

Edd Marston
Executive, Access & Licensing
Email [REDACTED]

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Dear Jules and Quentin,

81st 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, steel and retail industry across the country, and especially in Wales, where steel traffic is key to the Welsh economy and in London and Southeast of England, where rights for aggregates traffic are used to alleviate capacity issues in the storage of construction materials. Intermodal traffic in this application supports lean supply chains for DB Cargo's retail customers. 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 15 new one-hour window firm rights, previously running as contingent rights. It also amends 10 existing one-hour window firm rights and relinquishes a firm right that is no longer resourced.
7. All contingent rights in this application have been in the timetable since at least December 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, 3 rights have been removed through the quarterly Network Rail Capacity Management Review Group and the associated paths have been removed from the timetable, these rights have been withdrawn from the application. Five other rights have been withdrawn as they are no longer resourced or no longer required. 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 West Yorkshire Combined Authority, Northern Rail, Transport Focus, First Trenitalia West Coast and Grand Central Trains.

12. Transport for Wales, Govia Thameslink Railway, GB Railfreight, TransPennine Trains 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 Train Reporting Number (headcode), 6A23 (Acton to Brentford Town), as it wanted clarification on the routing, specifically whether it was routed via Southall during the morning peak traffic. As this train was included in the rights table extract for completeness but not part of the application, we have not considered the objection.
14. Comments were received from LNER querying the impact of the application on LNER's ability to exercise future-dated rights for an additional 0.5 trains per hour from London Kings Cross to Leeds. Network Rail's response to the query notes that the ability of LNER to exercise its right is contingent on completion of the necessary infrastructure works and on 10 July 2025, the Department for Transport confirmed that "there was no funding available within the settlement to continue development over the forthcoming four years for the project that enables the 5 future rights between London and Leeds each day", therefore Network Rail do not believe the rights contained in the DB Cargo 81st supplemental agreement will impact LNER's future rights for the foreseeable future. LNER confirmed they were content that this resolves their objection.

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 the Cardiff area, it sent its final representations on 4 July 2025. Again, we forwarded these to DB Cargo and asked for its comments, which it provided on 19 July 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 its 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.
19. In its final representations, Network Rail stated that it was now in a position to support the remaining 17 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.'

20. In its response DB Cargo noted concerns with the governance arrangements for the declarations of 'Congested Infrastructure', with the way the scope is specified. In particular that the reference to the congested infrastructure declared between Huntingdon North Junction and New England North Junction (Peterborough) area of geography did not clarify that it covers the period Sun – Fri from 06:00 to 21:00 only, leading to freight flows passing in adjacent periods being considered in the scope of the declaration.

ORR review

21. 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.
22. 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

Except for Train Reporting Number 4E94, 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. 4E94 is supported by Network Rail with a robust mitigation plan in place, Network Rail notes that since data was originally collected performance has improved from 61.4% to 73.6% for Right Time Departures. As the ongoing improvement work is already delivering positive results, we have no concerns about the current performance of this service or its impact on the wider network, provided that the improvement efforts continue.

23. 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.
24. 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.
25. 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.

26. 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.
27. 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.
28. Overall, we concurred with Network Rail's assessment regarding capacity and performance and have directed the 17 remaining rights and 1 relinquishment, after agreed withdrawals, as included in DB Cargo's 81st supplemental agreement.

Our duties under section 4 of the Act and our decision

29. 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))
30. 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

31. 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

32. 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