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Dear Bill,

**APPEAL BY DB SCHENKER RAIL (UK) LIMITED FOR ACCESS AND SERVICES AT SOUTHAMPTON MARITIME FREIGHTLINER TERMINAL SOUTHAMPTON**

This letter constitutes the response of DB Schenker Rail (UK) Limited ("DB Schenker") to the representations made by Freightliner Limited ("Freightliner") on 4 February 2015 (the latest redacted version received on 15 June 2015) in respect of DB Schenker's appeal under Regulation 29 of the Railways Infrastructure (Access and Management) Regulations 2005 ("the Regulations") for access at Southampton Maritime Freightliner Terminal ("Maritime Terminal").

At the outset, DB Schenker considers that this letter, together with the supporting documents referred to within it and disclosed to ORR, contain confidential information, the disclosure of which would significantly harm the legitimate business interests of DB Schenker. Should ORR be minded to disclose any part of the information contained in these responses and/or the supporting documents to any third party at a future stage, DB Schenker asks that it be given the opportunity to make prior written representations.

1. Opening Remarks

1.1. Since making its appeal in December 2014, DB Schenker understands that a significant amount of time has been taken up addressing whether or not certain information provided to Office of Rail Regulation ("ORR") by Freightliner should be withheld from DB Schenker on the basis of commercial confidentiality. Whilst DB Schenker fully acknowledges the reasons for this, it is somewhat disappointing that the timescales have been lengthened significantly as a result. However, DB Schenker hopes that the additional time taken in addressing this issue will not have been wasted in that ORR's decision will act as a precedent for any future appeals thereby helping to reduce timescales as a result.

1.2. Given that some information in Freightliner's response remains redacted, DB Schenker's representations are based on the detail that has been disclosed along with its supposition on the detail that continues to remain secret. DB Schenker thanks ORR for granting it further time to make this response.

## 2. Overview

2.1. Instead of providing a line by line critique on Freightliner's representations, DB Schenker will focus on two key issues which it considers have a significant impact on its appeal. These issues can be described as "capacity" and "viable alternative".

## 3. Capacity<sup>1</sup>

3.1. In its representations, Freightliner appears conclude that the Maritime Terminal is operating at full capacity and that any future increases in capacity would likely be filled with its own services. Consequently, there is little or no room for any further services at present and Freightliner submits that DB Schenker's requests for access should be denied.

3.2. Freightliner lists the key factors that, in its opinion, impact on the capacity of the Maritime Terminal. These are:

- Restricted siding length.
- Number of lifts per hour that can be achieved safely by the crane.
- Straddle carrier efficiencies.
- Requirement to shunt wagons to and from the wagon shed within the terminal to undertake maintenance.
- Restrictive shunt movements while fuel point in use.
- Performance of services arriving at the terminal off the rail network.
- Site conditions.
- Engineering access on the rail network.

3.3. Freightliner also states that the interaction between the factors listed above can influence available capacity. In an attempt to provide a measured analysis of those issues that are within the control of Freightliner and which do not require "significant further investment", this part of DB Schenker's response will focus on the following:

- Rail Infrastructure & Facilities
- Mechanical Handling Equipment
- Track Occupancy

3.4. Thereafter, taking the above three factors into consideration, DB Schenker will pose 'Key Questions' which it believes need to be considered by ORR in its determination of the issue of available capacity at the Maritime Terminal.

### *(1) Rail Infrastructure and Facilities*

3.5. DB Schenker understands that the four main roads (nos. 1 to 4) are, in total, long enough to accommodate a 30 FEA wagon train. It is acknowledged, however, that only a proportion of the length of each siding is situated beneath the cranes. This results in

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<sup>1</sup> The representations in this section have been derived from an Independent Report undertaken on behalf of DB Schenker.

wagons needing to be shunted during loading/unloading and in some cases, when maximum length trains are being operated, the adjacent road(s) can be adversely affected. DB Schenker does not contest the stated length of the other roads.

3.6. Freightliner's representations clearly demonstrate the significance of the locomotive and wagon repair/maintenance facility and its considerable impact on the capacity of the Maritime Terminal to accommodate further intermodal services. In this regard, Freightliner states that:

- Up to 18 locomotives per day receive service checks, exams and refuelling.
- Between 12 and 24 wagons per day are maintained and repaired in the wagon maintenance facility on site.
- The site is also used to pre-stage wagons for wagon general repair trips to Eastleigh that take place twice weekly.

3.7. As Freightliner's national wagon maintenance centre, this 24 hour 6 day a week operational facility has a constant throughput of wagons making exclusive use of roads 9 and 10 within the Maritime Terminal. It is also noted that locomotive refuelling at the Maritime Terminal can lead to congestion at the fuel point.

#### *(2) Mechanical Handling Equipment*

3.8. DB Schenker acknowledges that the height of the new Liebherr cranes has increased the distance between cab and rail wagon. It is also noted that the span is also greater. However when compared with the 40-year old Stothert and Pitt cranes it must be recognised that the Liebherr crane is superior in all respects including lift, trolley and traverse speeds as well as operator systems.

3.9. Information is set out in Freightliner's response regarding the performance of the two Liebherr rail mounted gantry cranes ("RMG") in terms of movements per hour (mph). DB Schenker acknowledges that it is unrealistic to assume that a maximum published speed in 'mph' can be achieved throughout a full 24 hour period and notes the factors listed by Freightliner which purport to restrict the capacity of the crane as follows:

- 2 hours are required for each crane for daily inspection and maintenance.
- No movement on numerous occasions per day due to safety requirements.
- Shunting of wagons.
- Double lifting of containers to road vehicles.
- Double lifting of containers to the holding area.

3.10. However to compensate for these delays some factors appear not to have been considered, for example, crane cycle speeds. DB Schenker believes that with a well organised operation it is often possible to achieve two container lifts within a single crane cycle. This is achieved by discharging an inbound container to create a wagon space and reloading an outbound container to the vacant wagon space within the same crane cycle. Although with some limitations and a slightly longer cycle, the net effect of two lifts per cycle impacts positively on the number of movements per hour.

3.11. DB Schenker understands that the straddle carriers are supplied and operated by DP World Southampton ("DPWS"). Freightliner states that 4-5 straddle carriers are deployed to service the Maritime Terminal. This is qualified by the statement that "*there are both physical and financial constraints in increasing the number of machines operated*". Significantly, and as indicated in the capacity study, DPWS stated that 10 straddle carriers were available for the Maritime Terminal operation.

3.12. Whilst DB Schenker acknowledges that the crossing of the main port road can limit the efficiency of the straddle carrier operation, this would appear to be reasonably within the control of DPWS.

(3) *Track Occupancy*

3.13. Track occupancy is by far the most significant factor in DB Schenker's view for determining terminal capacity. There are a wide range of issues which influence track occupancy and it is clear in the case of the Maritime Terminal that some of the track occupancy can be classed as productive (i.e. is influenced by the main operation of loading and discharging the train), whilst a large number of others factors are non-productive or ancillary to the main purpose of the Maritime Terminal (e.g. the large maintenance facility).

3.14. The Southampton MCT 36 hour rolling track occupation chart provided by Freightliner assists DB Schenker in understanding this matter, particularly when considered alongside the information provided by Freightliner in its representations.

(a) *Productive*

3.15. The operating of the Rail Mounted Gantry cranes will have a significant bearing on the track occupancy beneath the gantry. The speed for the loading and discharge of a train is determined by the specification of the crane and the efficiency of the operators.

3.16. The debate regarding in-line or herringbone positioning of containers under the crane has clearly been considered at length by Freightliner. Whatever the best solution, this will impact on the speed of train loading and discharge and thereby influence the occupancy of the track. Double lifting to either a vehicle, transit or storage will also impact adversely on the productivity of the crane operation. The other considerations listed in paragraph 3.9 above will also influence the loading/discharge operation as will adverse weather causing delays and extended track occupancy.

3.17. The impact of the straddle carriers on track occupancy relates directly to the efficiency with which containers are made available to, or taken away from, the crane loading area. If container availability is constantly maintained, thereby permitting an uninterrupted crane operation then optimum efficiency should be achieved as any delay in presenting or collecting a container is likely to result in reduced crane efficiency thereby extending track occupancy.

(b) *Non-productive*

3.18. The terminal must be able to accommodate trains on arrival, including any late arriving trains which place additional pressure on the terminal programme. All such

incidents will impact on track occupancy but they are an everyday aspect of terminal operations.

3.19. Train departures can also have an adverse impact on track occupancy. This will always involve the time to conduct pre-departure inspections (see below) but may also include the time spent on the terminal awaiting a departure slot onto the network.

3.20. Where train restrictions in the timetable necessitate extended delays between train arrival and departure times it is possible that working roads may have to be occupied 'non-productively' during this period as this reduces the availability of infrastructure for loading/discharge operations.

3.21. The layout of the Maritime Terminal and the length of the sidings necessitate a great deal of shunting when loading. This situation is becoming more critical as train lengths are being increased. As indicated in paragraph 3.5 above, on the four main roads under the crane a 30 wagon train will have to be shunted forwards and backwards during the loading operation. On the other roads it is likely that trains will have to be split. This will require even more shunting when loading followed by the reforming of trains prior to departure. There are also numerous occasions when the cranes are unable to operate for safety reasons which result in increased track occupancy.

3.22. Freightliner services operate with one hour 'cut off' prior to departure. This allows time for pre-departure inspections and a 10 minute buffer to ensure on-time-departure. Inevitably a working track underneath the cranes will be occupied during the cut-off period.

3.23. Locomotive movements as well as during refuelling will be occupying valuable track within the Maritime Terminal. Shunting at the refuelling facility and the inspection pit also impacts adversely on other shunting operations within the terminal.

3.24. In particular, the wagon and locomotive repair facility generates a great deal of shunting activity not directly related to the operation of intermodal trains to/from the Maritime Terminal. This impacts on the general track occupancy within the Maritime Terminal but in particular on roads 9 and 10 which are used almost exclusively to stable wagons pre and post maintenance. Similar to the refuelling facility, shunting onto the pit road increases track occupancy and impacts on productive activity as do the twice daily periods for crane inspection and maintenance.

#### (4) Key Questions

3.25. By relying on the various factors mentioned above, Freightliner is attempting to make its case that DB Schenker's appeal should be rejected on the grounds of "*non-availability of capacity at this terminal*".

3.26. Freightliner claims that "*they would themselves benefit from additional capacity at its Maritime Terminal*" and that "*if there was an additional slot that could be made to match with a slot on the network and it was commercially viable, Freightliner would operate this already*". Therefore, it appears that Freightliner has a clear motive to maintain its 'monopoly' position at the Maritime Terminal by protecting capacity for its future services and, thereby, its competitive advantage. The fact that Freightliner confirms that any slots that become available from the Maritime Terminal would be operated by itself suggests a

presumption that there would be no 'open access' available to other operators whether or not capacity is or becomes available.

3.27. Without access to further information relating to the Maritime Terminal (much of which DB Schenker must assume continues to be redacted from Freightliner's representations) it is difficult for DB Schenker to formulate a case to support its appeal. Much of the data that has been submitted by DB Schenker previously in respect of its appeal has been rejected as inaccurate or incomplete by Freightliner.

3.28. From the representations made by DB Schenker in this section of its response, it is clear that there are many factors that determine or affect capacity at the Maritime Terminal that cannot be analysed effectively by DB Schenker. Instead, DB Schenker believes that these factors need to be evaluated independently by relevant experts with specialist knowledge of rail mounted cranes and large intermodal terminal operations who have access to all of the relevant information. The questions that would need answering by such an evaluation would, in DB Schenker's view, include:

#### 3.29. On RMG Cranes

- Is the method of operating the cranes suitable?
- Are the cranes being operated to maximum efficiency?
- Are the crane drivers suitably skilled and trained?
- Is the crane maintenance regime appropriate?
- What is the most appropriate layout to position containers under the crane?
- How can crane stoppage time be reduced?
- How can double lifting be minimised?

#### 3.30. On Rail Terminal Operations

##### *Straddle carrier operations*

- Is the straddle carrier operation efficient?
- Should the number of deployed straddle carriers be changed?
- Does the main port road crossing need to be improved?

##### *Shunting*

- Can train loading/discharge shunting be improved?
- Are alternate arrangements possible for locomotive refuelling?
- Can inspection pit shunting be improved?
- How can the interface with the wagon and locomotive repair facility be better operated?

##### *Rail Operations*

- How can train planning be optimised for arrivals and departures, especially with late running trains?

- Are pre-departure inspections conducted efficiently?
- How can track occupancy for stabling and transit be minimised?
- Can the departure cut-off time be improved?

3.31. Clearly, any such evaluation and audit of the Maritime Terminal operation would be dependent upon Freightliner providing necessary access to the information but it would certainly give a more definitive understanding of terminal capacity and begin to establish the opportunity to accommodate third party services and in particular DB Schenker's access request.

(5) *Other Considerations*

3.32. Notwithstanding the above representations and in the absence of an independent audit and evaluation having access to all of the relevant information, DB Schenker submits that one of the key factors constraining capacity at the Maritime Terminal to accommodate additional intermodal trains (whether third party or those of Freightliner itself) is the need for Freightliner to carry out other activities at the Maritime Terminal that are not directly related to the throughput of containers at the Port of Southampton and in particular its locomotive and national wagon maintenance and repair function..

3.33. DB Schenker is unaware of any other key intermodal terminals in the UK which incorporate large scale vehicle maintenance and repair activities which impact significantly on capacity that could be made available to increase throughput of the terminal for containers. In fact, DB Schenker believes that other major intermodal terminals would positively discourage the use of the terminal for a scheduled maintenance facility to be set up which would occupy operational roads within the terminal thereby reducing the capacity available for revenue earning intermodal trains. DB Schenker's view is supported by the fact that both Roads 9 & 10 are in effect 'out of use' to revenue earning intermodal trains at the Maritime Terminal.

3.34. Although this appeal is facilitated under the Regulations, it also bears mentioning that both ports and rail networks are facilities to which the essential facilities doctrine has been applied, and to which access has been mandated by competition authorities (under Article 102 of the Treaty on the Functioning of the European Union and/or Chapter II of the Competition Act 1998). An owner of an essential facility will not commit an abuse where it has an objective justification for a denial of access. A particular issue which arises in the case of essential facilities is that there may be capacity constraints which make it impossible for access to be provided. However, DB Schenker does not believe that the alleged capacity constraints at the Maritime Terminal constitute an objective justification within the meaning of previous decisions since there are solutions which would allow any lack of space to be overcome (See *Frankfurt Airports OJ [1998] I 72/30*, where the Commission rejected the airport authority's arguments on capacity constraints).

#### 4. Viable Alternative Facility

4.1. Southampton is the second biggest container port in the UK and handles well in excess of 1.5m TEU per annum. Southampton has three intermodal rail terminals, two of which are operated by Freightliner (Maritime Terminal and Millbrook) and a one which is

owned by Associated British Ports and used by DB Schenker (and GB Railfreight Ltd. for non-intermodal traffic) (at Herbert Walker Avenue).

4.2. There are 21 train paths per day for deep sea container traffic out of Southampton, 18 of which are operated by Freightliner and 3 by DB Schenker.

4.3. Freightliner states in the summary at the start of its representations that "*DBS has in any event been unable to show that "viable alternative means of the service being provided under market conditions do not exist" as set out in regulation 29(6)(b) of the Regulations*". However, DB Schenker considers that as applicant, it is not required to show that viable alternative means of the service being provided under market conditions do not exist.

4.4. Notwithstanding the comments made in paragraph 4.3 above, and despite Freightliner's arguments to the contrary, DB Schenker considers that the site in 109 Berth, Herbert Walker Avenue, Western Docks at the Port of Southampton ("Herbert Walker Avenue Terminal") does not offer competitors of Freightliner a commercial and operational viable alternative to the Maritime Terminal.

4.5. In support of its position (which is not agreed by DB Schenker), Freightliner has made the following statements:

- FL understands that DBS have been running services at this facility since 2006, and started doing so under the previous ownership, English Welsh & Scottish Railways ("EWS"), from 2000.
- FL understands that DBS have consistently been running between 3 and 6 services a day out of the Western Docks Terminal and have run up to 8 daily services.
- It would therefore appear that DBS is alleging that the site has suddenly become uneconomical after about 15 years of successful operation.
- FL's customers regularly advise us that the rates quoted by DBS are the cheapest in the market.
- The site was improved by ABP in 2006. During that work, FL provided access to DBS at the Maritime terminal. Post completion of those works, the service returned to the Western Docks Terminal.
- Until the approach in February 2014, there have been no further requests from DBS since 2006 for access to either of Freightliner's sites.
- There is another alternative commercially viable site at Millbrook and access has already been offered by Freightliner for one train.

4.6. In response, DB Schenker wishes to make the points set out in the following paragraphs:

4.7. DB Schenker began operating a limited dedicated container service out of the Herbert Walker Avenue Terminal in 2004 although this was merely an extension of its wagon load service which necessitated specific 'trip' movements between Herbert Walker Avenue Terminal and Eastleigh. By 2008, this had progressed to regular deep sea




Walker Avenue Terminal is not considered a commercially viable alternative to the Maritime Terminal. Some of the differences include:

(a). DB Schenker understands that, at the Maritime Terminal, Freightliner pays a nominal sum for the containers to be moved to an area adjacent to the Maritime Terminal. These are then transferred across the road by port-owned straddle carriers to the train stacking areas (a distance of not more than half of a mile).

(b). To serve the Herbert Walker Avenue Terminal a truck and trailer have to be used for around a 2-mile journey to the 'public ' road interface stations within the Port, to be discharged and loaded as necessary, then make their way back to the Herbert Walker Avenue Terminal where containers are marshalled before being dispatched/arrived from trains. Not all containers are able to be moved directly from collecting truck to train with many being stacked resulting in a double-handling charge.


(c). A further disadvantage is the time taken for these operations. The movement of containers from Port to the Maritime Terminal (and vice versa) may take in the region of 10 minutes whereas the greater distance in the movement of containers from Port to the Herbert Walker Avenue Terminal (and vice versa) can result in transit times of up to 30 minutes.

(d). DB Schenker submits, therefore, that the lengthy transit of containers from Port to the Herbert Walker Avenue Terminal (and vice versa) using truck and trailer when compared to the much shorter transit from Port to the Maritime Terminal using straddle carriers greatly increases the cost and efficiency of operation of the Herbert Walker Avenue Terminal.

4.15. DB Schenker is continuing to explore means whereby to improve the operational and commercial viability of the Herbert Walker Avenue Terminal. 



*(The redacted information relates to DB Schenker's future business plans)*

4.16. In summary, therefore, DB Schenker currently operates on average 4.5 trains per day from the Herbert Walker Avenue Terminal. These trains serve Manchester Trafford Park, Wakefield, Burton on Trent, BIFT with half a train to South Wales. The four main destinations are all now 31 platforms and comprise modern length efficient wagons which maximise the numbers of boxes per train. By way of example, one train last week generated an exchange of  containers which illustrates DB Schenker's assertion that there is an immediate need for it to have container handling loading facilities in addition to the Herbert Walker Avenue Terminal to facilitate growth and competition.

container trains using mechanical side loaders to load and discharge trains and by 2010, DB Schenker was operating up to 4 deep sea container trains per day from the terminal to Hams Hall, Birch Coppice ('BIFT'), Burton-on-Trent, Wakefield and Trafford Park.

4.8. Services from the Herbert Walker Avenue Terminal were normally around 24 platforms in length and for gauge reasons were largely made up of FAA-type wagons which were very long for specifically carrying 40-foot containers - so the number of containers per train was very low per train impacting significantly on the economics of the operation resulting in utilisation factors of around [REDACTED]. DB Schenker refutes Freightliner's assertion the up to 8 trains a day were operated by DB Schenker from the Herbert Walker Avenue Terminal, the most it was possible to operate was 5 trains per day.

4.9. Services have since commonly increased to be around 31 platforms in length being comprised of more suitable wagon types able to convey different types of containers leading to an increase in utilisation factors of around [REDACTED]. These considerations, combined with the fact that the Herbert Walker Avenue Terminal is much smaller and significantly less well-equipped than Freightliner's two terminals at Southampton (e.g. it has no overhead RMGs) mean that further development of services cannot be achieved.

4.10. DB Schenker is, therefore, not suggesting that the Herbert Walker Avenue Terminal has suddenly become uneconomical (as Freightliner assert). Rather, the profile and growth of train length, service delivery and much improved utilisation factors have led to the terminal operating at capacity with an average of 4.5 trains per day being handled.

4.11. That being said, DB Schenker continues to maintain that operating costs at the Maritime Terminal are significantly less than those at the Herbert Walker Avenue Terminal and, contrary to Freightliner's assertion that DB Schenker offers rates cheaper than Freightliner's own, DB Schenker believes the opposite to be true. DB Schenker has in fact lost a customer contract to Freightliner in recent weeks because the customer informed DB Schenker that its rates were higher than the competition.

4.12. DB Schenker maintains that the Herbert Walker Avenue Terminal is not sustainable from an operational or financial perspective for further development and growth as it is both complex and unreliable to operate. Above all it is significantly more expensive per unit than the Maritime Terminal thereby creating an insurmountable cost disadvantage. DB Schenker, therefore, submits that the only way for it (and indeed other operators) to compete with Freightliner on an equal footing is to use the Maritime Terminal situated directly behind the quayside.

4.13. Freightliner also maintains that its Millbrook Terminal is a commercially viable alternative to the Maritime Terminal. DB Schenker disagrees. Millbrook is just as far from the quayside as the Herbert Walker Avenue Terminal and would require a similarly complex operation. It also does not allow the same length of train that can be accommodated at the Maritime Terminal. Notwithstanding these comments, DB Schenker acknowledges that Freightliner has offered it a 'window' for a short train at its Millbrook facility. This offer remains under consideration by DB Schenker.

4.14. DB Schenker has set out within the document at Annex 1 a comparison of operations and costs (as estimated) between the Maritime Terminal and those of the Herbert Walker Avenue Terminal. This information clearly demonstrates why the Herbert

4.17. In its representations Freightliner acknowledges that an additional path each hour will be required to accommodate the future growth in demand. It is essential therefore, in DB Schenker's view, that all 3 terminals at Southampton are operated efficiently to maximise capacity for the throughput of containers. The fact that the largest and most suitable facility (i.e. the Maritime Terminal) is used for activities that could be carried out elsewhere and that do not contribute to the throughput of containers (most notably Freightliner's locomotive and national wagon repair and maintenance facility) means that the maximisation of capacity for revenue earning intermodal trains is unduly constrained.

DB Schenker hopes that this response to Freightliner's representations is helpful. If you have any queries or require any further information, please let me know.

Yours sincerely,

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