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**Network Rail Representations for the proposed 85<sup>th</sup> Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and DB Cargo (UK) Limited dated 11 December 2016.**

As directed in your letter dated 30 May 2024, Network Rail is making its representations in respect of a Section 22A of the Railways Act 1993 for the 85<sup>th</sup> Supplemental Agreement (SA) of the Track Access Contract (TAC) dated 11 December 2016 between Network Rail Infrastructure Limited (Network Rail) and DB Cargo (UK) Limited.

In line with ORR's letter of 24 April 2024 to the industry on 'Competing and/or complex track access applications for December 2024, May 2025 and December 2025 timetable changes', DB Cargo (UK) Limited submitted this application to the ORR on 20 May as a S22A.

Your letter made clear to industry that "We expect applications received by 20 May 2024 to be of sufficient quality, completeness, and certainty to enable Network Rail, industry and ORR to assess them. A prerequisite for achieving this is that applicants will have discussed their plans with, and sourced information from Network Rail before submission (in line with our guidance)."

It further "...requested that Network Rail produces a high-level plan by 05 June 2024 for ORR and industry. This will set out when it will produce its robust assessment for the applications submitted by 20 May 2024."

Network Rail fulfilled this request on 05 June 2024 outlining the plan for undertaking capacity and performance assessments to inform both Network Rail and the ORR on the applications received.

That response should be considered alongside this Representation. In particular, it should be noted as indicated therein that:

- due to the unprecedented scale of 83 unsupported applications received at one point in time, Capacity Planning plan to phase its analysis,
- assessments will initially focus on applications and geography which do not overlap with the ongoing ECML ESG Development work to mitigate the risk of redundant analysis,
- all ECML ESG related applications will be considered following decisions as to the implementation of the ESG Timetable,

As we set out in the High-Level Plan; “Only those rights which potentially interact, contain the required level of information to inform assessments, were discussed with Network Rail and are intended for the next three timetable changes will be considered by Network Rail.” and that “Applications consisting of rights for geography not impacted or for later timetable changes should be considered separately.”

These factors have shaped the anticipated plan for submission of evidence related to this and other applications.

Whilst Network Rail was made aware by DB Cargo (UK) Limited that they would be applying for the proposed access rights as requested in ORR’s letter, Network Rail has not yet had an opportunity to fully consider its position on this application and whether it can eventually support the proposed access rights.

ORR, in its invitation to NR to make written representations, expects that NR will:

- include all of the necessary information for ORR to take an informed decision; or
- to refer to all of the necessary analysis and the confirmed timelines Network Rail requires to reach its decision on the application. This should include the “5 June 2024 capacity analysis” and any other analysis Network Rail needs to complete;
- recognise which other applications within the published list of “20 May 2024 applications” could interact with each application.
- Confirm any interested persons name(s) or confirm there are no interested persons.

Network Rail can confirm that we will not be able to in this representation provide all the necessary information for ORR to make an informed decision at this point in time. However, in this representation we will address each of the points above as well as provide:

- provide an initial view of the application Form F and supplemental;
- where applicable, highlight if Network Rail believes that some of the access rights sought are outside the scope of the ORR’s letter dated 24 April 2024;
- an indication of how Network Rail will be able to provide its final representations and any intermediate representations so that ORR will then have all relevant information from Network Rail to assist ORR in making an informed decision.

### **Interested Person(s)**

Network Rail is not aware of any persons who would fall within the definition of “Interested Person” in paragraph 1 of Schedule 4 of the Railways Act 1993 in relation to the application made by DB Cargo (UK) Limited.

### **Keeping you informed**

As stated in the letter to the ORR on 05 June “The plan will need to be flexible and reviewed through the process to consider industry decisions in relation to the ECML ESG along with potentially other

changing industry priorities and requirements. For example, recommendations from the East Coast Task Force may impact on industry resources, in particular timetabling resource. This could require changes to the remaining stages of the plan, including impacting when analysis can be completed.”

Please note although this application does not directly interact on the ECML, any decisions relating to the ECML could have consequential impacts on capacity and performance in relation to this application. This is particularly relevant for locations used by services which cross NR Route boundaries.

In the letter we also stated “We propose establishing a change control mechanism to track changes in the plan, when and where required, to retain transparency and clarity. This may also lead to consequential changes to anticipated dates of any resulting representations planned by our customer teams.” Where such changes in timeline occur, we will notify you of any impacts expected on content, volume or timing of forthcoming information.

Where there are capacity or performance aspects of this application that will not be addressed through the High-Level plan (due to lack of necessary information as indicated by ORR, or due to the focused areas of analysis being provided by the High Level Plan) we will discuss below how we propose to provide the necessary information that will be required by ORR to take a decision.

### **Summary of Rights Sought**

In their application and as a high-level summary, DB Cargo (UK) Limited are seeking 11 new Access Rights to commence on approval until PCD 2026. These trains are currently running under Train Operator Variation (TOVR) Rights.

DB Cargo (UK) Limited are seeking 1 amendment to an existing Access Right to take effect upon approval until PCD 2026.

DB Cargo (UK) Limited are proposing to relinquish 5 existing Access Rights.

Full details of all Rights sought by this application are contained in the Schedule 5 Rights Table submitted with the S22A. Key points are:

- **Commodity Type:** Aggregates
- **End Customer:** Brett Aggregates
- **Flow(s):**
  - Newhaven to Neasden
  - Acton – Ipswich Griffin Warf
  - Ipswich Griffin Warf – Langley
  - Newhaven – Langley
  - Crawley – Newhaven

Industry Consultation for this application commenced on 24 May 2024, and concluded on 24 June 2024. Some consultees have asked for additional time which has not been agreed.

### **The High-Level Plan and Dependencies**

The High-Level Plan submitted on 05 June 2024, and our additional engagement with Capacity Planning indicates that the following phases may be relevant for this application:

- Phase 1 - Collation and Scoping
- Phase 2 - Risk Identification for application
- Phase 3 - Production Development Period for SCD 2025 aspirations
- Phase 4a – ECML confirmation for December 2025
- Phase 4b – ECML confirmation for May 2025
- Phase 5 – December 2025 Production Period

This, along with the interacting applications matrix, should support Network Rail in considering application and interacting location dependencies.

We are mindful that the High-Level Plan and its analysis, or other issues indicated, may identify dependencies, risks or changes in risk profiles that could require revision or further review of individual responses. We also note the 05 June plan does not guarantee that analysis will not have to continue beyond the timetable development process. Where this is the case we will communicate with the Operator and ORR.

The current number of new applications received at this point in time is unprecedented, with 83 new applications received. Of these, 55 are seeking capacity on NW&C Region. This volume of simultaneous applications on NW&C Region, with this number of interactions to analyse, involves a level of complexity not previously experienced. As we move through the complexities of assessing the applications the plan may necessarily need to be reviewed and revised.

As stated in our letter of 5 June 2024 to the ORR “Throughout the rights assessment work phases Network Rail intends to communicate with ORR on progress and provide collated information against individual applications as they are assessed through the plan. The intention is to enable decisions during the process, where possible, rather than await a fully completed package of work considering all in-scope applications.”

We also recognised in our letter of 5 June 2024 that “this approach will have to balance the need for business continuity, so that current services may continue to operate and timetable changes can be made when there is low risk of negative outcomes for passengers and freight users, with the need to avoid prejudicial decisions that could unduly favour one party where aspirations interact.”

As stated later in this letter, if interactions occur at different points in time, i.e. different Timetable Change Dates then this could have an impact on the dates when Network Rail will be able to submit its position with regards to the application.

ORR will understand that due to the nature of the Freight Track Access Contracts, with Operators having the ability to bid for and operate trains under Contingent Rights outside of the Principal and Subsidiary Timetable change dates, some of the Rights sought, or parts thereof, are for services already running in the Timetable. Therefore, we anticipate potential for relevant outputs at all milestone stages of the High-Level Plan.

### **Common route / regional identified considerations / constraints**

This request for Rights covers a point in the network where it has been identified at a regional level that more than one applications should be considered by ORR at the same time as any one decision would restrict the ability to accommodate other requests due to the items listed in Annex A. The other affected operators’ applications are set out in Annex B.

## **Network Rail Review of Form P / Form F and associated documents**

Network Rail has performed an initial assessment of the Form F and associated documents submitted with this application.

Network Rail would like to highlight that whilst we have in phase 1 of the 05 June Plan identified where applications could interact at the previously identified locations with another Operators application, we will through Phase 2 for December 2024 and May 2025 applications identify those access rights sought which are not at an interacting location. If Network Rail does identify access rights (or part of the access rights) which are not at an interacting location, then Network Rail will consider the proposed rights as per business as usual and will engage with the operator and ORR on this.

## **Network Rail's Initial Position on the Access Rights Sought prior to necessary assessments being completed in line with the plan**

Network Rail has made every attempt in their initial assessment of the Application received to be able to inform the ORR of any early positions it might have on the access rights sought. We believe this application does not meet the criteria set out in the ORR's letter to industry sent on 24 April 2024, as it does not interact with the locations specified. Therefore, this application will not be assessed as part of the interacting rights workstream and should be processed business as usual.

## **Possible Interactions with Other Applications from 20th May 2024**

As requested in ORR's invitation for NR to make written representations to this application, Annex B to this letter shows where this application could interact with each of the "20 May 2024 Applications" at the previously identified locations.

Please note if the interactions occur at different points in time, i.e. different Timetable Change Dates, then this will have an impact on the dates that Network Rail will be able to submit its position with regards to the application. I.e. if the application submitted for Operator A is to commence December 2024 and there are no concerns or conflicts that does not mean that when Operator B's aspirations are considered which start in May 2025 that both will be able to be accommodated and therefore Network Rail will have to see the outputs of the capacity assessments for the May 2025 Timetable for Operator B before they can give a final position on Operator A's application.

Across our regions there is work required to inform the decisions to be taken on interacting rights; key issues and planned areas of work are highlighted below in the following Appendices within Annex A:

- Appendix B - Eastern Region Assessment
- Appendix C - North West & Central Region Assessment
- Appendix D - Southern Region Assessment
- Appendix E - Wales & Western Region Assessment

## **Allowing business continuity while preserving freedom of action for ORR in taking its decision**

Our letter of 5<sup>th</sup> June stated that in this interim period Network Rail will have to balance the need for business continuity, so that current services may continue to operate and timetable changes can be made when there is low risk of negative outcomes for passengers and freight users, with the need to avoid prejudicial decisions that could unduly favour one party where aspirations interact.

We note that some operators have split their applications across different timetable periods, which already provides ORR with the ability to deal specifically with the nearer-term applications now, whereas others have combined different timetable periods in a single application.

Should ORR wish to make a single decision on each application it has received, without breaking that application into parts, then, where a single application has been made relating to multiple timetable periods, there is a risk that rights might not be available in time for an operator to commence services as early as it would like, given the need for all of the information set out in our plans to be available in order for decisions to be made relating to those future timetables.

Where paths associated with some of the quantum rights in this application are included in a New Working Timetable issued under the Network Code Part D process, then Network Rail proposes to work with the applicant on these elements of the application. Our aim, subject to normal governance processes, would be to potentially agree a new s22 application for contingent, time-limited rights for that timetable period with no presumption of continuity – in line with the approach that ORR has supported for applications on the East Coast Main Line in recent years.

This would enable you to reserve your position on future capacity choices, allowing decisions that relate to a later timetable period to be made simultaneously, while making effective use of the railway network in the earlier timetable periods.

## **Conclusion**

Network Rail is aware that this representation letter does not contain all the information needed for this application for the ORR to make a decision.

As explained in our letter of 05 June 2024, these representations letters were mostly expected to reserve our position pending the outcome of the capacity and performance assessments. We are also mindful that the plan and its analysis may identify dependencies, risks or changes in risk profiles that could require revision or further review of this response. However, we hope that the plans we provided give you the reassurance that we will assess this application to inform Network Rail's position in a later representation in line with the plan and letter. In addition, Network Rail wants to give the ORR the confidence that we have made every effort in this letter to give any initial views where we can.

Network Rail asks that while we carry out our assessments, ORR progresses with its own assessments wherever possible to assist in making early decisions/ descoping the scale of applications requiring assessment from Network Rail. Additionally, where we have deemed an application for December 2024 or May 2025 to be unready in the initial representations in this letter, we ask that this be descoped from the analysis requirements as quickly as possible.

Network Rail will continue to keep ORR sighted on the progress of the plan for this application.

Yours sincerely

Ian Bartlett  
**Customer Manager**

## **Annex A – Plan for Information / Analysis / Assessment**

<b>Details of Information / Analysis / Assessment</b>	<b>NOTES</b>	
<b><i>High Level Phases from 5th June Plan</i></b>		
Phase 1 Collation & Scoping	Please see the 5th June letter for details	
Phase 2 Risk Identification for May 2025	Please see the 5th June letter for details	
Phase 3 May 2025 Production Development Period	Please see the 5th June letter for details	
Phase 4a - (ECML confirmed for December 2025) – focusing on December 2025	Please see the 5th June letter for details	
Phase 4b - (ECML confirmed for May 2025) – focussing on December 2025	Please see the 5th June letter for details	
Phase 5 – December 2025 Production Period	Please see the 5th June letter for details	
<b><i>Further Route / Function Analysis / Assessments / Information</i></b>		
Freight & Customer Considerations		Further details of assessment to be carried out found in Appendix A
Eastern Region Considerations	Informed by Regional / Route plans	Further details of assessment to be carried out found in Appendix B
North West & Central Region Considerations	Informed by Regional / Route plans	Further details of assessment to be carried out found in Appendix C
Southern Region Considerations	Informed by Regional / Route plans	Further details of assessment to be carried out found in Appendix D
Wales & Western Region Considerations	Informed by Regional / Route plans	Further details of assessment to be carried out found in Appendix E

### **Appendices for Annex A**

#### **Appendix A: Freight & Customer Considerations**

<b><i>Assessment</i></b>	<b><i>Detail</i></b>
Heavy Axle Weight (HAW) Assessment	Some of the Access Rights in this Supplemental Agreement are for Heavy Axle Weight (HAW) traffic which need to be properly consulted with our Regional engineering teams.
Assessment of Path and Utilisation	As part of our ongoing due diligence, we will assess usage and performance of the train slots associated with the Access Rights

Performance	requested as part of this Supplemental Agreement. We expect these outputs to be in line with the timescales of the High-Level Plan.
Future Freight Growth	In line with CP7 freight growth targets, we are committed to securing capacity in the timetable for future use. Where capacity and suitable capability can be identified, we will consider applications for the Sale of Access Rights.

### Appendix B: Eastern Region Considerations

Eastern Region has reviewed this application through its initial assurance sessions and is taking forward the relevant actions that will be tracked through the Regional High-Level Plan.

Eastern will be utilising all relevant intelligence gathered as part of the ECML ESG workstream to assist with its ongoing assessment and assurance activities.

Where an application has any additional rolling stock requirements, these will need to be fully assessed as part of the Eastern Region power modelling workstream and align with cross-route power modelling in other Network Rail regions.

As previously highlighted through this representations letter and the 05 June letter to the ORR, we may as we progress, identify dependencies, risks or changes that could result in a change to the plans or activities identified.

### Appendix C: North West & Central Region Considerations

North West and Central (NW&C) Region has several large enhancement projects taking place including TransPennine Route Upgrade, HS2 and Midlands Rail Hub impacting long term capacity utilisation for which we will give consideration to when reviewing this application once all the necessary assessments have been completed and Network Rail is able to collectively assess the risks and impact this application may have.

In addition to the key interacting locations specified in ORR's letter of 24 April 2024, Network Rail is also aware of other locations for which there are potentially interacting aspirations and capacity constraints. This includes but is not limited to Manchester and the surrounding area, Crewe, and the Wolverhampton corridor. During our assessment of the applications we will be paying particular attention to both the locations identified in ORR's letter and those named above.

In preparation of the December 2022 timetable, Network Rail formed industry workstreams to undertake a strategic review of capacity utilisation on both the West Coast Mainline South and Manchester area including the Castlefield corridor and Manchester Victoria. A separate industry working group (managed under the governance of the Grand Rail Collaboration) assessed options for



the service structure on the Wolverhampton – Coventry route through Birmingham New Street. The timetable today still reflects this structure, and the outputs produced for December 2022, which were supported by the industry, remains the strategic plan for capacity utilisation and will help us in assessing this and the other applications.

A key consideration included in the plan is regarding power supply on NW&C. As previously informed, NW&C has several areas of concern with regards to power supply. For any application utilising electric traction, it is our intention to model the outputs of the capacity assessment to understand the power supply risk both during normal working and in N-1 conditions. In carrying out traction power modelling, NW&C region adheres to the requirements stipulated in NR/L1/ELP/27000 “Policy Requirements for Electrical Power Assets”. This policy states that the electrical power supply system shall have sufficient redundancy to support the peak timetable with one key piece of equipment out of service (known as N-1). In addition to fulfilling Network Rail policy requirements, maintaining the required N-1 redundancy levels in the traction power network supports adherence to contractual, performance and safety targets.

In order to accurately assess power supply it is key that we understand any Empty Coaching Stock moves. We will be requesting this information separately from operators if it was not previously supplied as part of the 20 May applications.

We will undertake internal consultation of the application following our usual business practices however as a result of ORR letter of 24 April 2024 NW&C has 55 applications which it must consider. Therefore our internal consultation will be over a longer period of time, and this has been allowed for in the plan.

Power supply and route performance assessments require additional subject matter support from third party organisations and therefore, whilst we have included anticipated timescales within the plan, these are currently subject to confirmation.

## NW&C Assessment Plan

TASK	ASSIGNED TO	
<b>Capacity Assessment</b>		
High Level Plan provided 05 June 2024		
Collating & Scoping	System Operator - CP	Please see June 5 letter for details
Phase 2 Timetable Risk Identification May'25	System Operator - CP	Please see June 5 letter for details
Phase 3 May'2025 Production Development Period	System Operator - CP	Please see June 5 letter for details
Phase 4a ECML confirmed Dec'25 Dec'25 assessment against May'25	System Operator - CP	Please see June 5 letter for details
Phase 4b Dec'25 assessment ECML confirmed May;25	System Operator - CP	Please see June 5 letter for details
Phase 5 december 2025 Production period	System Operator- CP	Please see June 5 letter for details
Other Capacity assessment		
2022 Strategic plan capacity assesment	Regional Timetable Team	
<b>Risk Identification</b>		
May'25 TP-Hazid passenger applications	Regional Timetable Team	
TP-Hazid Upto and including May'25 freight applications	Regional Timetable Team	
May'25 TP RAM - all applications	Regional Timetable Team	
Dec'25 TP Hazid - all applications	Regional Timetable Team	
Dec'25 TP -RAM - all applications	Regional Timetable Team	
Internal consultation of applications	F&A Team	
<b>Planned Assessments</b>		
Ped flow assessment of Euston Station	Station Capacity Team	
Level Crossing assessment		
Mapping of number of services to each ELR	Regional Timetable/F&A team	
ALCRM modelling/assessment	LCM	
ALCRM modelling/assessment - May'25	LCM	
ALCRM modelling/assessment - Dec'25	LCM	
Power Supply Modelling		
Phase 1: Build baseline model		
Phase 2: Navitas provide modelling for baseline model	Asset Management	
Phase 3: Assess baseline + Proposed services	Asset Management	
Phase 4: May'25 Production Development Timetable	Asset Management	
Phase 5:N-1 assessment	Asset Management	
Phase 6: Impact assessment + mitigation assessment	Asset Management	
Phase 6: Re-create modelling CIF file based on Dec'24 actuals	Asset Management	
Phase 7: Dec'25 Production Development Timetable	Asset Management	
Phase 8:N-1 assessment	Asset Management	
Phase 9: Impact assessment + mitigation assessment	Asset Management	
Performance Analysis		
Phase 1: Internal review of existing data	Route performance teams	
Phase 2: Performance assessment of May'25 decisions	Route performance teams	
Phase 3: Performance assessment of Dec'25 decisions	Route performance teams	
<b>Governance</b>		
Potential representations for Dec'24		
Draft Letter	F&A team	
Internal Review	F&A Team	
SOAR review and approval	F&A Team	
Submit to ORR	F&A Team	
Final representations:		
Draft letter	F&A team	
Internal Review	F&A team	
Internal Consultation	F&A team	
SOAR review and approval	F&A team	
Submit to ORR	F&A team	

### Appendix D: Southern Region Considerations

Southern Region Performance teams are not currently in a position to provide a view on the overall performance impact across the region in relation to the S.22A freight applications. Due to the unprecedented volume of applications received at the same time, further information will be available in due course.

## Appendix E: Wales & Western Region Considerations

Wales and Western Region will consider any additional access right applications for the region in the context of current performance levels, our ongoing recovery plans, all other known and emerging future service aspirations, and our asset condition and maintenance requirements. Furthermore, we will consider the risks associated with planned enhancement projects, including Old Oak Common, East West Rail, South Wales Metro, MetroWest and others.

### Western Route Plan

Capacity Assessment	
Collating & Scoping	System Operator - CP
Phase 2 Timetable Risk Identification May'25	System Operator - CP
Phase 3 May'2025 Production Development Period	System Operator - CP
Phase 4a ECML confirmed Dec'25 Dec'25 assessment ag	System Operator - CP
Phase 4b Dec'25 assessment ECML confirmed May;25	System Operator - CP
Phase 5 december 2025 Production period	System Operator- CP
Risk Identification	
May'25 TP-Hazid passenger applications (Known at the tim	Timetable Project Manager
May'25 TP RAM - all applications	Timetable Project Manager
Dec'25 TP Hazid - all applications	Timetable Project Manager
Dec'25 TP -RAM - all applications	Timetable Project Manager
Internal consultation of applications	Customer team
Internal consultation Dec'24 applications not previously c	Customer team
Internal consultations May'25 applications	Customer team
Internal consultation Dec'25 applications	Customer team
Planned Assessments	
Level Crossing assessment	
ALCRM modelling/assessment	LCM
ALCRM modelling/assessment - May'25	LCM
ALCRM modelling/assessment - Dec'25	LCM
Performance Analysis	
Phase 1: Internal review of existing data	Route performance teams
Phase 2: Performance assessment of May'25 decisions	Route performance teams
Phase 3: Performance assessment of Dec'25 decisions	Route performance teams
Engineerring Access Assessment	Access Planning/Maintenance
Cardiff Central Capacity study workshop	Wales route
Cardiff Central Capacity Study	Wales route
Governance	
Potential representations for Dec'24	
Draft Letter	Customer team
Internal Review	Customer team
SOAR review and approval	Customer team
Submit to ORR	Customer team
Final representation:	
Draft letter	Customer team
Internal Review	Customer team
Internal Consultation	Customer team
SOAR review and approval	Customer team
Submit to ORR	Customer team





LIS 2nd SA 22a			x						x			
Scotrail 51st SA 22a			x						x			
TPT 64th SA 22a			x					x	x			
TPT 65th SA 22a			x						x			
Virgin New Contract 17			x	x	x							
Lumo London-Rochdale 17 2027				x								
LNER 35th SA 22A May '28									x			