



Periodic Review 2008 Consultations on (i) Caps for Freight Track Access Charges and (ii) Reservation Charges

The Freight Transport Association (FTA) represents over 12,500 companies engaged in the transport of freight both domestically within the UK and internationally. Their interests range from those as operators, carriers, freight service providers, through to customers – suppliers of raw materials, retailers, manufacturers, and wholesalers. They cover all modes of transport – road, rail, inland-water, air and sea.

This paper constitutes FTA's response to the two ORR consultation papers:

- i) Periodic Review 2008: Consultation on Caps for Freight Track Access Charges, December 2006
- ii) Periodic Review 2008: A Reservation Charge: Consultation on Issues and Options, December 2006

We are grateful to ORR for allowing FTA to submit this paper after its Rail Freight Council had met to discuss it. This recognises the importance of FTA's democratic structure and the direct involvement of our members in our policy forming process.

Introduction

This response sets out FTA's members' views of the current consultation on Track Access Charges. We acknowledge and welcome the positive movement ORR have made on a number of issues, and the further clarification of others, in this consultation. Whilst we would contest many of the assumptions involved (including that there is a need for a review of Freight TACs) we have tried to address in this response the wider concerns of the rail freight users resulting from this current process.

We also address a number of specific points raised in the consultations, which are set out below.

Our primary role in this response is to represent the views of the user of rail freight. The operating companies are also members and this response has been contributed to by them. However we would refer ORR to their responses as individuals and as the Rail Freight Operators' Association for further technical detail on some of the issues under discussion.

Overview – the customer perspective

The freight industry is a growing and currently successful industry. Expansion of the economy and greater levels of imports are stimulating all forms of freight transport in the UK. It is heartening that ORR has acknowledged this in its consultation papers. Further to this, however, FTA would like ORR to acknowledge that decisions made on Freight Track Access Charges will affect the future of the rail freight market and the freight industry across all modes. Anecdotal evidence from Rail Freight Council Members suggests that some views expressed by ORR in the early part of this review, and some which are still being suggested, have *already* had a negative impact on the market, with potential customers rejecting rail as a mode citing too great uncertainty over future costs.

Two key factors are, however, encouraging a wider range of companies to consider rail again. The first is constraints on the capacity of the road network. The second is the growing concern about the environmental impact of companies' operations.

Aside from the growth in the container market and bulk commodities, companies such as Tesco are now starting to consider how to utilise rail as part of their delivery networks. This is stimulating the debate about what use companies in fields such as FMCG can make of rail and we are starting to see smaller companies – not just the large, established organisations – take an interest in developing rail in their supply chains. However, this development is at a fragile stage. If more companies begin to use rail the effect could become self-reinforcing as others are drawn to examine it. But equally, if at this time the future costs and operating environment of rail freight are seen as uncertain, companies will be unwilling to commit time and effort to make the change – as cited above, this may already be happening.

Due to its highly competitive nature, there are continuing efficiencies being created in the road freight market. Companies considering the use of rail expect to see similar efficiencies being delivered in the rail freight market. The current debate over the variable charge levels and charging for freight only lines risks creating the impression

that, contrary to other supply modes, (and indeed other regulated, privatised industries) NR's costs will rise as time goes on. FTA understands (and supports) the setting of a theoretical cap prior to the discussion of the actual levels of charges. However we believe the ORR must make clear in their comment in and around this decision that it is just that – a theoretical maximum, not a figure for NR to plan to. The ORR should set out that the clear expectation is that NR will reduce costs through the control period, and thus reduce charges. Indeed, it was once the view of the regulator that freight should be attracted to rail now in anticipation of improved efficiencies and falling costs in the future – it is disappointing that is no longer seen as an appropriate policy.

The *impression* of where the industry is going (increased cost verses reducing costs, maintenance of current operations verses improvement in services) will be just as important as the actual prices set, in securing customer interest in rail freight.

More important for the users of rail freight than the current debate over the setting of the level of the cap is the debate over what the charge should actually be. ORR must set NR on a path to reducing costs – as this is the only way rail freight can remain competitive with road. ORR should make clear when the results of this current decision is announced that this is the aim.

Specific Issues

- **Rationale for increased charges: material change in circumstances since FCR2001**

We welcome ORR's further explanation of their view of the material change in circumstances since 2001. However, as we understand that that OM&R costs are falling in line with targets, we would still not accept this premise. We believe that at this stage there should not be a review of variable use charges.

- **Full cost of freight only lines - ORR's market assessment**

We welcome the acceptance that most market segments would not be able to bear the full costs associated with freight-only lines. We agree with the assessment that such an increase would have a direct and significant effect on the level of the use of rail freight, as well as its future growth potential.

We understand the need for ORR to examine charging these costs where possible due to expressed Government policy. However we would urge against applying full costs to any sector.

As regards the sectors that are proposed to pay the full cost, such an attitude from the ORR may encourage companies to explore alternative options to reduce their reliance on rail. For example, power stations may rebalance their use of fuel sources away from coal towards gas. As this is not, all things being equal, the most cost effective option this would have a knock-on effect for energy prices and thus for the UK as a whole. The issue here is not just one of cost, but of vulnerability to regulatory action. These industries will see themselves as having been identified as industries that can be treated on a discriminatory basis, and will factor this into their future planning.

ORR should be aware of the impression that will be created amongst the business community when it is seen that those that are too heavily reliant on rail are penalised for it. The perception will be that this could spread to other industries in future, or is indicative of a general regulatory attitude. This will harm the whole rail freight industry. It will not strengthen the hand of those who are currently arguing for increased use of rail within their businesses.

- **ORR's approach to charging for freight only lines**

ORR's allocation of costs of Freight only lines is a positive step forward from the Network Rail proposals. However we still believe these cost estimates are too high. We would refer the ORR to the freight operating companies' responses for further detail on this point. We welcome the recognition that appropriate management and cooperation in sharing the network has brought network benefits historically. We should not underestimate how much can be achieved in the future.

Members expressed concern over the current state of some of the freight only lines, whose maintenance is currently the responsibility of Network Rail. There is concern that some lines are only just fit for purpose and in some cases possibly not even that. If the maintenance of these lines is to become the responsibility of Freight Operators then they must be certain that they are not going to have remedial works to undertake as soon as they take possession. These lines must be properly audited, and if necessary Network Rail should be instructed to provide for remedial works to be carried out. The same is also true in the eventuality that responsibility for a freight only line changes between operators. ORR must commit to enter into discussions with the operators to establish an equitable and workable mechanism for the up keep of these lines.

- **ORR's proposed approach to dealing with capability**

We agree broadly with ORR's proposals. It is the Government's responsibility to ensure that the railway infrastructure improves its capability to meet the growth of *transport* needs in UK, not just the railway in isolation.

- **Renovation of freight only lines - method of assessment of costs**

The costs for the renovation of freight only lines should be based on averaging of the long term costs of on-going maintenance/renovation, rather than the “least cost first” approach.

- **ORR’s proposals for freight charge caps, including the proposed phasing and duration of the charges**
We had requested in our September response that any increase was phased in. We gratefully acknowledge that ORR has accepted this position. We accept RPI +3.7%pa as an appropriate phase level but reiterate our view that ORR must set out a clear expectation that Network Rail will reduce its costs and therefore reduce charges.

- **ORR’s proposals for further work**

In concluding this review we would want ORR to indicate with much greater clarity than has been seen previously, the longevity of any proposals, and must prescribe the circumstances which would trigger a further review prematurely. Furthermore ORR must indicate clearly, the circumstances under which any caps could be raised or lowered. We urge ORR to commit publicly to the longest possible period of certainty for any new regime in order to inspire shippers’ confidence in the rail freight sector.

A Reservation Charge

FTA is in favour of measures to increase the efficient use of network capacity and has been closely involved in Network Rail’s Route Utilisation Strategy process. There is a need for Freight Operators to hold more paths than they may actually use on any given day. The reasons for this are well rehearsed and, we had hoped, understood by ORR.

ORR’s paper recognises that work is being done to tighten up existing administrative measures. Such administrative solutions should be exhausted before resorting to punitive measures such as charging. ORR’s paper states that “A reservation charge would not prevent operators from retaining headroom”. That suggests that if FOCs paid to reserve all their existing headroom, ORR would consider it a success even though they would not have gained any paths across the entire network that had been previously retained for headroom. If that is the case then this is nothing more than a revenue generator. ORR should make a distinction between unused paths and paths retained for headroom and should acknowledge the business need for such capacity by committing to their exclusion from any capacity charging scheme.

Of course any additional charges would have to be either passed on to customers or absorbed by the operator. Many customers would be astonished and perplexed if freight operators were to charge them for not using all the paths they have, all the time. To be asked to pay for something one does not need could result in shippers leaving rail freight altogether to move their goods by road where no such restrictions exist. If the freight operating companies tried to absorb the charge themselves, they would be paying for something that is outside of their control.

Of the two models suggested by ORR, the second (a charge payable only on areas of the network considered to be congested) would be preferable, if it was to be applied only where all administrative options had been exhausted. FTA is more in favour of industry working together, as seen in the RUS work and to resolve the capacity issues over the Settle-Carlisle line, than punitive measures which would have further negative impacts on rail freight’s ability to compete in the *transport* market place.

It should be noted that some operators expressed views on reservation charges which differed from the Rail Freight Council’s agreed line and we would ask ORR to consider arguments raised in Freight Operators’ own responses to this consultation.