

Edd Marston
Executive, Access & Licensing

8 September 2025

Ian Bartlett
Customer Manager
Network Rail Infrastructure Ltd
Waterloo General Office
London
SE1 8SW

Quentin Hedderley
Regulatory Affairs Specialist
DB Cargo (UK) Limited
Lakeside Business Park,
Carolina Way
Doncaster DN4 5PN

Dear Ian and Quentin

**88th 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.
2. ORR's approval of this application contributes to supporting the construction and steel industry across the country, and especially in London and Southeast of England, to which rail transport is critical for both raw materials and finished products. The train paths in this supplemental agreement are core to significant ongoing investment in equipment, staff and infrastructure that DB Cargo and its customers have made. These directions provide DB Cargo certainty for the purposes of planning its business and its ability to deliver further benefits through future investment.

Background

3. 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.

4. [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.
5. 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

6. The purpose of this supplemental agreement is to add 1 amendment to an existing one-hour window firm right and 31 new one-hour window firm rights, currently running as contingent rights.
7. The 31 contingent rights in this application have been in the timetable since December 2024 as time-limited contingent rights as part of Network Rails interim contingent rights policy. They were also running prior to that as Train Operator Variation Rights (TOVR). The existing firm rights to be amended have been in the timetable for at least two years.
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 the original submission of this application, 10 contingent rights and the 1 amended firm right have been withdrawn. 3 rights have been withdrawn as they are no longer required. The other 8 rights have been withdrawn as they are duplicates and remain in DB Cargo’s 73rd section 22A Supplemental Agreement. 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 and West Midlands Trains.
12. MTR Elizabeth Line (MTREL – operator of the Elizabeth Line at the time of consultation), Govia Thameslink Railway, Arriva Rail London and London Travelwatch, requested further time or additional information before being able to definitively support or not support the application.

13. Further comments were received on this case when Network Rail's final representations were shared with industry in July 2025. MTR Elizabeth Line (MTREL – operator of the Elizabeth Line at the time of consultation), raised a concern about the potential impact of 6A34 on Elizabeth Line train performance at Langley. We have assessed this and found that the train reporting number has been operating in the timetable with the run around at Langley for more than 18 months. From April 2024 to August 2025, it has had a singular attributable delay of under 20 minutes and hasn't caused any other impact to performance, so it is reasonable to conclude that the impact on other operators is minimal.
14. An additional comment was received from GWR querying the tonnage of 6A34. They suggested they would support the application if the train was pathed in the timetable at 2200 tonnes. Network Rail have confirmed that the train path is for 2200 tonnes, however as DB Cargo applied for the right at 1800 tonnes and consultation was carried out on that basis, they will only support 1800 tonnes. DB Cargo have confirmed that they accept this change. We are satisfied that this resolves the query.

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 ECML, on 14 March 2025 and the other interacting locations associated with this application, namely those in the Sheffield-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 19 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 one 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. DB Cargo was concerned at likely delays in processing this application due to 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 generalised representations from Network Rail Regions were included that didn't seem relevant to the application.
19. 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 for the remaining rights 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.'

20. Network Rail also stated that '*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.*' In this application 5 rights were supported by Network Rail on this basis. DB Cargo expressed their frustration at this approach and re-stated their requirement for 1hr window firm rights in order to have the certainty they need for their business.
21. Network Rail provided updated Final Representations on 24 July 2025, regarding applications where firm 'quantum' 24hr window rights had been supported. For the DB Cargo 88th SA, they confirmed that, subject to some amendments to timing windows and timing loads, 1hr window firm rights could be offered for all 5 impacted rights. DB Cargo confirmed they were content to accept this, along with the amendments. We have assessed these amendments and are content they are consistent with ORR's amendments policy.

ORR review

22. 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.
23. 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
24. Two of the services did not pass this assessment, however Network Rail confirmed they are satisfied that the services should not be penalised as these delays are due to congestion coming out onto the main line at Acton as a result of signallers holding trains due to perturbation on the network to avoid impacting on main line working.
25. Since 2019, Network Rail has offered operators only contingent or time-limited rights, providing limited certainty for businesses. The ECML Event Steering Group (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.
26. 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.
27. 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.

28. 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.
29. 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.
30. Overall, we concurred with Network Rail's assessment regarding capacity and performance and have directed the rights as included in DB Cargo's 88th supplemental agreement.

Our duties under section 4 of the Act and our decision

31. 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))
32. 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

33. 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

34. 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