Edd Marston
Executive, Access & Licensing
Email [redacted]

6 October 2025

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Customer Relationships Executive
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Quentin Hedderley
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Dear Jules and Quentin,

72nd 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, chemical and aggregates industry across the country, and especially in London and Southeast of England, where rights for aggregates traffic are used to alleviate capacity issues in the storage of construction materials. 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 12 new one-hour window firm rights, previously running as contingent rights. It also amends 7 existing firm rights with a mix of one-hour and 24-hour windows and relinquishes 10 firm rights that are no longer required.

7. All contingent rights in this application have been in the timetable since at least June 2024 as time-limited contingent rights as part of Network Rail’s interim contingent rights policy, prior to this they were in the timetable as a Train Operator Variation Request, and as such, had no contractual certainty.

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 2030.

9. Since the original submission of this application, the 10 relinquished rights have been withdrawn by DB Cargo as they have already been relinquished via Part J2.1.3 of the Network Code. One right has been removed as it has been relinquished via Part D8.5.2 of the Network Code. Eight rights have been removed as they are included in the transfer of traffic from DB Cargo to another freight operator. One right has been removed through the quarterly Network Rail Capacity Management Review Group and the associated path has been removed from the timetable, this right has been withdrawn from the application. Two other rights have been withdrawn as they are no longer resourced or no longer required. Two rights have been removed where the amendment is no longer sought. 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 27 June to 11 July 2025.

11. In the initial consultation, comments in support or raising no objections or concerns were received from West Yorkshire Combined Authority, Northern Rail, Transport Focus, First Trenitalia West Coast and Grand Central Trains.

12. Arriva Rail London, MTR Elizabeth Line (MTREL – operator of the Elizabeth Line at the time of consultation), London North Eastern Railway, Govia Thameslink Railway and London Travelwatch, requested further time or additional information before being able to definitively support or not support the application.

13. MTR Elizabeth Line (MTREL – operator of the Elizabeth Line at the time of consultation), raised a concern about whether this application has taken into account the Crossrail Track Access Option. As the trains remaining in this application solely operate into and out of the Peak District and do not come into the geography adjacent to the Crossrail routes, we have not considered the concern.

14. In the opportunity to comment, LNER raised a concern about the seven rights that interact with the ECML between Huntingdon North Jct and New England North Jct (Peterborough), and whether those rights can be accommodated given the Congested Infrastructure Notice covering that geography. The rights that pass through the geography have since been withdrawn or removed from this application.

15. LNER also raised a concern about the impact on LNER of the rights contained in the application, should ORR choose to direct those rights in a manner other than as suggested by Network Rail. Two remaining rights do use the geography around Sheffield, however, they are already running as existing firm rights and have been accommodated in successive timetables whilst passing Network Rail's performance criteria, otherwise no other rights offer a potential interaction with LNER's rights so we consider that concern to be satisfied.

Statutory Consultation

16. 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.

17. 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 the Sheffield area, it sent its final representations on 23 May 2025. Again, we forwarded these to DB Cargo and asked for its comments, which it provided on 19 June 2025.

Network Rail's representations

18. 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.

19. 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 that didn't seem relevant to the application.

20. In its final representations, Network Rail stated that it was now in a position to support the remaining 6 access rights sought in this application, following 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*.'

21. DB Cargo in it's response noted that one of the rights supported was no longer required and another had been relinquished earlier in 2025 through Part D of the Network Code, leaving 4 remaining supported rights.

22. DB Cargo raised a concern about the lack of support for train reporting number 6M53 running on Sunday from Attercliffe to Peak Forest. This train has an existing firm right with a 24-hour window. DB Cargo has requested the one-hour window to *'ensure asset efficiency, provide long-term certainty and maintain customer confidence'*. Network Rail have confirmed that they require a continuation of the existing 24-hour window in order to complete work that seeks to find flexibility in the December 2025 timetable to accommodate the Reading to Birmingham and onward Birmingham to Newcastle Upon Tyne service operated by CrossCountry Trains.

23. We reviewed the paths in the timetable; there is currently a chance of interaction between the DB Cargo and CrossCountry trains south of Sheffield at Dore Station Junction as the DB Cargo train crosses the main line to access the Hope Valley track. The northern leg of the CrossCountry route was removed from the December 2025 timetable by the operator as the southern leg could not be accommodated. Both the DB Cargo and CrossCountry trains were included in the ECML Event Steering Group (ESG) Timetable work, so we consider Network Rail's position of seeking to accommodate both trains to be reasonable. We do not expect Network Rail to seek accommodation for CrossCountry trains at the expense of DB Cargo, so we would want to see evidence of Network Rail seeking accommodation for a one-hour window for the DB Cargo 6M53 Attercliffe to Peak Forest service as part of the work to accommodate CrossCountry services. In the interim we consider the retention of the existing 24-hour window firm right is a suitable outcome.

ORR review

24. 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.

25. 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

All of the services passed this assessment and Network Rail confirmed they are satisfied that the services are performing well and require no additional analysis.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. Overall, we concurred with Network Rail's assessment regarding capacity and performance and have directed the 4 remaining rights – 6M52 (Weds, Thurs and Fri Only), 6F07 (Tues and Fri Only), and 6H07 (Tuesday Only and Friday Only), after agreed withdrawals and other removals, as included in DB Cargo's 72nd supplemental agreement.

Our duties under section 4 of the Act and our decision

32. 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))

33. 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

34. 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

35. 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