

IN PARLIAMENT
HOUSE OF COMMONS
SESSION 2005–06

CROSSRAIL BILL

PETITION

Against the Bill – On Merits – Praying to be heard by Counsel, &c.

TO THE HONOURABLE THE COMMONS OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND IN PARLIAMENT ASSEMBLED

THE HUMBLE PETITION of:

THE MAERSK COMPANY LIMITED

SHEWETH as follows:—

- 1 A Bill (hereinafter referred to as “the Bill”) has been introduced into and is now pending in your Honourable House intituled “A Bill to make provision for a railway transport system running from Maidenhead, in the County of Berkshire, and Heathrow Airport, in the London Borough of Hillingdon, through central London to Shenfield, in the County of Essex, and Abbey Wood, in the London Borough of Greenwich; and for connected purposes.”.
- 2 The Bill is promoted by the Secretary of State for Transport (hereinafter called “the Promoter”).

Relevant Clauses of the Bill

- 3 Clauses 1 to 20 of the Bill together with Schedules 1 to 9 make provision for the construction and maintenance of the proposed works including the main works set out in Schedule 1. Provision is included to confer powers for various

building and engineering operations, for compulsory acquisition and the temporary use of and entry upon land, for the grant of planning permission and other consents, for the disapplication or modification of heritage and other controls and to govern interference with trees and the regulation of noise.

- 4 Clauses 21 to 44 of the Bill together with Schedule 10 make provision for the application with modifications and the disapplication in part of the existing railways regulatory regime which is contained in and in arrangements made under the Railways Act 1993 (c. 43) and associated legislation. In particular, they provide for the disapplication of licensing requirements, the imposition of special duties on the Office of Rail Regulation ("ORR"), the modification of railway access contracts and franchising agreements and the disapplication of railway closure procedures and of the need for consent from Transport for London in relation to impacts on key system assets. Provision is also included to enable agreements to be required as between the nominated undertaker and controllers of railway assets, to govern the basis for arbitration and to provide for the transfer of statutory powers in relation to railway assets.
- 5 Clauses 45 to 59 of the Bill together with Schedules 11 to 14 contain miscellaneous and general provisions. These include provision for the making of transfer schemes, the designation of nominated undertakers, the devolution of functions and as respects other actions to be taken by the Secretary of State. Provision is also made in particular for the disapplication or modification of various additional miscellaneous controls, for the treatment of burial grounds, for the application of provisions of the Bill to future extensions of Crossrail, for the particular protection of certain specified interests and as respects arbitration.

Your Petitioners

- 6 Your Petitioners are The Maersk Company Limited, a private limited company (Company No. 00493147) whose business is predominantly concerned with the transport of deep sea shipping containers. Your Petitioners move over 300,000 deep sea shipping containers on rail within the UK. Your Petitioners' registered

office is One Canada Square, Canary Wharf, London, E14 5DP. Your Petitioners employ over 5,000 UK staff operating on both land and at sea. Your Petitioners are the largest ship owner in the UK with 42 vessels under the UK flag and, together with the parent company, operate the largest ocean container transport operation in the world. Over 400 container ships and 1.5 million containers are under the control of the parent company, with regular calls made at more than 120 countries worldwide.

7 Your Petitioners are party to a rail transport service agreement with rail freight carrier Freightliner Limited for the carriage of deep sea containers from the Port of Felixstowe to destinations throughout the UK, including all major regional cities and London. In the year 1 March 2005 to 31 April 2006 your Petitioners expect to transport via its rail freight carrier, Freightliner Limited, over 300,000 containers. Of this volume it is estimated that 160,000 containers per year, principally moving via the Port of Felixstowe, will be affected by the Bill. This equates to approximately 30 trains per day, with the vast majority going across London via the Great Eastern Main Line (GEML). It is expected that, after taking future growth into account, by 2012 over 320,000 containers per year could be affected by the Bill.

8 Your Petitioners' rail freight carrier has an interest in railway apparatus and running rights in the areas governed by the councils of the Royal Borough of Windsor & Maidenhead, Borough of Slough, District of South Bucks, London Borough of Hillingdon, London Borough of Ealing, City of Westminster, London Borough of Tower Hamlets, London Borough of Newham, London Borough of Greenwich, London Borough of Bexley, London Borough of Redbridge, London Borough of Barking & Dagenham, London Borough of Havering, Borough of Brentwood and District of Basildon which are in the immediate vicinity of the proposed works and liable to be injuriously affected by them.

- 9 Your Petitioners and their rights, interests and property are injuriously affected by the Bill, to which your Petitioners object for the reasons, amongst others, hereinafter stated.

Your Petitioners' concerns

- 10 Your Petitioners are not opposed in principle to the construction of the new railway transport system for which the Bill provides, but are greatly concerned as to the impact that the works and system will have on their business. The scheduled works detrimentally interfere with and affect the operations and businesses of your Petitioners and their customers. Some of these customers are the biggest importers and exporters in the UK.
- 11 Your Petitioners object to the Bill on the grounds that it does not afford sufficient safeguards to the continued and continuous operation of rail routes used in the daily operation of their business in the areas concerned and that, as a result, your Petitioners will suffer reduced rail freight carriage tonnage which will be displaced onto the roads, increasing costs to your Petitioners and their customers.
- 12 Your Petitioners consider it imperative that the powers to be conferred by the Bill should only be exercised so that there is no interruption or interference to the operation of rail freight services along the route of the proposed Crossrail service. If, however, interruption or interference is inevitable then your Petitioners consider that any such interruption or interference should be kept to an absolute minimum and that it is only appropriate that your Petitioners and their customers should be fully compensated for all losses, costs and expenses incurred and suffered as a result.

Network-specific concerns

Capacity

- 13 Your Petitioners' rail freight carrier operates rail freight services on Network Rail's network and has two network access agreements providing access for inter-modal freight services throughout the network. In addition your Petitioners' rail freight carrier holds a number of connection agreements providing further access to the network and other privately-owned freight-serviced facilities. These agreements all have various lengths to run and are currently subject to negotiation for long term renewal. Your Petitioners are concerned that the Promoter's proposed Crossrail services will create congestion on a network that is already congested, displace rail freight services in favour of Crossrail services and prevent future rail freight service growth through lack of network capacity. Your Petitioners respectfully submit that the Bill should not be allowed to pass into law without making provision for additional network capacity for the proposed Crossrail services.
- 14 Your Petitioners submit that enhancements to gauge clearances for high cube containers, re-signalling and work to allow increased capacity along the Felixstowe to Nuneaton, via Peterborough, line would relieve congestion along the Great Eastern Main Line (GEML) by reducing the number of services travelling through central London to connect with the West Coast Main Line. This would allow increased capacity for other services running along the GEML, including the proposed Crossrail service. These improvements will accommodate high cube containers on regular wagons and reduce the volume of road freight and its associated detrimental environmental effects. In addition further capacity would be gained through infrastructure enhancements along the Felixstowe to Nuneaton line as well the line running from Barking to Willesden via Gospel Oak which, if fully implemented, has the potential to free up capacity on the wider network thus providing operational flexibility to all service operators using Network Rail's network.

- 15 These enhancements would allow your Petitioners' rail freight transport agreement to continue with Freightliner Limited and increase rail freight transport capacity. It is estimated that your Petitioners' current deep sea container carriage volume via Felixstowe will double in the next seven years and a substantial percentage of this volume will be transported by rail subject to capacity being available. Your Petitioners submit that the Bill should not be allowed to pass without amendments allowing for increased future rail freight capacity to be taken into account in the construction of Crossrail. It must be noted that neither the Bill, the Environmental Statement nor any other associated document addresses the issue of future rail freight capacity on the proposed Crossrail route, or any impacts the proposed scheme will have on existing rail freight services.

Network ownership

- 16 The Promoter is to be provided with the power under Clause 6 of the Bill to acquire compulsorily Network Rail-owned facilities and network throughout the proposed Crossrail route, which will either limit or prevent access to the acquired network or require multiple network access agreements in order to provide a single rail freight service. Your Petitioners believe that the entire rail network should remain in the hands of a single party to allow for ease of service integration, efficient timetabling and coordinated maintenance scheduling. Your Petitioners respectfully submit that Clause 6 of the Bill should be amended to ensure the rail network remains in the ownership of Network Rail.

Great Western Main Line

- 17 Your Petitioners' rail freight carrier operates rail freight services twenty four hours a day, six days a week along the Great Western Main Line (GWML), with up to 3 trains per day presently using the line into and out of London. Your Petitioners are concerned that the Promoter's proposed services along the GWML would severely decrease line capacity and prevent, or significantly reduce, the ability of your Petitioners' rail freight carrier to operate rail freight

services on the GWML. Your Petitioners submit that the Bill should be amended to require the Promoter to take into account long term growth and to ensure that future capacity is sufficient to meet the future needs of your Petitioners and their rail freight carrier.

Great Eastern Main Line

- 18 Your Petitioners' rail freight carrier operates rail freight services twenty four hours a day, six days a week along the GEML, with up to 28 trains per day presently using the line into and out of London. Your Petitioners are concerned that the Promoter's proposed services along the GEML would severely decrease line capacity and prevent, or significantly reduce, the ability of your Petitioners' rail freight carrier to operate rail freight services on the GEML. Your Petitioners submit that the Bill should be amended to require the Promoter to take into account long term growth and to ensure that future capacity is sufficient to meet the future needs of your Petitioners and their rail freight carrier.

Port access

- 19 Your Petitioners' rail freight carrier's services are dependant on access to freight terminals along the GWML, GEML and at the port of Felixstowe for the operation of their business. Without timely access to these terminals your Petitioners would be unable to transport freight effectively by rail and therefore efficiently service their customers. Your Petitioners are concerned that the Promoter's proposal to acquire, adjust or remove access to a large number of rail freight terminals along the GWML, GEML and lines leading to the port of Felixstowe will prevent or severely limit your Petitioners' ability to obtain efficient rail freight services to and from the port. Your Petitioners submit that the Bill should be amended to require the Promoter to continue to provide full rail freight access, or alternative equivalent rail freight facilities and services to your Petitioners along the GWML, GEML and any other affected line. It is further submitted that the Bill should not be allowed to pass into law without making provision for future rail freight network capacity needs and after taking

fully into account the projected long term growth rate of your Petitioners' ocean container transport business in the United Kingdom through the port of Felixstowe.

Environment

- 20 The Promoter, in exercising the compulsory acquisition powers that would be provided under Clause 6 of the Bill in relation to the rail network inside the limits of deviation shown on the deposited plans, will be able to prevent your Petitioners' rail freight carrier from accessing the rail network along the Crossrail route. A lack of network access by your Petitioners' rail freight carrier would have the effect of displacing up to 160,000 of your Petitioners' deep sea shipping containers from rail to road-based transport, equating to an extra 34 million lorry miles a year and an extra 145,000 lorry journeys a year. This will have a detrimental effect on CO² and other emissions, noise levels and traffic congestion which the Promoter has failed to take into account in assessing the impacts of the proposed works and associated powers.

Construction

- 21 The Promoter proposes to close temporarily many track sections and terminals along the existing rail network during the construction phase of the works authorised by Clause 1 of the Bill. Your Petitioners are concerned that the Promoter's proposed track closures would limit or remove their rail freight carrier's ability to operate rail freight services during the works. Your Petitioners submit that the Bill should be amended to require the Promoter to provide full and continued access, or alternative equivalent access, to your Petitioners' rail freight carriers' track sections and terminals along the GWML and GEML during the carrying out of the works authorised by Clause 1 of the Bill.

Railway matters

- 22 Your Petitioners are gravely concerned that the duties imposed on the independent Office of Rail Regulation under Clause 22 of the Bill (the duty to

exercise its access contract functions in favour of Crossrail) will undermine current impartial and open regulation of the railways and in turn create a climate of uncertainty throughout the industry. Clause 22 of the Bill further provides the Promoter with the power to extend the period of operation of the duty without reference to Parliament. Your Petitioners are especially concerned that open and fair regulation of the railways is maintained through an unfettered and impartial regulator so that your Petitioners' rail freight carrier's access rights and future freight capacity can be determined with certainty in the interests of your Petitioners and the use of rail to carry freight generally. Your Petitioners will be specially and directly affected by the operation of Clause 22 of the Bill, by holding a rail freight carriage agreement the rights of which are likely to be adversely affected by the Promoter in the interim period if a direction is issued under Clause 22.

- 23 Your Petitioners note that Clause 23 of the Bill requires the Promoter to consult with Transport for London and passenger rail service providers likely to be affected by Crossrail before directing the Office of Rail Regulation to specify the minimum operating levels for Crossrail. The operating levels for Crossrail will impact on the ability of other rail service providers, including your Petitioners' rail freight carrier, to run services along those parts of the existing rail network that will be used by Crossrail services, as track availability will be reduced by the number of services taken by Crossrail. Your Petitioners submit that the Promoter should not be able to issue directions under Clause 23 without first consulting with rail freight operators likely to be affected by the exercise of the direction and that the Clause should be amended to reflect this requirement. Your Petitioners do not believe that the discretionary power to consult "other persons (if any) as the Secretary of State considers appropriate" is sufficient, as there is no right for rail freight interests to be heard that is equivalent to rail passenger interests. Your Petitioners will be specially and directly affected by the operation of Clause 23 of the Bill, by holding a rail freight carriage agreement the rights of which are likely to be adversely affected by the Promoter when setting minimum Crossrail service levels under Clause 23, as these

services will displace your Petitioners' rail freight carrier's services and prevent your Petitioners from efficiently servicing their customers.

24 Your Petitioners are gravely concerned that the Office of Rail Regulation is to further have its regulatory independence interfered with by the operation of Clause 24 of the Bill. Your Petitioners' specific concern is that the general duties of the Office of Rail Regulation (including the promotion of the use of the rail network for the carriage of goods) are to be overridden by a duty to exercise its functions in a manner that does not impede the performance of any design, construction, financing or maintenance agreement relating to the works authorised by Clause 1 of the Bill. Your Petitioners submit that the Promoter should:

- (a) be required comprehensively to justify the need for these overriding duties;
- (b) not be permitted to modify or override the statutory duties of the Office of Rail Regulation by the operation of the Clause; and
- (c) in the event that your Honourable House considers it necessary to approve these overriding duties, be required to make provision for meeting the full cost of making good any disadvantage or loss suffered as a result of any exercise of the overriding duties.

Your Petitioners respectfully point out that the Bill contains no provisions whereby the Promoter will be specifically obliged to have regard to the interests of your Petitioners' business.

25 Your Petitioners are concerned as to the disruptive effect which the exercise of powers conferred by Clause 25 of the Bill would have on the operation of your Petitioners' rail freight carrier's services leading into and through central London. Your Petitioners submit that, if such a power were to be granted, the power should be tempered with a requirement to provide alternative access to those parties subject to a direction and/or for the Promoter to provide full

compensation for any loss or cost incurred by your Petitioners or their customers as a result of the exercise of the power, in order to minimise the impact on rail freight into and out of central London on the east-west routes.

26 Your Petitioners are deeply concerned that the Promoter will be able to object to your Petitioners' rail freight carrier's access contracts already in force, potentially resulting in the access contracts being amended or voided under the powers provided by Clause 26 of the Bill. Your Petitioners and their customers will suffer business instability as a result of the uncertainty created by the Promoter's ability to influence the content or existence of agreed and operational access contracts. The exercise of the proposed access contract objection power by the Promoter is an abuse of a dominant position in the market and is inconsistent with Chapter II of the Competition Act 1998 (c.41) and Article 82 of the Treaty of Rome. Your Petitioners wish to ensure the maintenance of the current transparent, competitively neutral and industry-accepted access contract process without the statutorily authorised undue influence, favour or uncertainty by Clause 26 of the Bill.

27 Your Petitioners are again concerned that the Office of Rail Regulation is to have its regulatory independence further interfered with through the operation of Clause 27, which provides the Promoter with the power to direct the Office of Rail Regulation to make and amend directions it issues under section 17 of the Railways Act 1993 (c.43) (directions requiring facility owners to enter into contracts for the use of their railway facilities). The power will undermine the confidence the rail industry has in the independence of the Office of Rail Regulation and, because of its discriminatory nature, places Clause 27 of the Bill in direct conflict with Article 5 of Directive 2001/14/EC, which entitles EU rail service operators rail track access. Your Petitioners will be especially affected by the exercise of this power in gaining on-going rail freight transport services along and adjacent to the Crossrail route.

28 Your Petitioners again submit that the Office of Rail Regulation will have its regulatory independence interfered with by the Promoter through the operation

of Clause 28 of the Bill. Under the power the Office of Rail Regulation will be required to consider any representations of the Promoter before adjusting an access contract, relating to a competitor of the Promoter, to account for any compensation that may flow from the works authorised by Clause 1 of the Bill. Your Petitioners' rail freight carrier is currently party to a large number of access contracts that may be adjusted through the exercise of this power, resulting in the loss of business certainty, an inability to guarantee customer timetables and significant disruption to the movement of freight along/through facilities affected by Clause 28.

29 Your Petitioners submit that the provisions of Clause 29 of the Bill are objectionable in that they disapply your Petitioners' rail freight carrier's access rights to the Promoter's facilities, conferred by sections 17, 18 and 22 of the Railways Act 1993 (c.43), while the Promoter, through the operation of Clauses 25, 26, 27 and 28 of the Bill, is provided with preferential and discriminatory access to facilities currently utilised by your Petitioners' rail freight carrier. The powers contained in Clause 29 of the Bill are in direct contravention of Article 5 of Directive 2001/14/EC of the European Parliament which prohibits, with some minor exceptions, the rejection of facility access requests. Your Petitioners are also concerned that an order made under powers provided in Clause 29 of the Bill will not be subject to annulment through a resolution of either House of Parliament and hence the disapplication of laws passed by Parliament will not be subject to any scrutiny by Parliament.

30 Your Petitioners are concerned that the provisions of Clause 30 of the Bill will enable the Promoter to prohibit the Office of Rail Regulation, in certain circumstances, from making a direction under section 18 of the Railways Act 1993 (c.43) (access agreements: contracts requiring the approval of the Office of Rail Regulation). The operation of Clause 30 of the Bill will further provide a competitor for facility access, being the Promoter, with the power to modify proposed access contracts in favour of the Promoter or to reject proposed access contracts outright. The Promoter, in exercising the power provided under Clause 30 of the Bill, may delay the Office of Rail Regulation from approving an access

contract indefinitely. If these provisions are approved, your Petitioners' rail freight carrier will suffer significant disadvantage and delay when making applications for facility access agreement approvals in relation to new and alternative rail freight sidings, depots and freight transfer facilities, required in order to replace existing facilities that are to be acquired as a result of the operation of Clause 6 of the Bill.

31 Your Petitioners note that the Promoter will, under the provisions of Clause 31 of the Bill, be empowered to direct a railway facility owner to enter into an access contract with the Promoter or any other person for the purposes of the works approved by Clause 1 of the Bill. The powers provided to the Promoter under Clause 31 of the Bill are likely to be exercised to the detriment of your Petitioners who have an agreement for the carriage of rail freight, either on or adjacent to the Crossrail route, which is likely to be displaced or conflicted by the Promoter's new access contracts. Your Petitioners request that the Promoter be required to consult with, and take advice from, your Petitioners' rail freight carrier prior to making a direction under Clause 31 of the Bill, if the carrier has an interest in the railway facility that is proposed to be subject to the direction.

32 Your Petitioners note that Clause 32 of the Bill provides the Office of Rail Regulation with the power to amend existing access contracts affected by the creation of a new access contract by the Promoter under the powers provided by Clause 31 of the Bill (power of the Secretary of State to require entry into an access contract) for the purpose of facilitating the operation of Crossrail as the principal passenger service. Your Petitioners are concerned that the provisions of Clause 32 of the Bill do not require the Promoter to provide compensation to parties, such as your Petitioners, who will be adversely affected by the exercise of the power provided by Clause 31 of the Bill.

33 There are other Clauses and provisions in the Bill which, if passed into law as they now stand, will prejudicially affect your Petitioners and their rights, interests and property and for which no adequate provision is made to protect your Petitioners.

34 As a general matter, your Petitioners submit that provision should be made for the Promoter to repay to your Petitioners all proper costs, charges and expenses (including the proper fees of such professional advisers as they may instruct) reasonably incurred in consequence of the Bill or of any provision made as a result of this Petition.

Conclusion

35 Your Petitioners submit that the Bill fails to safeguard and protect the interests of your Petitioners and of its subsidiaries and should not be allowed to pass into law without these issues being addressed.

YOUR PETITIONERS THEREFORE HUMBLY PRAY your Honourable House that the Bill may not be allowed to pass into law as it now stands and that they may be heard by themselves, Counsel or Agents and with witnesses in support of the allegations of this Petition against so much of the Bill as affects the property, rights and interests of your Petitioners and in support of other such Clauses and provisions as may be necessary or expedient for their protection or that such other relief may be given to your Petitioners in the premises as your Honourable House shall deem meet.

AND YOUR PETITIONERS WILL EVER PRAY, &c.

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