

Manager Track Access
Office of Rail and Road
One Kemble Street
London WC2B 4AN

DB Schenker Rail (UK) Ltd
Ground Floor McBeath House
310 Goswell Road
London EC1V 7LW

Access Manager

Telephone:

Fax:

Mobile:

@dbschenker.eu

21 January 2016

Dear ,

**SECTION 17 APPLICATION FOR A LONG TERM TRACK ACCESS CONTRACT
BETWEEN DB SCHENKER RAIL (UK) LIMITED AND NETWORK RAIL
INFRASTRUCTURE LIMITED – RESPONSE TO NETWORK RAIL'S
REPRESENTATIONS**

This letter (and attachments) constitutes the response of DB Schenker Rail (UK) Limited ("DBSR") to the representations made by Network Rail in its letter to the Office of Rail and Road ("ORR") dated 8 January 2016 concerning DBSR's application for a long term track access contract pursuant to Section 17 of the Railways Act 1993.

Contract Length

DBSR is pleased to note Network Rail's position that it does not have a particular objection in principle to granting DBSR a 10-year contract, particularly as DBSR has mentioned the existence of specialised investments and long term underlying customer contracts in its application in order to meet the requirements of Regulation 18.8 of the Railways Infrastructure (Access and Management) Regulations 2005 ("the Regulations"). However, DBSR also notes that Network Rail's position is contingent on its view being adopted on the extent of the arrival and departure windows specified in the Rights Table. If its view in this respect is not adopted, Network Rail would only advocate a 5-year rather than 10-year term.

DBSR believes that the Regulations do not limit the length of term of a track access contract to only a 5-year term based on the extent of arrival and departure windows. In any event, the proposed long term access contract contains arrival and departure windows allowing up to a maximum of 2 hours of journey time flex for Network Rail which, in DBSR's view is more than sufficient to strike an appropriate balance between the need for certainty and stability for DBSR and its customers on the one hand and Network Rail's ability to maximise the capacity of the network on the other. DBSR submits that the size of arrival and departure windows advocated by Network Rail for bulk traffic which allow for up to a maximum of 4 hours of journey time flexibility destroys this balance by moving much further away from certainty and stability for DBSR and its customers. Furthermore, DBSR has removed certain restrictions on Network Rail's flexibility that are contained in

its current track access agreement (e.g. the Maximum Variation provision and rights to timings at Intermediate Points) as well as including an Access Rights re-opener mechanism in Schedule 5 which will allow Network Rail to state its case for wider arrival and departure windows in circumstances where further flexibility is warranted on particular Services.

The Expression of Rights within Schedule 5

DBSR welcomes Network Rail's endorsement of its adoption in its proposed track access contract of the new format of Schedule 5 and the associated changes to Schedule 4 as devised by the joint industry working group. However, DBSR notes that the key issue preventing Network Rail's agreement to DBSR's proposed long term access contract remains the size of the arrival and departure windows for Services that Network Rail considers are not conveying 'just in time' traffics (in general 'bulk commodities'). The respective views of the parties on the size of the arrival and departure windows for Network Rail accepted 'just in time' commodities and those rights currently expressed as Level 2 appear to be aligned.

- *Arrival and departure windows*

As mentioned above, DBSR disagrees with Network Rail's view that having 2-hour windows (giving up to a maximum of 4-hours of journey time flexibility) for bulk traffics represent an appropriate balance between the flexibility Network Rail needs to maximise capacity through timetable planning and the certainty of arrival and departure times that Freight Operators and their end customers need. DBSR set out its position on why it requires default arrival and departure windows of 1-hour in its application and, therefore, does not believe there is a need to repeat it in full in this letter. That said, it does however wish to respond to certain specific points raised by Network Rail.

Network Rail suggests that unlike intermodal type traffic, there is still a very low risk of any bulk traffic being lost to rail as long as road is not a viable option. However, DBSR submits that with the possible exception of electricity supply industry coal, spent nuclear fuel and iron ore, road is an extremely viable option for bulk traffics. Aggregates, for example, which is one of the growing sectors of the bulk traffic market is very susceptible to modal shift. Aggregates terminals tend to be located in and around areas of population and have prescriptive environmental constraints placed upon their hours of operation. There are also carefully planned forwarding arrangements associated with such terminals that form part of a complex logistics chain involving bulk delivery to the various terminals linking in with onward deliveries by road. If rail is unable to work within the environmental/operational/resourcing constraints that the aggregates industry requires, then end customers will look to other modes of transport (such as road) which will be able to deliver. Similar considerations apply to the waste industry and the delivery of steel where rail is looked upon as part of the production line.

DBSR also notes that with the exception of electricity supply industry coal, spent nuclear fuel and iron ore, no other bulk traffics are subject to mark-ups on their track access charges as they are not deemed to be captive to rail. In summary, therefore, for all sorts

of reasons (e.g. environmental constraints, restricted hours of operation, efficiency of resources and lack of storage capability), 'just in time' delivery is now very much sought after in most bulk traffic markets.

Network Rail asserts that "*some open access type passenger operators run two-hourly services*". Even if true, it really only applies to the East Coast Main Line ("ECML") which has bespoke capacity issues that will not be solved with 2-hour rather than 1-hour arrival and departure windows. Timetable studies based on operator-agnostic services have been carried out in the past by Network Rail and still all aspirations could not be accommodated without the need for infrastructure enhancements or fewer trains. The majority of the network, however, is actually based around the concept of 'standard-hour' timetables, particularly in the 'off-peak' where freight is given standard opportunities to operate within each hour. This concept strongly lends itself to 1-hour windows in DBSR's view.

Network Rail also contends that the additional pathing and looping time contained within the timings of DBSR's freight services does not in fact represent a benefit to Network Rail but instead is a benefit to DBSR. However, DBSR submits that this additional pathing and looping time significantly extends the journey times of its services and increases costs when DBSR actually requires end to end journey times as expeditious and efficient as possible to meet the requirements of its end customers. It is therefore surprised that Network Rail considers slower transits and extended journey times represents a benefit to its rail freight customers.

DBSR considers that Network Rail's contention that this additional time is not flexibility available to train planners because it is essential to enable a viable end-to-end service rather than not accommodating the service at all is nonsensical. When planning future Working Timetables, train planners regularly use pathing time and allowances from one part of a train's journey and move it to another in order to accommodate new or amended services. DBSR contends that whether flexibility is included in arrival and departure windows in the Rights Table or is included within train schedules as additional pathing time or allowances, it is all available for use by train planners when planning future timetables to maximise capacity of the network. DBSR, therefore, rejects Network Rail's view in this respect and remains firmly of the position that additional looping and pathing time is clearly a benefit to Network Rail despite its suggestions to the contrary.

Network Rail has also stated its preference for more flexible timetabling at the outset of the contract (i.e. wider arrival and departure windows) rather than rely on the proposed Schedule 5 re-opener provision adopted by DBSR. DBSR, on the other hand, considers that the proposed re-opener provision is by far the most appropriate way of enabling Network Rail to obtain more flex as it would target only those services where it can be demonstrated by Network Rail that more flex is required rather than Network Rail's alternative 'just in case' approach that would apply to all services. The re-opener mechanism achieves a much better balance in DBSR's view between certainty and stability for freight operators and their end customers and enabling Network Rail to maximise capacity of the network.

Network Rail sums up its position on the expression of freight access rights by stating: “A continuation of the current ‘rigid’ access rights may drive arguments for greater use of financial incentives/access charges to focus on capacity use and development”. It is abundantly clear, however, that DBSR’s application moves well away from the current expression of access rights by adopting a significantly more flexible approach which includes:

- Adopting the new Schedule 5 format devised by the industry (including Network Rail)
- Removing certain constraints on Network Rail’s flexibility that are contained in the current contract (i.e. eliminating the maximum variation provision and rights to timings at intermediate points)
- A mechanism which will allow Network Rail to re-open the flexibility of any service where it can demonstrate a need for more flex.

DBSR notes that Network Rail welcomes DBSR’s use of the new Schedule 5 format and its removal of the maximum variation provision.

- *DBSR Rights sample check*

Network Rail argues that the arrival and /or departure windows sought by DBSR in its application do not correspond with the timings of the relevant service in the current Working Timetable. This, in DBSR’s view, demonstrates the co-operation that it currently affords to Network Rail in evaluating requests for additional flexibility outside of DBSR’s Firm Rights.

DBSR’s existing Rights Table, which has been agreed by Network Rail and approved by ORR, contains the access rights that DBSR requires (subject of course to the ever-changing needs of customers) whereas the Working Timetable contains the Train Slots that have been offered by Network Rail and accepted by DBSR following discussions between the parties during the Timetable Development process. It cannot be taken for granted by Network Rail that just because DBSR may agree to Train Slots in one Working Timetable being outside of its Firm Rights, does not mean that such agreement may be given in future Working Timetables. By way of illustration, DBSR has often agreed in the past to accept Train Slots in a Working Timetable that are outside of its Firm Rights in order to accommodate Network Rail’s engineering work programmes. This agreement is usually given on the expectation that the Train Slots would revert back to being within DBSR’s Firm Rights in future Working Timetables once the engineering works have been completed.

Notwithstanding the above comments, DBSR is willing to work with Network Rail to address its concerns to see if any arrival and departure windows need further amendment.

Contract Miles

If DBSR has understood Network Rail’s position correctly, Network Rail argues that ‘Contract Miles’ should be removed from Freight Track Access Contracts because Freight

Operators already receive compensation under Schedule 4 of the Freight Track Access Contract for any additional mileage travelled. Network Rail asserts, therefore, that charging Freight Operators based on Contract Miles rather than the actual diversionary mileage results in Freight Operators being compensated twice.

DBSR considers that Contract Miles should remain a part of the Schedule 5 Rights Table for the following reasons:

- (a). If Network Rail levied track access charges based on actual (presumably TOPS mileages) rather than Contract Miles then Freight Operators would be levied charges for any mileage travelled 'off-network' as such mileage is also included in TOPS. For example, in TOPS, Whatley Quarry is included in the mileage (shown as 4 miles from Frome whereas the Network Rail boundary is only at 2 miles 40 chains). This means that if TOPS mileage was used, services to/from Whatley Quarry would be charged on the basis of this 1.5 miles of 'off-network' infrastructure being included. Contract Miles on the other hand enable 'off-network' mileage to be excluded. Another example is Fenny Compton where TOPS miles include the 3-mile 'off-network' MOD Branch.
- (b). There are cases where Contract Miles are required to enable Network Rail to maximise capacity of the network. For example, when the Olive Mount Chord opened in Liverpool, Network Rail wanted to divert as many freight services as possible between the Bootle Branch and Warrington via this route. However, the direct route is 5 miles longer than running via Edge Hill leaving little incentive to Freight Operators to use it. However, in return for DBSR's agreement to move to the new route, the original Contract Miles value was retained to ensure DBSR was not disadvantaged as a result of its co-operation. Without Contract Miles, agreement to use longer routes on a permanent basis may prove more problematical.
- (c). Compensation under Schedule 4 for diversionary mileage only includes services that have been diverted over 5 or 10 miles (depending on notice given). Therefore, the many services that are diverted up to 5 or 10 miles would pay the additional mileage without such compensation. In addition, the compensation under Schedule 4 is a liquidated sum which is intended to compensate for a number of different cost drivers (e.g. traincrew hours, additional fuel and wear and tear on resources). If 'Contract Miles' as a concept was to be removed, which DBSR opposes, this should not be done without also reviewing the amounts of the relevant liquidated sums specified in Schedule 4. Such discussions should take place under the ORR's Periodic Review process.

Schedule 7

Network Rail argues that paragraph 2.1.2 of Schedule 7 which states that:

"No Track Charges shall be payable by the Train Operator in respect of a Train Slot when the train has not reached its Planned Destination for a reason which is Attributable to Network Rail."

should either be amended or removed because it contends that this provision results in Freight Operator's being compensated twice.

As in the case of Contract Miles discussed above, DBSR submits that no amendment of this provision should be undertaken without reviewing the amount of compensation received. If Network Rail considers that a review is necessary then this should be raised as part of the Periodic Review process.

Clause 16.1.2 Delivery of invoices

DBSR would have no objections to a provision being included to enable invoices, notices and other contractual communications to be sent by electronic means.

DBSR suggested changes to Model Contract

Network Rail's support of the changes DBSR has proposed to the Model Contract in its application is noted.

DBSR hopes that these comments are helpful. If you require any further information or clarification, please let me know.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Vol' followed by a stylized flourish.

Access Manager

cc.

Network Rail
ORR