Edd Marston
Executive, Access & Licensing
[redacted]

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Dear Ian and Quentin

73rd 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 steel industry across the country, and especially in Lincolnshire and Teesside, 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 British Steel and DB Cargo 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.

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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 18 amendments to existing one-hour window firm rights and 12 new one-hour window firm rights, currently running as contingent rights. There are also 21 existing firm rights DB Cargo wishes to relinquish as they are no longer running.

7. The 12 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, the 21 relinquished rights have been withdrawn by DB Cargo as they have already been relinquished via Part J2.1.3 of the Network Code. Three rights have been withdrawn due to being removed through the quarterly, Capacity Management Review Group and therefore no longer having paths in the timetable. Four rights have been withdrawn as they are no longer required. Two rights (6J03 SX and MSX), have been withdrawn as they were supported by Network Rail on a basis that did not work for DB Cargo, so they have retained their existing firm rights. 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 22 July to 5 August 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. No further comments were received on this case when Network Rail's final representations were shared with industry in July 2025.

Statutory Consultation

14. 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.

15. 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 17 July 2025. Again, we forwarded these to DB Cargo and asked for its comments, which it provided on 22 July 2025.

Network Rail's representations

16. In its initial representations dated 28 June 2024, Network Rail confirmed that this application had previously been a considered at internal consultation in October 2023, as an agreed application under Section 22 of the Act. Network Rail Eastern Region had objected to the application at that stage due to considerations with the ongoing ECML Event Steering Group (ESG), however '*good progress',* was being made until the application was converted into a Section 22A due to the commencement of the Competing and Complex Application process in April 2024.

17. 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.

18. 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*.'

19. In its response to the Final Representations, DB Cargo noted that, aside from the two rights (train reporting number 6J03), which it subsequently withdrew, it was content to amend timing windows and timing load, to align with the Train Slots in the December 2025 timetable offer. We have assessed these amendments and are content they are consistent with ORR's amendments policy.

ORR review

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. Overall, we concurred with Network Rail's assessment regarding capacity and performance and have directed the rights as included in DB Cargo's 73rd supplemental agreement.

Our duties under section 4 of the Act and our decision

28. 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))

29. 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

30. 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

31. 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