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Dear Jules and Quentin

84th 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 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

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, where 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 amend 6 existing firm one-hour window access rights, add 2 new firm one-hour window access rights (which are currently running under Contingent Rights as granted by the DB Cargo 100th SA General Approval) and relinquish 1 existing firm access right. The initial application submitted on 20 May 2024 included an additional amended right (with a minor change to the contract miles) however this has been removed from the proposed Schedule 5 Rights table that we are making a determination on.
7. The access rights are to support DB Cargo’s BMW automotive traffic between BMW Oxford Rail Terminal and Southampton Eastern Docks and STVA traffic between Southampton and Halewood.
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. DB Cargo and Network Rail have produced an updated Schedule 5 rights table to reflect the final position. We have assessed these amendments and are content they are consistent with ORR’s amendments policy.
10. Prior to this application being submitted, an application (the s22 84th SA) for similar access rights as those contained with this s22a was progressing through Network Rail’s usual internal processes (inc. capacity allocation) and was approved at SoAR panel. As the application was then being consulted on by industry, ORR issued a deadline to receive applications that Network Rail deemed as complex and/or competing by 20 May 2024. Despite it already being at an advanced stage, with the application being supported by Network Rail up until this point and industry not raising any significant concerns, the application was submitted to ORR for our determination along with the “unsupported” applications. Network Rail said that it had not yet had an opportunity to fully consider its position on the application and whether it can eventually support the proposed access rights.

11. In its initial representations at the time, DB Cargo was sceptical of the argument put forward by Network Rail concerning the potential impact of the proposed ECML ESG timetable on the application and that it suggests that Network Rail hadn't examined the application in detail.
12. DB Cargo noted concerns around a potential solution of continued contingent, time-limited rights for freight traffic over ECML infrastructure, including that "[the] *uncertainty and risks around timetabling and allocation of capacity will continue to influence investment decisions adversely*".
13. 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*".
14. In DB Cargo's final comments, it added that a decision, to conclude that the Train Slots serving the Cowley terminal do not encroach on Oxford Station itself (and so do not impinge on any of the nine locations referred to in ORR's letter (dated 24 April 2024)), could and should have been taken much earlier.

Industry consultation

15. The initial industry consultation ran from 24 May-24 June 2024. There were no specific concerns raised relating to any of the rights in the application. Some consultees requested additional time however this was not agreed to by Network Rail.
16. Industry was then invited to comment on Network Rail's representations from 29 April-14 May 2025. Again, there were no concerns raised relating to any of the rights in this application.

Statutory Consultation

17. 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 responding to Network Rail's initial representations and commenting on the approach taken for this application.
18. On 6 May 2025, we invited DB Cargo to provide a written response to Network Rail's final representations (submitted 17 April 2025). On 16 May 2025, DB Cargo provided comments to Network Rail's final representations. DB Cargo confirmed that it was pleased that Network Rail is now able to support the application along with comments on the wider competing applications process.

Network Rail's representations

19. In Network Rail's initial representations, it said that it has a number of assessments and analysis to undertake to inform a position on whether it can support it or not. As the application potentially interacted with other aspirations, Network Rail could not progress with it further at this stage.
20. 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."*
21. In its final representations, Network Rail confirmed that it is supportive of the application. This includes its support for 2 Firm Access Rights with 1-hour windows, 6 amendments with 1-hour windows and 1 relinquishment of an existing Firm Rights.
22. Although the application was flagged as interacting at Oxford, the rights do not pass through Oxford Station itself and therefore do not interact with any of the nine locations referred to in our April 2024 letter. Similarly, there are 4 rights that cross through Western route geography however not at the specific Oxford and Gloucester areas. All trains have been accommodated in the May 2025 timetable and are all running in the current timetable and meet the characteristics and timings with what is included in this application.
23. 4V44 was flagged as a potential impact on the Engineering Access Statement however this was resolved as the arrival time is before the start of maintenance blocks and therefore does not conflict.
24. Although the application was paused due to potential interactions with aspirations within CrossCountry's 38th SA, in its final representations Network Rail seemed to confirm that capacity has been identified for both the services involved at the locations at which the application could interact.
25. On 27 May 2025, we asked Network Rail to confirm whether the 'potential interactions' do still conflict or whether they have been checked and/or resolved as it wasn't completely clear from their representations. On 14 August 2025, Network Rail confirmed that capacity can be found for the trains, which effectively closed out our outstanding queries.

ORR review

26. We carried out a full review of the application, taking into account issues that were being considered both in relation to this application and to the competing demands on capacity on the wider network.
27. The rights in this application are all running in the current timetable. Network Rail has assessed the performance of each headcode 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
28. As all the headcodes in the application passed these criteria, Network Rail is satisfied that the services perform well and that no further analysis is required.
29. All rights sought in this application are for train services which operate with diesel locomotives so there are no power supply issues.
30. ORR have reviewed the application and agree that Network Rail has applied a reasonable process and decision criteria for measuring the performance levels of the services.
31. ORR's Operations Team were satisfied that Network Rail has demonstrated there is sufficient capacity for the services and that they deliver an acceptable level of performance.
32. Network Rail should note the time taken for it to respond to ORR's queries was poor and significantly delayed ORR being able to make a determination on this application. Network Rail finally responded to our query (sent on 27 May 2025) on 14 August 2025 following regular requests for updates both in person and via correspondence.
33. 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.
34. 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.
35. 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.
36. 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.
37. 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.

38. Overall, we concurred with Network Rail's assessment regarding capacity and performance and have directed the rights as included in DB Cargo's 84th supplemental agreement.

Our duties under section 4 of the Act and our decision

39. 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))

40. 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

41. 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

42. 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

Ryan Holt