



By Appointment to
Her Majesty The Queen
Royal Train Operator
English Welsh & Scottish Railway Ltd
London

Brian Blackwell
HS1 Business Planning Director
High Speed 1
Location 3T10
CTRL House
2 Ossulston Street
London NW1 1HT



310 Goswell Road
London EC1V 7LW

Tel : +44 (0)870 140 7010

Fax : +44 (0)20 7713 2310

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Dear Brian,

**CONSULTATION ON PROSPECTIVE LEVELS AND PRINCIPLES OF
ACCESS CHARGING FOR THE HIGH SPEED 1 RAILWAY**

This letter constitutes the response of English Welsh & Scottish Railway Limited ('EWS') to your consultation document dated 25 October 2007.

EWS is rapidly developing its plans to facilitate a substantial increase in the operation of Trans-European rail freight services to and from the UK through the Channel Tunnel. The recent announcement made by EWS on 22 November 2007 regarding the launch of an integrated network of intermodal services between Belgium, Germany, Italy and the UK is a first step towards this goal. HS1 presents the unique opportunity of a fast link from the Channel Tunnel to London which EWS hopes will accelerate the transit of such services and, therefore, attract further modal shift from road to rail. Before EWS could operate rail freight services on HS1, however, it is crucial that EWS can be confident that the access charges for rail freight services will be affordable. However, at present, and for the reasons summarised below, EWS does not have that confidence.

EWS notes that it is stated in the consultation document that the charging basis for freight services needs to reflect the obligation in the Railways Infrastructure (Access & Management) Regulations 2005 ('the Regulations') to ensure the competitiveness of international rail freight. Accordingly, it is proposed that access charges for rail freight services will be limited to a recovery of an equitable apportionment of operating, maintenance and renewal costs plus a margin which is currently subject to discussion with the rail freight industry.

From this, and the remainder of the consultation document, EWS understands that HS1 track access charges for freight services are proposed to comprise of:

- Usage Charge;
- Usage Charge Mark Up; and
- Investment Recovery Charge

<http://www.ews-railway.co.uk>

continued ...



Usage Charge

EWS acknowledges that under the Regulations, an infrastructure manager cannot set its usage charges at a level that is below at least the cost that is directly incurred as a result of operating each particular service. However, EWS understands that the freight usage charges for HS1 are currently proposed to be at a level that is 80-90% higher than the average levied on the UK domestic network. Notwithstanding that EWS wishes to understand why the HS1 usage charges are at the level they have been set, rail freight will not be able to afford usage charges that are almost twice those levied by Network Rail on its domestic network which are themselves already amongst the highest in Western Europe.

Usage Charge - Mark Up

EWS understands that, as currently proposed, a mark-up of 10% is to be applied to HS1 rail freight usage charges. EWS also understands that this 10% mark-up is a notional figure and that the infrastructure manager is planning to undertake its own market analysis in discussion with prospective freight users of HS1 to assess whether or not a mark up can be justified and, if so, at what level it should be set. Whatever the outcome of this further analysis, if rail freight cannot afford to pay for the basic level of usage charges which is almost twice that it pays for use of the domestic network, it would not be able to afford a further mark-up in addition. Furthermore, EWS notes that both Eurotunnel and Network Rail (i.e. the adjacent infrastructure managers to HS1) do not levy a 'mark-up' and whilst the proposed 'mark-up' may meet the relevant requirements of the Regulations to be transparent and non-discriminatory, such factors could be considered as irrelevant if the 'mark-up' is unaffordable and, therefore, discourages rail freight from using HS1.

EWS notes that sub-paragraph 2(1) of Schedule 3 of the Regulations allows for the levying of mark-ups on the basis of efficient, transparent and non-discriminatory principles whilst guaranteeing optimum competitiveness, in particular in respect of international rail freight. However, EWS also notes that this provision is subject to sub-paragraph 2(2) of the same Schedule. This provides that the effect of the mark-up shall not be to exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the service. EWS understands that ORR took account of this when forming its view in its document entitled '*Periodic Review 2008, Consultation on Caps for Freight Track Access Charges*' that international rail freight cannot afford to pay a mark-up. This view, of course, was expressed in the context of Network Rail's usage charges which, as EWS has highlighted above, are already at a level which is almost 50% of those proposed for HS1.



Investment Recovery Charge

Given the comments made above in respect of the un-affordability of both the usage charges and the usage charge mark-up, EWS is further concerned that if it is proposed rail freight should also be subject to a further charge designed to recover investment. EWS considers that this further charge should not be levied if its effect would be to exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the service. EWS considers that the proposed investment recovery charge will have such an effect on rail freight and, therefore, should not be levied on freight services.

EWS does, however, note that the Regulations provide a mechanism for the recovery of investment in new railway infrastructure by which higher access charges may be set on the long-term costs of the project. However, it is important to recognise that this mechanism is an exception to the basic charging principle established by the Directive (i.e. charges set at the cost that is directly incurred as a result in operating the train services). Paragraph 3(2) of Schedule 3 of the Regulations provides that an infrastructure manager may only set higher charges on the basis of the long-term costs of a specific investment project where:

- (a) the effect of the higher charges must be to increase the efficiency and cost effectiveness of the project; and
- (b) the project could not otherwise have been undertaken without the prospect of such higher charges.

EWS believes that an investment recovery charge levied on freight would not satisfy either of these pre-conditions. In respect of sub-paragraph 3(2)(a), EWS considers that this does not apply to freight on HS1 and in respect of sub-paragraph 3(2)(b), EWS considers that there would need to be evidence to indicate that the project could not have been undertaken without the prospect of the higher charges for freight. EWS, therefore, submits that the relevant legislation reinforces EWS's view that the investment recovery charge should not be levied on freight services.

Conclusion

Whilst EWS remains committed to developing a rail freight option for HS1, it cannot proceed with its planning and investment decisions until it is confident that track access charges will be affordable. Currently, for the reasons stated above, this confidence is severely lacking but EWS hopes that its concerns can be overcome so that HS1 continues to offer a viable option for international rail freight services. In this respect, EWS is keen to discuss its concerns with DfT and the HS1 infrastructure managers as soon as possible.



Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nigel Oatway', with a long horizontal flourish extending to the right.

Nigel Oatway
Access Manager

cc.	Graham Dalton	DfT
	Dan Phillips	DfT
	Chris Rayner	NR (CTRL) Ltd.