

Margret Child

Executive, Access and Licensing
Tel: 020 7282 2056
Email: margret.child@orr.gsi.gov.uk



OFFICE OF RAIL AND ROAD

9 October 2017

Mike Pybus
Customer Manager – DB Cargo
Network Rail Infrastructure Limited
4th Floor
George Stephenson House
York
YO1 6JT

Nigel Oatway
Access Manager
DB Cargo (UK) Limited
Ground Floor, McBeath House
310 Goswell Road
London
EC1V 7LW

Dear Mike and Nigel

DB Cargo (UK) Limited: Third Supplemental Agreement

1. On 9 October 2017 the Office of Rail and Road (**ORR**) approved the 3rd 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**). The SA was formally submitted to us on 4 October 2017. This letter sets out the reasons for our decision.

Background

2. The purpose of the SA is to make changes to the Schedule 5 rights table of the TAC to update five Service Groups to match the May 2017 timetable.

Consultation

3. The industry consultation ran from 28 October 2016 to 24 November 2016. Crossrail raised several issues. The parties were unable to resolve these concerns. No objections by any other parties were declared. Network Rail and DBC informally submitted the proposed SA to us on 14 June 2017, with Crossrail's concerns unresolved.
4. Crossrail was concerned about ten proposed services which might impact its future services. Crossrail wanted these modelled using the Railway Systems Model. In line with paragraph 7 of '[Industry code of practice for track access application consultations](#)¹ and Clause 8.6 of the [Crossrail Track Access Option \(TAO\)](#), Network Rail should have worked with Crossrail to highlight and resolve these particular concerns before undertaking the industry consultation.
5. ORR stated our position that:
 - we would not direct Network Rail to do something in the TAC that would conflict with another approved access contract (such as Crossrail's TAO); and
 - if the parties did not agree, we would expect them to work to resolve any differences, if necessary using the TAO's dispute resolution process, before requesting ORR's approval.

¹ http://orr.gov.uk/data/assets/pdf_file/0006/17592/code-of-practice-for-track-access-application-consultations.pdf



6. On 21 August 2017 we received confirmation that the parties had resolved Crossrail's outstanding issues. It was established that eight of the ten firm rights in question can be accommodated in the timetable based on the modelling work already carried out.
7. The other two rights, identified in Schedule 5 as 6V31 [MO] and [MSX], do appear to create a conflict with paths in the Crossrail TAO. Agreement has been reached between all the parties such that these rights will expire at PCD 2019, when the Crossrail services are expected to commence.

ORR Review

8. Once agreement was reached between the parties and Crossrail, we suggested that the two time limited rights should be identified in the SA and annotated in the 'Special Terms' column of the Rights Table.
9. There is normally a strong presumption in our approach in favour of the extension of current working timetable access rights, except where we have said otherwise: for example, where there is uncertainty about capacity or performance impacts, or if we anticipate a significant change in infrastructure configuration/capacity. In the case of the time-limited rights referred to in paragraph 7, should DBC required these rights beyond the expiry date (PCD 2019) this presumption will not apply.

ORR Decision

10. 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.
11. 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 improvements in railway service performance;
 - iii. 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;
 - iv. to promote efficiency and economy on the part of the persons providing railway services; and
 - v. to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.
12. 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.
13. In accordance with section 72 of the Act, we will place a copy of the 3rd SA on our public register.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Child', with a horizontal line extending to the right.

Margret Child