



Katherine Goulding
Senior Executive, Access & Licensing
Office of Rail and Road
One Kemble Street
London WC2B 4AN

DB Cargo (UK) Limited
Ground Floor McBeath House
310 Goswell Road
London EC1V 7LW

Access Manager

Telephone:
Mobile:

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Dear Katherine,

**APPEAL UNDER PART M OF THE NETWORK CODE BY DB CARGO (UK) LIMITED
IN RESPECT OF DETERMINATIONS TTP1331 & 1376 OF THE TIMETABLING PANEL**

Thank you for your letter dated 19 December 2018 confirming ORR's decision that DB Cargo (UK) Limited ("**DB Cargo**") was entitled to submit its appeal dated 27 November 2018 in respect of Determinations TTP1331 & 1376 ("**the Determination**").

In response to ORR's request for DB Cargo to set out the remedies DB Cargo is seeking in the event that ORR does decide to hear its appeal, DB Cargo wishes to make the following representations:

The grounds of DB Cargo's appeal were set out in its letter to ORR dated 27 November 2018. However, in summary, DB Cargo considers that a specific part of the Determination is wrong, unjust and lacks proper legal reasoning to enable DB Cargo to understand the conclusions that the Timetabling Panel has reached on this particular point.

The specific part is as follows:

Paragraph 80 of the Determination; the words "*The Hybrid Timetable issued on 17 August 2018 is the New Working Timetable effective from 9 December 2018*".

Consequently, DB Cargo requests ORR to determine that:

(1). the Timetabling Panel erred in describing the Hybrid Timetable as the New Working Timetable and that the New Working Timetable is in fact the timetable published by Network Rail at D-26 pursuant to Condition D2.7.1 of the Network Code;

(2) the New Working Timetable is defined in Part D of the Network Code and is not capable of being unilaterally withdrawn and replaced with some other timetable(s), such as in this case with the Hybrid Timetable, as is implied by the Determination.

If ORR is able to determine the above two requests, DB Cargo seeks that the wording in paragraph 80 of the Determination set out above (together with any relevant supporting statements elsewhere in the Determination) be struck out.



Alternatively, if ORR upholds the Timetabling Panel's decision that the Hybrid Timetable is the New Working Timetable, in order to provide clear understanding for the industry and in the absence of any proper reasoning set out in the Determination, DB Cargo requests that ORR provides a fuller explanation of why such a conclusion can be drawn by reference to the legal entitlements of the parties.

For the avoidance of doubt, DB Cargo is not appealing the directions in the Determination in respect of GB Railfreight Limited's Access Proposals. DB Cargo's appeal relates solely to the specific issue concerning the proper interpretation of the Network Code regarding the New Working Timetable.

DB Cargo considers that its requests are within the powers of the ORR to grant if it was so minded to do so as they are similar in nature to requests made in previous appeals against TTP determinations that have been heard and upheld by ORR. For example, DB Cargo understands that ORR accepted Network Rail's appeal requests to strike out certain aspects of TTP Determination No.1174 which concerned matters of principle pertaining to the operation of Part D of the Network Code whilst leaving the other aspects of that determination concerning the acceptance of Access Proposals to stand (ORR's appeal determination dated 15 February 2018 refers).

DB Cargo hopes that the above representations are helpful. If you require any further information, please let me know.

Yours sincerely,

Access Manager