-term baseline timetable, in this case the ECML ESG, is preferable to the alternative. Furthermore, we will continue to hold Network Rail to account to ensure the proposed timetable delivers the expected benefits to passengers, funders and freight operators.

33. Overall, we concurred with Network Rail's assessment regarding capacity and performance and have directed the rights as included in DB Cargo's 86th supplemental agreement.

Our duties under section 4 of the Act and our decision

34. We have considered this supplemental agreement, and we have concluded that its approval is consistent with the discharge of our statutory duties under section 4 duties of the Act: in particular, those relating to:

- enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g))
- promoting improvements in railway service performance (section 4(1)(b))
- protecting the interests of users of railway services (section 4(1)(a))
- promoting the use of the railway network for the carriage of passengers and goods (section 4(1)(b))
- having regard to the funds available to the Secretary of State (section 4(5)(c))

35. We have looked very closely at all the evidence submitted from the parties and consultees. We have concluded that we should approve the application.

Conformed copy of the track access contract

36. Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and DB Cargo (UK) Limited. ORR's copy should be sent for my attention.

Public register and administration

37. Electronic copies of the directions notice and the supplemental agreement will be placed on ORR's public register (website) and copies of this letter and the supplemental agreement will be placed on the ORR website.

Yours sincerely

Edd Marston