

STB FD 33388 (Sub 79) 6-3-98 J BUSINESS

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (SUB-NO. 79)

CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-CONTROL AND OPERATING LEASES/AGREEMENTS-
CONRAIL, INC., AND CONSOLIDATED RAIL CORPORATION

PREPARED REMARKS OF RANDALL C. HUNT, VICE CHAIRMAN
OF THE STARK DEVELOPMENT BOARD, INC.
ORAL ARGUMENT

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June 4, 1998

PREPARED REMARKS

In 1995, Stark Development Board, Inc. ("SDB") strategically built an intermodal terminal ("Neomodal") on the Wheeling and Lake Erie Railway Company ("W&LE"), a regional railroad connected to three Class I carriers, Conrail, Inc. and Consolidated Rail Corporation (collectively "Conrail"), CSX Corporation and CSX Transportation, Inc. (collectively CSX"), and Norfolk Southern Companies and Norfolk Southern Railway Company (collectively "NS"). Neomodal was built to foster competitive shipper access to these carriers and help create an efficient and economical rail system in Northeast Ohio ("NEO"). The chain of events leading up to the ODOT's November 1994 award of the funds to the SDB to build Neomodal and the participation of the Class I carriers in the decision have been recited in previous SDB filings. (SDB 4, 7 and 11).

Prior to the Conrail breakup, CSX and NS did not have access to the NEO international market. Furthermore, prior to the Conrail breakup, Neomodal was the only intermodal terminal in NEO (NS has a small international ramp in Cleveland, Ohio), and it provided CSX and NS with an intermodal terminal to compete with Conrail for NEO and Western Pennsylvania intermodal business.

With the breakup of Conrail, CSX is now planning to build an intermodal terminal at the newly acquired Conrail Collingwood, Ohio Yard and NS is planning to build an intermodal terminal at its Bellevue, Ohio Yard and at the newly acquired Conrail Pittsburgh, Pennsylvania Yard. With these new terminals, NS and CSX plan to service the same market that Neomodal was designed, located and constructed to serve, and which was Neomodal's nearly exclusive market, prior to the breakup of Conrail. However, the breakup of Conrail

would create access for CSX and NS to now serve this market through the construction of additional terminals, which will duplicate service and cost, all at the expense of the federal, state, and local governments' investment in Neomodal. Due to the cost of capital for the construction of their respective terminals, CSX and NS will have no incentive to utilize Neomodal.

The construction of the new terminals by CSX and NS will lead to predatory pricing and business practices which, in turn, would lead to an undue concentration of market power in the NEO corridor. Accordingly, it is imperative that the growing NEO industrial and distribution centers continue to have direct access to intermodal service on the W&LE, a reliable rail carrier, to avoid this concentration of market power and potential predatory practices. Consistent therewith, SDB's protective conditions set forth in the conclusion hereof must be granted by the STB, and the W&LE must be granted trackage rights to Toledo, Ohio, Chicago, Illinois and unrestricted trackage rights to Hagerstown, Maryland to keep the W&LE a viable carrier and "to foster sound economic conditions in transportation and to insure effective competition and coordination between rail carriers and other modes." 49 U.S.C. § 10101(5).

CSX and NS, who were partners of W&LE and Neomodal prior to the Conrail breakup, are now after the breakup, and even more so in the future, will become direct competitors of W&LE and Neomodal. As such, CSX and NS can utilize their trackage rights, their financial resources, and their marketing strength to bankrupt the W&LE and Neomodal. This anti-competitive posturing is precisely why CSX and NS have apparently changed their minds, and now are belatedly arguing that SDB should not have built Neomodal on a regional carrier's tracks.

Prior to the proposed Conrail breakup, W&LE and Neomodal had access to all CSX and NS intermodal origin and destination markets through NS Bellevue, Ohio yard and through CSX Willard, Ohio yard. Now, W&LE and Neomodal may have access to NS South and Southwest service if the routes develop in the future, and will have no access to NS East and West service which apparently will no longer go through the Bellevue, Ohio yard. In addition, CSX's plans to move its intermodal train blocking from its CSX Willard, Ohio Yard to its CSX/Conrail Collingwood, Ohio Yard. Unfortunately, W&LE has no direct access to the CSX/Conrail Collingwood, Ohio Yard, and as a result thereof, the W&LE and Neomodal will effectively be eliminated from the major CSX intermodal train system, with the possible exception of one Neomodal train to Chicago, Illinois. These actions obviously do not foster "effective competition and coordination between rail carriers" as envisioned by 49 U.S.C. § 10101(5). The only argument for the proposed intermodal terminals of CSX and NS and the change in the CSX blocking yard is that these Class I railroads do not want a regional railroad, like W&LE, to compete in the intermodal terminal business. NS and CSX obviously want exclusive control of NEO rail and its customers, thereby forcing W&LE and Neomodal out of business. It is a well known fact that eighty percent (80%) of the shippers that are serviced by only one (1) Class I railroad ultimately pay twenty-five percent (25%) to thirty percent (30%) higher rates. Therefore, it is imperative for NEO and its shippers to preserve multi Class I access through Neomodal and W&LE.

Both CSX and NS aggressively pursued the W&LE to secure the line haul Contracts prior to the Conrail breakup, at a time when CSX and NS had no other available intermodal terminals in NEO. Five (5) year contracts are in place.

Competitive rates, service and scheduling are offered by the Class I railroads because the railroads have Class I railroad competition. Wall Street Journal, February 6, 1998. As monopolistic providers, railroads can charge whatever the market will bear and become "profit maximizing sellers." Clearly, the impact of the Conrail breakup, while competitively advantageous for CSX and NS, would practically destroy the W&LE and Neomodal, and would adversely impact two hundred fifty (250) NEO shippers and the entire transportation system of NEO, contrary to sound public policy.

Should the W&LE be forced into inclusion, CSX has recently stated to the SDB that it has no interest in acquiring or taking over any or all of the W&LE system. NS's acknowledged strategy is to shed all unprofitable tracks and NS applied that strategy in its original sale of the W&LE track. (W&LE6). If there are no protective conditions ordered by the STB, W&LE may be facing insolvency which may require it to seek inclusion. As a result of the inclusion of W&LE, NS will shed all or substantially all of the W&LE system over time, and many, if not all, of the shippers on the W&LE will be forced to truck their products. Both CSX and NS have stated that it would be easy to get another regional railroad operator to take over the W&LE. Unfortunately, these pronouncements beg the question, for if the W&LE can't operate this system with very experienced personnel, then how can another operator succeed?

There is no question that if the SDB, ODOT and W&LE knew in 1994 that Conrail would be acquired by CSX and NS and as a result thereof become competitors, then Neomodal would never have been built, and over Eleven Million Two Hundred Thousand Dollars (\$11,200,000) of federal, state, and local funds would not have been spent for its construction.

It is easy for CSX and NS to now state that "the free market should judge whether Neomodal flourishes or fails" (CSX/NS Rebuttal, Vol. 1 of 3, 477). While it is true that the SDB, ODOT and W&LE accepted the risk of building Neomodal on W&LE lines, they accepted that risk before the Conrail breakup; and they would agree that the "free market," as it existed before the Conrail breakup, should control Neomodal's destiny and prevail in this proceeding. Therefore, to maintain this "free market," the STB should issue the protective conditions sought by the SDB and the W&LE. The ultimate result of the Conrail breakup will lead to anti-competitive benefits for CSX and NS, and therefore, protective conditions are essential for a fair and competitive marketplace in NEO.

SDB met with CSX and NS the past two (2) weeks to review the future strategic plans of both railroads and their impact on Neomodal. It is very clear in that after the Conrail breakup, Neomodal is not in their respective intermodal plans. The division of the Conrail tracks and its intermodal ramps between CSX and NS, will place Neomodal at a significant operational disadvantage and will make it extremely difficult if not impossible for Neomodal to be competitive in NEO.

CSXI has designated the Conrail Collingwood, Ohio yard as its "New X" in its system and CSXI will offer direct service to over twenty (20) markets. This service will include direct competition for the one Philadelphia train per day from Neomodal to Chicago, Illinois, as proposed by CSXI. This strategy will make it extremely difficult and require time to build up the Neomodal train volume to compete with the Conrail Collingwood, Ohio yard volume. SDB must be assured that this one (1) CSX train will be in place during this post Conrail breakup ramp-up period.

NS stated that its East-West intermodal trains will no longer go through its Bellevue, Ohio yard, and that the only intermodal service that will travel through its Bellevue, Ohio yard will potentially be a southern route and a southwestern route. NS stated that a viable connection over the Ohio Central Railroad to Columbus, Ohio would open up other potential routes for NEO shippers, such as the Kansas City, Gateway west, but unfortunately that connection is theoretical only.

The sales and marketing of Neomodal is solely in the hands of NS and CSXI. Currently, there is virtually no NS volume and CSXI is working hard to build up its volume which is approximately four hundred (400) lifts per month. Even at these low lift volumes, Neomodal is operational because its operating cost break-even is low as a result of the efficiencies built into the Terminal design. The longer term problem for Neomodal is that "economics drive the market" and it may be less expensive for NEO shippers with a shorter schedule, to dray their products to the CSX Conrail Collingwood, Ohio yard rather than to dray their products to Neomodal and have W&LE rail to the CSX Willard, Ohio yard to connect to the one train to Chicago, Illinois. A better solution would be for CSX to create direct rail access to its Conrail Collingwood, Ohio yard for W&LE and Neomodal, and such a protective condition would create greater market access for NEO shippers.

Normally, it would take two (2) to three (3) years to convert shippers from draying trailers and containers to Chicago, Illinois and to the East Coast, to using Neomodal. However, this planned start-up period for Neomodal has been significantly delayed, due to the following:

1. CSX and NS interests and resources have been diverted to the divestiture of Conrail and establishing new operating and strategic plans and facilities as a result thereof; and

2. The Union Pacific Railroad and Southern Pacific Railroad system problems have spilled over to the W&LE and Neomodal, creating delays and service failures that have caused some NEO shippers to revert to trucking their products.

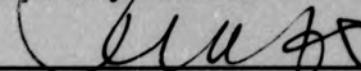
As a result of the delayed startup of Neomodal, SDB has incurred damages in excess of One Million Dollars (\$1,000,000) in the form of operating losses, including but not limited to interest expenses, as well as legal costs.

In conclusion, SDB continues to oppose the breakup of Conrail, but if the breakup is approved by STB, then SDB requests that STB issue the following protective conditions to ensure the future of Neomodal:

1. Written assurance with remedies for ten (10) years, that at least one (1) CSX intermodal train operating East and one (1) intermodal train operating West will stop daily at its Willard, Ohio yard and daily pick up and/or drop off cars to W&LE and Neomodal;
2. Written assurance that CSX will connect the W&LE directly into its Collingwood, Ohio yard and provide timely, reliable, daily access thereto;
3. Written assurance, with remedies for ten (10) years, that at least one (1) NS intermodal train passing through its Bellevue, Ohio yard, in all directions, will daily stop and pick up or drop off cars to W&LE and Neomodal;
4. Written assurance, with remedies, that CSX and NS will provide W&LE and Neomodal with competitive, timely schedules and reliable service within the CSX and NS systems;

5. Written assurance, with remedies for ten (10) years, that NS and CSX will quote a leveled, total intermodal system haulage rate for NS Cleveland, NS Pittsburgh, CSX Collingwood and W&LE/ Neomodal NS and CSX, such that W&LE and Neomodal are not placed in a disadvantage in the NEO marketplace from competing with other CSX and NS Ohio and Western Pennsylvania terminals;
6. Written assurance, with remedies, that CSX and NS will provide a steady, timely supply of empty containers and trailers and intermodal rail cars to Neomodal, as required;
7. CSX and/or NS shall enter into guaranteed ten (10)-year take or pay lift contract(s) with Neomodal at a 1998 level of 20,000 lifts per year, at Thirty Dollars (\$30.00)/perlift. The \$30.00 lift rate and the 20,000 lifts per year shall escalate at five percent (5%) per year, compounded, for the ten (10)-year period;
8. Written assurances that CSX and NS will aggressively market and sell Neomodal as if it was their own terminal.

Respectfully Submitted


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ATTORNEYS FOR
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by ordinary U.S. mail this
____ day of June, 1998, to the counsel and/or parties of record on the restricted service list.



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