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Network Rail Infrastructure
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Dear Steve, Nigel and Doug

**Appeals of GB Railfreight Limited and DB Schenker Rail (UK)
Limited against Determination ADA05 of the Adjudication Panel
under the Network Code**

1. I refer to my letter of 12 May 2011, informing you that the Office of Rail Regulation (ORR) was minded to hear the appeals of GB Railfreight Limited (“GBRf”) and DB Schenker Rail (UK) Limited (“DBS”) against the determination of ADA05 and affording the parties an opportunity to comment on ORR’s proposed decision.

2. In relation to procedural issues, GBRf responded that DBS served its Notice of Appeal on the eleventh working day after the determination of the Adjudication Panel which is outside of the timescale stipulated in Condition M 2(b) of the Network Code (ten working days). ORR considers that the ten working days commenced one clear day from publication of the determination, meaning the ten working days ran from 12 April 2011. Therefore DBS’s appeal has been submitted within the correct timescale. ORR further considers that the issue raised by DBS’s appeal would be considered during the process of hearing GBRf’s appeal in any event.

3. ORR has now finalised its decision on this matter and considers that it should determine both appeals. In reaching this decision, we have had regard to both GBRf’s and DBS’s notices of appeal, and consider that the issues raised are of sufficient importance to the industry to warrant determination on appeal by



ORR. We do not consider that any of the grounds in Condition M4.1 of the Network Code apply in this case.

4. We are currently awaiting formal responses to the notices of appeal, which are due on 26 May 2011. On receipt of formal responses, we may contact you for further information and/or comments, in relation to the appeals. In the meantime, if I can be of any further assistance, please contact me directly.

Yours sincerely

Kara Johnson