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Dear John,

Freightliner Group welcomes the opportunity to provide a few comments on the Office of Rail and Road's (ORR) Consultation on proposals for the charging framework for the Heathrow spur.

The ORR's consultation document considers specific issues in relation to the Heathrow spur, which is owned and operated by Heathrow Airport Limited (HAL). ORR proposes not to allow HAL to levy higher charges on the basis of the long-term costs of the project because it does not satisfy all the criteria that is required to do so. Notably the ORR is not satisfied that HAL has provided sufficient evidence to demonstrate that the project could not have gone without the prospect of higher charges to rail users.

Without having seen the documentation that HAL provided to the ORR, it is difficult to comment specifically on the ORR's decision to establish a charging framework which specifically excludes the ability to recover the Historical Long-Term Costs. However Freightliner recognises that the ORR appears to have been thorough and transparent in its approach and determination, and therefore we have no reason to query the decision.

As this consultation is specifically focused on the legality of recovering long-term costs for the Heathrow spur there is no precedent established for other infrastructure schemes. However the consultation does suggest that there exists a grey-area, and the ability for an infrastructure manager to recover long-term costs requires a degree of subjectivity to determine. ORR notes that there is "no case law, at either a domestic or European level...[and neither]...the explanatory memorandum to the Regulations, nor the recitals to the Directives provide further assistance in interpreting this provision".

To provide some clarity detailed guidance from the ORR would be helpful in this area. This would be particularly beneficial in the context of the recommendations that Shaw will make regarding the longer-term future shape and financing of Network Rail. This review could recommend a financing framework that will allow the introduction of private capital, and this could result in infrastructure managers' increasingly trying to recover long-term fixed costs.

The rail freight industry and its customers consistently highlight the importance of having a national charging and incentives framework to reduce complexity, provide some stability and allow rail freight to better compete with road. Nevertheless we do recognise that the Regulations allow the recovery of long-term costs subject to a number of conditions. However, it is unclear whether such charges can be imposed on markets that cannot bear such levy, or whether in those instances, the charge should be based on the cost that is directly incurred as a result of operating train service.

Against the backdrop of potential changes to the shape and financing of Network Rail we would welcome the ORR developing some guidance to provide some clarity in this area, for funders and operators alike.

If you would like any further information or require any clarification on any of the issues identified please do not hesitate to contact us.

Yours sincerely,

Peter Graham
Rail Strategy Manager
Freightliner Group Limited