From: John Campbell [mailto:JohnCampbell@Fergussongroup.co.uk]
Sent: 01 March 2013 14:45
To: Worley Ben
Subject: Consultation Response

Network Rail consultation on the phasing in of the freight-specific charge, applying the variable usage charge cap, updating the estimate of freight avoidable costs and updating / phasing in the freight-only line charge.
Response from Fergusson Group Limited

1st March 2013

Dear Mr Worley,

I write in response to the Consultation of 8 February on behalf of Fergusson Group Limited (FGL).

FGL is one of the UK's leading suppliers of solid fuels, with a growing export record. We deploy a flexible approach to coal sourcing, supporting indigenous UK producers, and importing from international markets through the bulk terminal at Hunterston in Ayrshire.

We have a strong position in the UK domestic house coal market, offering a wide range of fuels through national sales and distribution channels. We are also an established and growing supplier to the UK's lead coal generators. Our processing facilities and supporting logistics allow us to prepare and deliver bespoke fuel blends to meet the diverse needs of these varied market segments.

Our business model, built up over decades, involves the transportation of significant volumes of coal from Scottish open-cast sites and from Hunterston to the demand hubs in England. Our presence in the market has been instrumental in delivering healthy competition and diversity of supply, particularly over recent times in which coal generation has been key to maintaining economic and secure power supplies for the UK. FGL provides a reliable and economic alternative to often heavily congested port and rail infrastructure further south.

Given the importance of rail freight operations to our business and the coal industry in general, we are deeply concerned by ORR's unprecedented proposals for a Freight Specific Charge (FSC), along with increases to the Variable Usage Charge (VUC).

Our response to ORR's consultation on the FSC argued that these proposals were wholly unacceptable both in terms of the quantum of charge that is proposed and on the market distortions which will be created by a distance based recovery model. We fundamentally disagree with the proposal and the basis upon which it is predicated i.e. the assertion that a market reduction of up to 10% is acceptable and that ESI coal can bear the increase.

This unprecedented increase in pricing reverses the previous direction of policy on track access charges and will have disastrous consequences on jobs and investment in coal extraction, supply and freight, and a negative impact on power security and prices. It also risks, in some cases, pushing rail freight traffic on to the roads, against the grain of Government policy.

The impacts are particularly acute for the coal extraction and supply industry in Scotland where industry participants rely on long distance freight for their very existence.

Given our clear position on the proposal for a coal related FSC, commenting in detail on the NR Consultation would be inappropriate. We entirely reject the basis of the ORR decision and also, therefore, the proposed implementation of that decision.

Notwithstanding this position, we would make the following general comments on points raised in the NR paper:

Distance based recovery - We note that the proposed application of the FSC is on a km distance basis. This approach is the main driver of the market distortion effects. We have not seen the evidence that the relevant costs are driven 100% by distance, and we note that the market distortion effects would be largely avoided if the charges were levied on a tonnes lifted basis.

Illustrative profile of the FSC – If the FSC is ultimately to be applied, then clearly we wish the charges to be minimised and delayed for as long as possible. However, the apparently arbitrary phasing profile for applying the FSC merely defers the impact on businesses, jobs and investment for market participants. The suggestion that the profile allows market participants time to adjust has no real meaning in the context of an industry based on geographically fixed assets, and historic investments made on the basis of a wholly different charging model.

Cost uncertainty - It is clear that there remains significant uncertainty over the actual definition and level of the costs to be recovered, both by the VUC and by FSC, and the relationship between these entities. We would seriously question whether ORR have a sufficiently robust cost model upon which to make any decision in the first place, particularly decisions with such wide ranging consequences for the industry, jobs and investment. It is unclear to us as to how the outcomes of the various studies will potentially translate into adjustments below the cap levels. We are aware that colleagues in the rail-freight industry, who naturally have a much greater understanding of these cost structures, are continuing to raise detailed concerns on these points.

Coal freight volume projections - There is significant uncertainty over the future coal freight volumes given structural changes within the coal generation sector, combined with the distorting effects of the VUC increases and FSC which would significantly impact future rail-freight traffic flows and tonnage. It is not clear that ORR and NR have taken these dynamics into account in terms of the implications for future volumes/revenues/costs/charges, and the knock on effect for the wider rail network. This creates an unmanageable degree of instability and uncertainty in future charges with obvious consequences for planning and investment.

Average cap on VUC - We question the meaning of an average cap of £1.68 per kgtkm. By definition, some traffic will be priced under the cap, and some will be priced above the cap. If the purpose of a cap is to provide certainty in business and investment planning, then it is not clear to us that this approach is of any practical value.

I understand that our industry association CoalImp will be requesting further meetings with Network Rail, ORR and other relevant bodies to discuss our concerns further and to explore whether there is an alternative way forward. FGL look forward to participating in those discussions.

Regards,

John Campbell