

**Proposed Track Access Contract Between  
Network Rail Infrastructure Limited and DB Schenker Rail  
(UK) Ltd under Section 17 of the Railways Act 1993**

**Network Rail's Representations**

**8 January 2016**

## **Executive Summary**

Network Rail strongly supports Railfreight and welcomes the opportunity to enter into a new long term freight contract with DB Schenker Rail (UK) Ltd.

Network Rail would have preferred to have negotiated the terms of this contract via Section 18, however it accepts that the respective positions of Network Rail and DB Schenker Rail (UK) Ltd on the Schedule 5 detail outlined further in our response made a Section 18 negotiation difficult.

The areas that Network Rail covers in this response are:

1. Contract Length
2. The expression of Rights within Schedule 5 including 'windows'
3. Contract Miles
4. Suggested change to Schedule 7, Paragraph 2.1.2
5. Suggested change to Clause 16.1.2
6. DBSR suggested changes to Model Contract

## **Network Rail detailed response**

### **1. Contract Length**

DB Schenker Rail (UK) Ltd (DBSR) has asked for a 10 year contract, commencing PCD 2016 and ending in PCD 2026. Network Rail (NR) does not have a particular objection to the granting of a 10 year contract in principle, subject to the comment below regarding window size.

The Railways Infrastructure (Access and Management) Regulations states in Regulation 18.8, that 'a framework agreement for a period of between five and ten years must be justified by the existence of commercial contracts, specialised investments or risks.'

DBSR cites investments made to upgrade various facilities, and also lists contracts which continue beyond the proposed expiry date of 2026. NR considers that the existence of these investments and contracts meets the requirements of Regulation 18.8 above, but would welcome ORR's view on that also.

However, as NR has stated its position below regarding the size of departure and arrival windows, notwithstanding this position, NR contends that if ORR were to decide in favour of DBSR's position of one hour departure and arrival windows, it would be appropriate to grant a contract of no longer than 5 years, in order that NR was not tied into such prescriptive access rights for longer than 5 years.

### **2. The expression of Rights within Schedule 5**

NR welcomes the fact that DBSR has adopted the new format of Schedule 5, proposed following constructive joint working between NR, the Freight Operators, and ORR. NR is content that the format of Schedule 5 and the associated Schedule 4 changes are consistent with those agreed in the joint working group.

#### Arrival and Departure Windows

Whilst we are in agreement over the new format of the Schedule 5 rights table, and the concept of arrival and departure windows, NR and DBSR have not managed to agree the width of these windows for all commodities. NR has sought to agree an overall package regarding windows for all freight commodities, ranging from one hour windows for Intermodal, or 'just in time' commodities, two hours for bulk traffic, and 24 hours for those rights that are currently expressed as 'Level 2'. This would represent a balance between the flexibility that NR needs to maximise capacity through timetable planning, and the certainty of arrival and departure times that Freight Operators and their end customers need. This approach, whilst welcomed initially in discussion with DBSR, was subsequently rejected by them.

### DBSR justification for one hour windows

DBSR has supplied justification for one hour windows in its Application Form. Attached to this response in Annex A is NR's position on departure and arrival windows.

Some specific points made by DBSR in its submission are discussed here also.

The ability to realise future Railfreight growth in the UK is essential. However the timetable is becoming more and more congested and financial issues are making it increasingly difficult to create new capacity through enhancement funding. As a result, NR strongly believes that a fine balance is required between making rail attractive to end customers through defined arrival and departure times, and the ability to grow capacity through more effective and flexible timetable planning. This is the key principle behind NR's policy of one hour windows for price sensitive intermodal type traffic, which recognises that these services are prone to modal shift and do require the certainty of one hour windows, and two hour windows for bulk traffic, which gives NR the ability to flex those services through a wider time period in order to make optimal use of capacity. Some open access type passenger operators run two hourly services so it is important to be able to use this full spectrum within a standard timetable pattern in order to optimise capacity which will help grow Railfreight, as more timetabling opportunities are created. DBSR contends that all traffic now is of a time sensitive nature, as there is less stockpiling, but there is still a very low risk of any bulk traffic being lost to rail as long as road is not a viable alternative mode of transport.

DBSR discusses pathing and looping time contained in the schedules of their train services, as an argument in favour of one hour windows. NR contends that this pathing and looping time does not in fact represent a benefit to NR, as the best paths available have been offered to DBSR for their services, and as such the pathing time does not represent a benefit, but a means to be able to offer a path. Without this pathing time, it is possible that a suitable path may not have been offered. So if there is a benefit of pathing time to any party, it is in fact to DBSR, as without it, they may not have been able to operate these services.

DBSR makes reference to the reopener proposed by ORR that allows for the adjustment of windows post PCD 2019. Whilst that would be a welcome addition to a contract containing purely one hour windows, NR's strong preference would be for wider windows to start with to allow for more flexible timetabling at the outset, rather than to have to adopt a protracted process to alter windows 3 years after the contract commences.

NR welcomes the fact that DBSR along with other operators have adopted the new proposed Schedule 5 format and removed both the maximum variation provision and rights to specific timings at Intermediate Points, but in order to fully accommodate projected Railfreight growth, to the benefit of all industry parties, more flexibility in timetabling is necessary in order to fit new services onto an already crowded network.

### DBSR Rights sample check

The total number of DBSR Level 1 rights being sought as part of the Section 17 application is 1377. Due to the volume of rights, resources available and timescales, NR has completed a sample selection of 137 rights (10% of the total). Of this sample we have found that only 55% of rights requested have associated WTT paths in TRUST, and only 31% have paths which correspond to the requested departure/arrival Window in the Section 17 application. This sample check is contained within Annex B.

As this application represents current traffic rather than new traffic not yet operating, NR will not agree to support any rights applications that have no associated WTT paths.

In principle, NR would agree to one hour windows for Intermodal and two hour windows for bulk traffic, only where the current WTT path falls within the requested window.

Where the current WTT path falls outside of the requested window, NR would request that the timing of the window is changed to reflect that WTT path.

As NR has not been able to carry out a 100% check on the proposed Schedule 5 rights table in this Section 17 application, we request that ORR considers agreeing to the above three principles, and that we jointly undertake a rights table review exercise to adopt those principles prior to the March 2016 priority date.

Please refer to Annex A for NR's full position on departure and arrival windows.

### **3. Contract Miles**

NR notes that some of the contractual mileage listed in Schedule 5 differs from actual mileage highlighted in train schedules. Whilst NR acknowledges that Contract Miles were not specifically discussed during negotiations with FOCs regarding the new format of Schedule 5, on considering the fact that some of these mileages need updating to reflect the actual miles operated by FOCs, NR now considers that there is no longer a need for Contract Miles to remain in Freight Track Access Contracts.

If trains are diverted, and if the diversionary mileage is greater than the contract miles listed for that service, then the FOC will get charged the contract miles rather than the longer diversionary mileage. However the FOC will also receive compensation for that diversion via either Schedule 4 or Schedule 8, which is intended to cover their diversionary costs such as additional mileage. As a result, the FOC is receiving compensation twice for the same thing.

NR considers that Contract Miles should therefore be removed. If however the decision is that Contract Miles are to remain, NR would seek that all Contract Miles in

this DBSR Schedule 5 are fully updated to reflect WTT schedule mileage.

NR would however be content to discuss the removal of Contract Miles as part of the Periodic Review process.

#### **4. Schedule 7**

##### Paragraph 2.1.2

Paragraph 2.1.2 states:

‘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’.

NR believes this paragraph is poorly written as it could have the effect that no charges are payable for the entire Train Slot, even though it may have stopped only a short distance from its destination, and when the Train Operator would receive compensation via Schedule 8 in that situation anyway. Again this is another example whereby the Train Operator receives compensation twice for the same thing.

NR considers that this paragraph should be either re-worded or removed, or is an item put forward as part of the Periodic Review.

#### **5. Clause 16.1.2 Delivery of invoices**

Clause 16.1.2 states:

‘All invoices or statements of amounts payable issued under any provision of this contract shall be delivered by hand at, or sent by prepaid first class post or by facsimile transmission (with confirmation copy by prepaid first class post) to, the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3’

NR considers this is no longer appropriate, and that provision should be made in the Contract for invoices to be sent via electronic means.

#### **6. DBSR Suggested changes to Model Contract**

DBSR has suggested a number of revisions to the latest version of the Model Contract (Freight Services) as published on the ORR website. NR agrees with these proposed changes and is happy to adopt them for all Freight Track Access Contracts, except for the proposed changes which relate specifically to DBSR, which NR is happy to adopt for DBSR alone.

NR thanks DBSR for highlighting the requirement to make these changes.

## **ANNEX A – Network Rail Position on the Expression of Freight Access Rights**

Please see attachment enclosed.

## **ANNEX B - NR review of DBS S17 sample**

Please see relevant attachment enclosed.