

**Steve Jones**

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



12 March 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 Fifth Supplemental Agreement.**

1. On 6 March 2020 the Office of Rail and Road (**ORR**) approved the twenty fifth 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 the same day. This letter sets out the reasons for our decision.

**Background**

2. This supplemental as originally submitted contained three additional one hour window firm rights, and surrender of one firm right. The additional rights relate to intermodal traffic to/from London Gateway and Trafford Park, Manchester and are for one timetable period only (December 2020 to May 2021).
3. The services must pass through the Castlefield Corridor which is classed by Network Rail as “congested infrastructure”. Hence, the application contained wording for the rights table of the contract 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.

**Consultation**

4. Industry consultation took place between 5 February 2020 and 5 March 2020. Arriva Rail London had concerns over one of the services potentially conflicting with London Overground trains on the North London line. These were resolved when Network Rail proposed to increase the window to four hours for this service.
5. Also, Arriva Rail Northern had objected to granting of firm rights, as that would be contrary to Network Rail’s Castlefield congested infrastructure policy and the precedence this could set and fact that one service was timed in the morning peak.
6. These objections were removed after Network Rail explained that the DBC services were already running without significant performance issues, the



application was for just five months and the situation would be reviewed when the outcome of the Castlefield study was known.

### **ORR Review**

7. ORR undertook to consider this case, as far as possible, in advance of a completed application to meet the one day turn around between consultation close and PCD2020 Priority Date (6 March 2020) and given the novel wording proposed.
8. This case was unusual because both parties proposed a novel approach to try and overcome the issues at Castlefield and provide a level of certainty to DBC. Essentially, if a path could be found on the corridor, DBC would have a firm right for the whole of the service. However, a firm right does not normally have provisos or conditions. Was it a firm right or a contingent right? Either way the proposed wording could lead to some ambiguity, which might cause difficulties when calculating priorities under the Network Code. DBC's proposal was less ambiguous, clearly being a firm right, albeit with a defeasance clause. It was not clear how this would fit with Network Rail's policy of not allowing firm rights through the Castlefield Corridor. This issue was not fully resolved.
9. Network Rail did not send us up to date performance data so we could not fully conclude our assessment in the time available, to our satisfaction (given the status of the corridor), as if they had been firm rights. We are, however, content with Network Rail's resolution of the consultation issues.
10. Due to the need to make a decision in time for the Priority Date, the parties discussed the issues and we invited them to submit the supplemental agreement for approval on a contingent rights basis. Contingent rights are not considered contentious and ORR's approval was duly granted.

### **ORR Decision**

11. This application is under section 22 of the Act and therefore is agreed between the parties, who are prepared to enter into the agreement as submitted. Therefore we are content to approve this agreement.
12. 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.
13. 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**