

Carl Hetherington  
Deputy director, Railway markets and economics

8 February 2019

Network Rail Infrastructure Limited  
c/o Alexis Streeter

DB Cargo  
c/o Nigel Oatway

Dear Alexis and Nigel,

## **Schedule 8 Recalibration: Our determination of the annual caps for DB Cargo**

### **Introduction**

1. This letter sets out our determination of the reciprocal annual cap for Network Rail Infrastructure Limited (Network Rail) and DB Cargo (together 'the parties') in respect of the Schedule 8 regime for control period 6 (CP6)<sup>1</sup>.

### **Background**

2. In the freight operator Schedule 8 regime, freight operators and Network Rail have reciprocal caps on the net annual liability they face under the Schedule 8 performance regime.
3. The purpose of the annual caps is to provide certainty to freight operators and Network Rail on their maximum Schedule 8 liability for any year, without removing incentives on events within 'normal' bounds.
4. To achieve this, the annual caps should be set at a level with a low likelihood of being reached, since once the cap is breached the incentive and compensation effects of Schedule 8 are lost.
5. The annual cap is the same for all small and new entrant freight operators. All other freight operators have a bespoke annual cap. The recalibration process for the 2018 periodic review (PR18) provided for Network Rail and each relevant freight operator to agree the level of the cap that should apply for CP6. Subject to our approval, we would then provide for this cap to be applied from 1 April 2019 in the

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<sup>1</sup> CP6 will run from 1 April 2019 to 31 March 2024.



relevant parties' track access contract, through the inclusion of the cap in our PR18 review notices, which began the implementation process for PR18.

6. However, Network Rail and DB Cargo were unable to agree a cap in time for it to be included in the review notice<sup>2</sup> that we issued on 20 December 2018. Because of this, we included in the new Appendix 1 to Schedule 8 that will apply to the parties' track access contract from 1 April 2019 a provision to allow us to determine this cap at a later date<sup>3</sup>. We also gave the parties some further time in which to agree the cap, albeit with the proviso that if they could not agree, we would make a determination.

### **Developments since December 2018**

7. Following further discussions, on 19 December 2018 you advised us that Network Rail and DB Cargo had now agreed a reciprocal annual cap of £ (2017-18 prices) for CP6 and requested our approval of this. This was too late to be included in the review notice.
8. In addition, you also provided evidence to demonstrate that an annual cap of £ (2017-18 prices) has a relatively low likelihood of being breached in CP6.

### **Our decision**

9. Based on the information you have provided (as set out above), we approve a reciprocal annual cap between Network Rail and DB Cargo of £ (2017-18 prices) for use in CP6.
10. Accordingly, through this letter we determine that in Appendix 1 of Schedule 8 of the parties' freight track access contract that will apply on and from 1 April 2019:
  - (a) the Network Rail Cap shall be £ (2017-18 prices); and
  - (b) the Train Operator Cap shall be £ 2017-18 prices).
11. In accordance with section 72 of the Railways Act 1993, a redacted version of this letter will be added to our public register.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Carl Hetherington', written in a cursive style.

**Carl Hetherington**

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<sup>2</sup> Review notice: Freight operator track access agreements, ORR, 20 December 2018, available [here](#).

<sup>3</sup> See paragraph 4.6(b) of Annex 2 of the aforementioned review notice.