

**Steve Jones**

Executive, Access and Licensing  
Email: [steve.jones@orr.gov.uk](mailto:steve.jones@orr.gov.uk)



25 November 2020

Mike Pybus  
Customer Manager  
Network Rail Infrastructure Limited  
Floor 4B  
George Stephenson House  
York YO1 6JT

Nigel Oatway  
Access Manager  
DB Cargo (UK) Ltd  
McBeath House  
310 Goswell Rd  
London EC1V 7LW

Dear Mike and Nigel

**Amendment of a track access contract between Network Rail Infrastructure Limited (Network Rail) and DB Cargo Ltd: Twenty Sixth Supplemental Agreement.**

1. On 25 November 2020 the Office of Rail and Road (**ORR**) approved the twenty sixth Supplemental Agreement (**SA**) to the track access contract (**TAC**) between Network Rail Infrastructure Limited (**Network Rail**) and DB Cargo (UK) Limited (**DBC**) under section 22 of the Railways Act 1993 (**the Act**), submitted to us on 23 November 2020. This letter sets out the reasons for our decision.

**Background**

2. This supplemental as originally submitted contained alterations to firm rights for a number of services between Southampton Western Docks and various destinations in the Midlands, Trafford Park and Wakefield.
3. It seeks to acquire six additional one hour window firm rights and amend ten existing one hour window firm rights. It would relinquish eight existing one hour 'window' firm rights and one existing 24 hour firm right.
4. Those services to and from Trafford Park must pass through the Castlefield Corridor which is classed by Network Rail as "congested infrastructure". Hence, the application form F contained wording stating that the firm rights were on the proviso that Network Rail can accommodate the services through Castlefield. If not, then the rights in their entirety would not exist.
5. The trains in this proposal have been validated against all other train services in the December 2019 and May 2020 Working Timetables.

**Consultation**

6. Industry consultation took place between 14 May 2020 and 14 June 2020. However, once that consultation had concluded, it was noted that the original Form F requested all rights up until the Subsidiary Change Date 2021. Whilst this expiry date is correct for the contingent rights which operate over the Castlefield Corridor, the remainder of the rights applied for are intended to expire on the Principal Change Date 2026 in line with the expiry date of DBC's current TAC. Consequently, as a result of this error, a second 14-day industry consultation



period was agreed between DBC, Network Rail and ORR, which ran from Thursday 9th July 2020 to Thursday 23rd July 2020. There are no unresolved issues with this SA.

### **ORR Review**

7. As stated in ORR's decision letter on DBC's 25<sup>th</sup> SA on 12 March 2020, we felt that the wording proposed in paragraph 4 above could lead to ambiguity as a firm right should not have provisos.
8. We therefore requested the parties to make it clear in the tables that services through Castlefield would be contingent with rights expiring in SCD 2022. This has now been done and is in line with Network Rail's policy of offering contingent rights for up to 6 months along the Castlefield corridor.
9. Contingent rights are not considered contentious and ORR's approval was duly granted.

### **ORR Decision**

10. This application is under section 22 of the Act and therefore is agreed between the parties and there are no outstanding issues. Therefore, we are content to approve this agreement.
11. In making this decision, we are satisfied that this decision reflects our duties under section 4 of the Act, in particular:
  - (i) to protect the interests of users of railway assets;
  - (ii) to promote the use of railway network in Great Britain for the carriage of passengers and goods and the development of that railway network, to the greatest extent ...economically practicable;
  - (iii) to promote efficiency and economy on the part of the persons providing railway services; and
  - (iv) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.
12. Under clause 18.2.4 of the TAC, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and DBC. I look forward to receiving the conformed copy.

Yours sincerely

*S Jones*

**Steve Jones**