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Dear Jules and Quentin

85th 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. On 17 May 2024, DB Cargo submitted a s22a application requesting 11 new Firm access rights with 1 hour windows (which are currently running under Contingent Rights as granted by the DB Cargo 100th SA General Approval), the amendment of 4 Firm access rights and the removal of 3 access rights.

7. The access rights are to support traffic serving Brett Aggregates, a producer of sand and gravel with quarry, marine dredged aggregates operations serving London, the East and South-East of England. The sea dredged sand, for example, that is transported from Newhaven Marine to Neasden is for concrete that supplies construction companies for projects in the London area.

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.

Industry consultation

10. 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.

11. When industry was invited to comment on Network Rail's final representations from 29 April - 14 May 2025, MTR Elizabeth Line responded with several questions, which we put to both parties and are set out below:

6O94 Langley Reception Sidings to Hoo Junction Down Yard

12. MTR raised an initial concern that Network Rail's representations imply that 6O94 is supported by Network Rail but that another inbound Langley service (instead from

Ipswich) is being withdrawn. MTR asked whether DB Cargo is seeking rights for an outbound move from Langley with no corresponding inbound move.

13. On 26 June 2025, DB Cargo confirmed that although the outbound path is no longer running, it intends to run them again soon so DB Cargo would like to have the rights for the path. DB Cargo added that the paths were running at the time of submission so maintains that they are still ‘required rights’. With regards to the inbound path, DB Cargo confirmed that this also isn’t currently running but when it is DB Cargo will bid again for a path. On 29 August, Network Rail confirmed that it supported 6O94 and that 6V23 (which is being withdrawn by DB Cargo) is a ‘Y’ path with other services so 6O94 will be formed from one of the other services.

Langley run-round

14. During the Opportunity to comment, MTR asked DB Cargo to confirm whether a run-round at Langley is required as part of 6V23 and/or 6O94 and if so, whether any data can be provided to indicate any impact that these movements have on Elizabeth Line on-time arrivals at Langley.

15. Network Rail confirmed that 6O94 does not require a run-round at Langley as the train departs in an east bound direction. This effectively closed out both of MTR Elizabeth Line’s concerns.

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 responding to Network Rail’s initial representations and commenting on the approach taken for this application.

17. 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 responded to Network Rail’s final representations highlighting that all train slots contained within the application are in the Working Timetable and none of them interact with the ECML ESG geography.

18. With regards to one of the access rights with a 24-hour quantum window (6O93), DB Cargo confirmed that it would prefer to have a uniform SX slot - so if the rights cannot be split as separate ThSX and ThO entries then it is prepared to accept the proposed quantum 24 hour right.

19. DB Cargo had specific comments relating to 6V20 and highlighted that the purpose of this supplemental agreement is to tidy up their access rights so that they reflect current requirements, which includes relinquishing unused access rights. DB Cargo confirmed that it would be prepared to relinquish the rights listed in NR’s final representations, if they are offered firm 60-minutes windows for 6V20 at 1800 tonnes. DB Cargo added that if ORR were not to direct access rights at 1800t then it would withdraw 6V20/6V16

(which are 5 relinquishments) from the application. Network Rail has since updated its position on the 6O93 and 6V20 – see **ORR review**.

Network Rail's representations

20. In its initial representations dated 28 June 2024, Network Rail stated that it has a number of assessments and analysis to undertake to inform a position on whether it can support the application or not. As the application potentially interacted with other aspirations, Network Rail could not progress with it further at this stage.

21. Network Rail initially did not consider the application as part of the interacting rights workstream, as the rights do not interact with any of the locations specified in ORR's letter to industry on 24 April 2024 and should therefore be processed as business as usual. However, Network Rail's further representations (15 November 2024) confirmed that as a result of operators submitting a large amount of Section 22A applications there were inevitably other geographic locations (other than those identified by ORR) where there are interactions between this and other aspirations and therefore, so as not to unduly discriminate one operator over another, all applications would have to be assessed to ascertain whether there is capacity to accommodate all of the aspirations and to carry out any other assurance require to inform a position.

22. In its final representations dated 17 April 2025, Network Rail confirmed its partial support for the updated application. This includes 7 Firm access rights with 1-hour windows and 2 Firm Quantum access rights with 24-hour windows. In addition to the 5 access rights that DB Cargo originally submitted to relinquish, there were 3 access rights included that DB Cargo now withdraws from the application.

23. Those 2 rights that Network Rail could only support as quantum 24-hour windows, it says was due to the characteristics of the rights now being different to what was originally submitted and that they enable Network Rail to have maximum flexibility for developing the timetable. This difference in characteristics is in relation to 6V20 which has a different timing load and 6O93, which has a different departure window. Network Rail confirmed that if DB Cargo cannot accept the 24-hour quantum firm rights, then Network Rail would not support these rights with 1-hour windows.

24. On 24 July 2025, Network Rail provided an update to its approach to Quantum Rights. Although it was previously only able to support some Rights on a 24-hour quantum basis as the December 2025 timetable was still under development, following completion of Phase 5 of its high-level plan, Network Rail is now supportive of these Firm Rights with 1-hour windows subject to certain requirements so that they are aligned with the Working Timetable. These are set out below – see **ORR Review**.

ORR review

25. 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.

26. 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

27. 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.

28. All rights sought in this application are for train services which operate with diesel locomotives so there are no power supply issues.

29. ORR has reviewed the application and agree that Network Rail has applied a reasonable process and decision criteria for measuring the performance levels of the services.

30. 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. As part of our review however, we asked Network Rail to provide an update on its position in relation to the 24-hour window quantum rights 6V20 and 6O93.

6V20 - 1800t timing load

31. In relation to 6V20 (SX) Newhaven Marine – Acton T.C, Network Rail confirmed that although a 1800t timing load has been accommodated in the December 2025 Working Timetable, it can only support a 1600t timing load as that was what was consulted both internally and externally and it aligns with the Right sought.

32. On 24 July 2025, Network Rail provided an update to its approach to Quantum Rights. Network Rail was previously only able to support some Rights on a 24-hour quantum basis as the December 2025 timetable was still under development. However, following completion of Phase 5 of it's high-level plan, Network Rail is now supportive of these Firm Rights with 1-hour windows provided that DB Cargo confirms to Network Rail and ORR that they are willing to amend the Right sought to align with the Working Timetable and so in the case of 6V20 with a 1600t timing load.

33. On 25 July 2025, DB stated that if ORR were not to direct access rights at 1800t, then DB Cargo would withdraw 6V20/6V16 from the application as it would not accept a reduction in tonnage.

34. On 29 August 2025, Network Rail confirmed that it could hypothetically support a 1800t timing load subject to it going through the necessary consultations with the associated path in the December 25 timetable reflecting this as it does not impact on other applications submitted.

35. We have decided that on balance it would not be fair on other operators or a consistent application of the Competing Applications process if we were to direct access rights

that have not gone through the necessary consultation processes. We would welcome a subsequent section 22 application from Network Rail and DB Cargo requesting access rights at the higher tonnage.

6O93 - departure and arrival windows

36. In its final representations, Network Rail confirmed that it can only support 6O93 as a Quantum Firm (24-hour window) Right due to the characteristics being different to what was originally submitted and that it enables Network Rail to have maximum flexibility when developing the timetable. In the case of 6O93, the Right sought is for a 08:08 – 09:08 departure window (SX WO–Y) but the Working Timetable path is a 07:45 departure from Acton TC.

37. DB Cargo responded to Network Rail's final representations confirming that it would prefer to have a uniform SX slot and that the ThO 07:45 departure from Acton is a consequence of Network Rail's Section 4 engineering footprint. DB Cargo confirmed that if the Rights cannot be split as separate ThSX and ThO entries, then it is prepared to accept the proposed Quantum Firm (24-hour window) Right.

38. In Network Rail's update to its approach to Quantum Rights (24 July 2025) it confirmed that the corresponding path for the Right sought in this application meet the characteristics on ThSX. However, on Thursdays, whilst the Right sought is for a 08:08 – 09:08 departure window the Working Timetable path departure time is 07:45. Network Rail confirmed that it can now support splitting the Right ThSX and ThO with the ThSX Right with the arrival and departure windows that were included in the original application. Network Rail is supportive of a Thursday Only right with an amended departure windows 07:15 – 08:15.

39. On 25 July, DB Cargo confirmed that it supported the proposal of seperate ThSX and ThO access rights and to align the windows with the WTT schedules.

40. We have no concerns of the proposal now supported by both parties.

Conclusion

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. Overall, we concurred with Network Rail's assessment regarding capacity and performance and have directed the rights as included in DB Cargo's 85th supplemental agreement.

Our duties under section 4 of the Act and our decision

47. 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))

48. 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

49. 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

50. 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

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