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Dear Joe

Consultation on the variable usage charge and on a freight-specific charge

Thank you for the opportunity to respond to this consultation. It is not my intention to respond to each of the questions asked. Rather, I will offer some general comments on the proposals within the document and highlight a number of areas where we would expect the ORR to undertake some follow up activity.

Variable Usage Charges (VUCs)

I would offer the following in respect of the proposals within the document on VUCs:

- We are broadly supportive of the setting of caps for the charges. As you will be aware, the new ScotRail franchise is due to come into operation in 2014, and we will shortly be commencing the competitive tendering process for that contract. Setting a cap as proposed will enable potential franchisees to bid with a degree of certainty, and may help to reduce the levels of risk premia which may be reflected in those bids. Similarly, the capping of freight charges will allow users and providers to plan their future business.
- I recognise that the setting of charges is a matter for the ORR. While the Scottish Ministers do not have legislative competence in this area, they would expect that the ORR will take an approach which serves to encourage the use of rail, particularly freight, represents value for money and which strikes the right balance between rail users, providers and the funder.
- We note the outcomes of the ARUP assessment of Network Rail's cost estimates, and urge the ORR to ensure that those concerns are satisfactorily addressed before charging levels are set.
- The confidence interval (15%) does intuitively seem disproportionately high. However, the consultation document does not contain sufficient information on which to base a more informed view. The ORR may wish to revisit this issue.

Framework for a freight specific charge

General comments

We are broadly supportive of a track access charging structure in CP5 which enables Network Rail to recover its efficient costs and which is fair e.g. it reflects the effects of different types of traffic. However, as outlined above, the charging structure should not serve to drive traffic from our railways, and the ORR must ensure that they strike the right balance between users, providers and funders.

In terms of the charges which relate specifically to freight, we would expect that they would be fully supportive of the aims of the Scottish Ministers, namely:

“To create a Scotland where the infrastructure and the co-operation between Government, wider industry and customers is conducive to the expansion of rail freight movements, with a focus on modal shift away from less sustainable transport.”¹

The Scottish Ministers are committed to increasing the use of rail for freight, with an aim towards an efficient and sustainable supply chain overall and reduced congestion on Scotland’s road network.

In this context, I would refer you to the recently revised Guidance from the Scottish Ministers which, inter alia, stated that:

“In developing the track access charges arrangements for freight operators, the Scottish Ministers expect the ORR to use a mechanism which recognises the impact that freight operators have on the network but maintains the attractiveness of rail to freight customers, and which is adaptable to prevent the outputs of businesses in Scotland from becoming uncompetitive in their key markets.”²

Freight avoidable costs

In discussion with the freight and energy sectors in Scotland, considerable concerns have emerged about the ORR’s proposal to replace the freight only line charge with freight avoidable costs:

- An increase in charges will present serious challenges to the security of coal supply for energy generation in Scotland putting at risk the long term future of Longannet Power Station, and affecting future propositions such as Summit Power’s plans to invest in the construction of a coal-gasification plant in Grangemouth.
- Increased charges by tonne-km will have a disproportionate impact on the price of coal from Scottish sources (ports and mines) to power stations in England, when compared with English sources (ports). As the consultation document illustrates, an increase of £10 per thousand tonne km would increase the cost of Scottish coal to power stations in England by around £4.50 per tonne compared to almost £1 per tonne for flows within England.

¹ <http://www.transportscotland.gov.uk/strategy-and-research/publications-and-consultations/Developing-Rail-Freight-Policy-in-Scotland>

² <http://www.transportscotland.gov.uk/rail2014/Scottish-Ministers-guidance>

- Where charges are increased, road may become a more attractive option, particularly for Scottish domestic movements with consequent implications for our road network and the achievement of environmental targets.
- The Scottish coal market may not be able to bear the cost of increased charging: we are of the view that the impact on opencast coal mining in Scotland has not been explored thoroughly enough in the consultation document and supporting evidence. Any change to coal mining caused by increases in charging could have considerable adverse impact on the Scottish economy and job opportunities, particularly in rural communities, where it is often difficult to find alternative employment.
- An increase in track access charging targeted at ESI coal could unintentionally undermine the development of Carbon-Capture-Storage by threatening the viability of the current coal generation plants required to demonstrate this technology in the CP5 time frame and the future plants required to support the subsequent large scale roll out of the technology in the 2020's.

It may be that these concerns are localised and very specific to Scotland. Nonetheless, given executive devolution and the separation of the regulatory price control, I would expect the ORR to be able to accommodate different charging requirements for freight traffic – either across the sector or by market segment - which operates within or originates in Scotland, should this be the most appropriate solution.

I appreciate that the determination of the structure of charges resides with the ORR. However the proposal for freight charging is of such economic and social importance that we would expect the ORR to undertake further, more detailed engagement with the freight, coal and energy industries in Scotland before any conclusions are reached. I would also expect that further discussions between the ORR and Transport Scotland will take place at the earliest opportunity, and certainly before any decisions are made.

I hope this response has been helpful, and am content for it to be placed on your website.

Yours sincerely



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