FREIGHT TRANSPORT ASSOCIATION

Valentina Licata
Office of Rail Regulation
1 Kemble Street
London
WC2B 4AN

3rd September 2012

Dear Ms Licata,

ORR Draft Determination PR13 – Rail Freight Track Access Charges 2014 – 2019

Thank you for asking FTA to comment on ORR's Draft Determination for PR13. Our specific concern is rail freight Track Access Charges. The Freight Transport Association (FTA) represents over 14,000 companies spread across the UK relying on or providing the transport of freight both domestically and internationally, to or from the UK. Our members involved in rail freight include shippers of bulk, deep sea and domestic intermodal and retail goods, and also freight operating companies and logistics service providers, accounting for approximately 90 per cent of goods moved by rail.

FTA's primary rail freight policy focus is to represent the shippers – the ultimate end users – of rail freight who make the decisions about modal choice. To this end we are grateful for the opportunity to be involved in the Periodic Review. We are also grateful for ORR having presented and discussed on this matter at different stages of the process to our Rail Freight Council.

FTA remains fundamentally concerned at the change of approach to freight track access charging and consequential damaging uncertainty that has been caused with this Periodic Review. During a process that started its current phase in March 2012 ORR signalled that it wanted to increase charges to reduce taxpayer support for rail overall and make freight "pay more of its shared network costs", termed "freight avoidable costs", i.e. the costs that would not exist if there were no freight on the network. Previous Control Period "periodic reviews" by ORR have seen freight track access charges decline, and this has been accompanied by increases in rail freight. So at the start of the process a fundamental change of policy was publicly heralded that caused significant unsettling in the market. While a significant concern to operators that access charges could increase, (and any presumptions that these could at least initially be passed on by them if they happened is not accurate as cost increases will end up being shared inevitably along the supply chain adding cost to the whole industry), for shippers and logistics service providers such concern translated into fear of increased costs casting doubt on proceeding with facility investment or commitment to new services, and inability to enter into accurate and meaningful customer contractual negotiations. Overall this led to a significant denting of confidence in rail due to the uncertainty and drawn out nature of the process. Damage such as this is difficult to easily rectify. And ORR's "Conclusions" on Track Access Charges in January this year indicated the likelihood that charges would indeed increase. With facilities investment decisions based on ten year pay back periods, and locomotive and freight rolling stock investment based on asset lives of up to thirty years, change of access charging policy of this nature and on a five year basis casts doubt over the viability of these decisions.

Concern earlier in the year focussed on the fact that the variable track access charge (paid by all FOCs) *could* increase by *up to* 23% on current levels. The *additional* charges on Electricity Supply Industry (ESI) coal and iron ore (the "freight specific charge"), could have seen these sectors' costs rise by an additional 15% and 9% as well. This had worrying prospects for the extractive coal industry in Scotland during a time of economic difficulty and for steel production investment decisions in Britain. The continued uncertainty over biomass was also undesirable at a time of prospective investment. Worry about cost increases for aggregates and intermodal sectors has potentially damaged modal shift to rail with fear of reverse modal shift from rail. An additional worry in this was that unlike franchised passenger train operating companies that pay both a fixed and variable track access charge (the former offset as part of the franchise value calculations), licensed rail freight operating companies ("FOCs") pay a variable charge only. Under EU rail liberalisation Directives this is supposed to be a "marginal" charge only, reflective of the actual incremental infrastructure wear and costs that running each freight train imposes upon the network. There is though an ability to charge a "mark-up" on traffics that can be assessed as being economically able to bear such, i.e. that are inelastic. The desire in this process of ORR to target in its consultation markets deemed "inelastic" such as ESI Coal, Spent Nuclear Fuel, Iron Ore and Biomass sent negative signals to those using or contemplating rail as it implies that "captive" markets will be targetted. While at previous reviews ESI Coal and Spent Nuclear Fuel have been targeted for mark-ups, the extension now potentially to other sectors during consultation has sent worrying concern to shippers. The question of "who next" i.e. which sector is will next have additional charges applied is being asked by FTA shipper members.

While FTA has welcomed the publication of the Draft Determination on 13th June as giving a degree of re-assurance and certainty for this Control Period, this is a cautious welcome in that the proposed increases are not as bad as could have been. It remains the case that total freight charges will increase by 21% over the control period, 4% per year. It is welcomed that intermodal freight (now the biggest sector on rail and with the largest growth profile) charges will be kept in line with earlier Determinations, but the process of targeting certain sectors with increased (even if only in principle and with the implementation delayed and back ended toward end CP5) represents a fundamental shift away from promoting rail freight and is worrying for market segments that may fear they would become deemed "captive" and have higher charges applied. The decision not to proceed with a new freight specific charge for biomass is welcome. However, concerns over continued pursuit of the principles set out in this Access Charges Review of targeting "inelastic" markets and increasing freight costs at the next Periodic Review remain.

In summary, FTA welcomes that ORR have to their credit clearly listened to and responded to FTA and industry's serious concerns articulated during the consultation process and capped the proposed increases below that initially intended, thereby reducing the impact of the new charging regime. However, the fact remains that there has been a radical shift away from charging marginal costs and towards pricing industries because of their reliance on rail. Additionally, the process itself has caused huge uncertainty and we remain concerned about the longer term effects of the new charging regime on existing and potential customers. We therefore believe that much of the genuine confusion caused particularly to shippers during this process could have bee avoided by better communication and consultation on the proposed changes.

We do trust that you find these views helpful.

Yours sincerely

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