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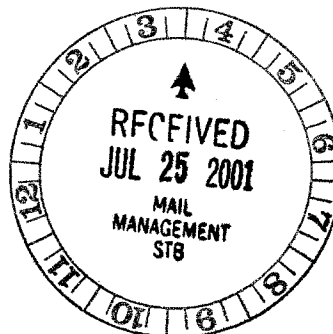
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WRITER'S E-MAIL:

July 25, 2001

VIA HAND DELIVERY

The Honorable Vernon A. Williams
 Secretary
 Surface Transportation Board
 Case Control Unit
 1925 K Street, N.W.
 Washington, D.C. 20423-0001



jhl@sloverandloftus.com

Re: Finance Docket No. 34000, Canadian National
 Railway Company, et al. -- Control -- Wisconsin
Central Transportation Corporation, et al.

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding
 please find an original and twenty-five (25) copies of the
 Response of AK Steel Corporation to Comments and Requested
 Conditions (AKS-10).

We have enclosed an electronic copy of the Response on
 a computer diskette, and have enclosed an additional hard copy to
 be date-stamped and returned to the bearer of this letter.

Thank you for your attention to this matter.

Respectfully submitted,

John H. LeSeur
 An Attorney for AK Steel
 Corporation

Enclosures

cc: Parties of Record

ENTERED
 Office of the Secretary

JUL 26 2001

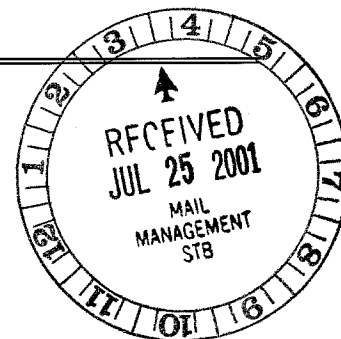
Part of
 Public Record

AKS-10

BEFORE THE
SURFACE TRANSPORTATION BOARD

Canadian National Railway Company,)
 Grand Trunk Corporation, and WC)
 Merger Sub, Inc. -- Control and)
 Merger -- Wisconsin Central)
 Transportation Corporation,)
 Wisconsin Central Ltd.,)
 Fox Valley & Western Ltd.,)
 Sault Ste. Marie Bridge Company,)
 and Wisconsin Chicago Link Ltd.)

Finance Docket No. 34000



RESPONSE OF AK STEEL CORPORATION
TO COMMENTS AND REQUESTED CONDITIONS

ENTERED
Office of the Secretary

JUL 26 2001

Part of
Public Record

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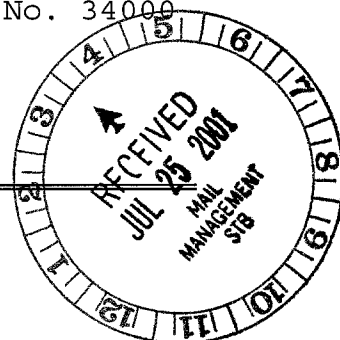
Dated: July 25, 2001

Attorneys for AK Steel
 Corporation

BEFORE THE
SURFACE TRANSPORTATION BOARD

Canadian National Railway Company,	)
Grand Trunk Corporation, and WC	)
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Fox Valley & Western Ltd.,	)
Sault Ste. Marie Bridge Company,	)
and Wisconsin Chicago Link Ltd.	)

Finance Docket No. 34000



**RESPONSE OF AK STEEL CORPORATION
TO COMMENTS AND REQUESTED CONDITIONS**

Pursuant to the Board's procedural schedule, AK Steel Corporation ("AK" or "AK Steel") hereby files its Response to Comments and Requested Conditions.

SUMMARY

In its June 25, 2001 Comments, AK did not support or oppose the proposed CN¹/WC² merger. AK did ask the Board to impose one condition, if it approved the merger, holding GLT³ to representations GLT made concerning continued provision of service to AK's Butler, Pennsylvania steel works.

Since the filing of its Comments, CN/WC and GLT have entered into a settlement agreement ("GLT Agreement" or

¹Canadian National Railway Company, et al. ("CN").

²Wisconsin Central Transportation Corp., et al. ("WC"). Collectively CN and WC shall be referred to as "Applicants".

³Great Lakes Transportation LLC ("GLT").

"Agreement").⁴ That Agreement is blatantly anticompetitive and should not be imposed as a merger condition. If the Board approves the merger with the GLT Agreement as an adopted condition, AK opposes the merger.

I.

BACKGROUND

A. The Pertinent Terms of the Settlement Agreement

The GLT Agreement,⁵ at Section II. A., establishes the Duluth, Missabe, and Iron Range Railway Company ("DMIR")⁶ as the "exclusive agent" for CN and WC for "the all-rail, joint-line movement of taconite . . . originating at points served by DMIR . . . and moving over CN's and/or WC's lines to ultimate destinations at Gary or Indiana Harbor, IN, Pittsburgh/Braddock, PA, Nanticoke, ON, or Lorain, OH." The exclusive agency relationship also extends to "through rates for joint-line movements" of taconite originating at DMIR served points "to WC's Escanaba Docks and through WC's Escanaba Docks for further waterborne transport." See section II. A. 6. According to GLT, "CN would not independently solicit these movements or set prices to shippers for its portion of such movement[s] unless required to do so by law." See Comments of GLT (July 26, 2001), at Attachment B.

⁴CN-GLT Settlement Agreement (July 18, 2001).

⁵The 16-page Agreement consists of sections I. through IV.

⁶DMIR is a subsidiary of GLT.

CN/WC's principal responsibility under the Agreement is to provide DMIR with the revenue requirement applicable to its portion of any covered joint-line movement. See sections II. A. 4. and II. A. 6. DMIR retains control under the agreement over the pricing and terms, and "shall make all necessary arrangements" for such joint line movements. See sections II. A. 1. through II. A. 6. Further, the parties are authorized to "amplif[y], as the parties deem appropriate" any of the "commercial and other rights and obligations" under the Agreement (including apparently such matters as the DMIR exclusive agency relationship and the coverage of that relationship) by entering into secret ancillary agreements. See section IV. H. The DMIR exclusive agency extends for a ten year period. See section II. B.

B. AK's Taconite Transportation Interests

AK currently ships taconite from EVTAC's Fairlane facility -- a "covered origin" under the GLT Agreement.⁷ AK does not currently transport taconite to any "covered destinations" under the Agreement (most of which are steel mills). Instead, AK's DMIR-originated shipments go to its Middletown, Ohio steel mill (which is not a covered destination). However, in the past, AK has transported taconite from Fairlane to steel mills owned by other steel manufacturers and AK may in the future choose to transport taconite from Fairlane (or other DMIR-served points) to

⁷AK also currently obtains taconite from one Minnesota Iron Range producer that is not presently served by DMIR.

covered destinations under the Agreement. AK also may choose to transport taconite from Fairlane to (and through) Escanaba, which transportation is also subject to the agency agreement. Finally, AK is particularly concerned that the secret amendment provisions may allow CN/WC and GLT to expand the scope of the Agreement to include AK's current taconite movements.⁸

II.

ARGUMENT

The STB grants conditions to mergers only to ameliorate or eliminate demonstrated public harms caused by the transaction. See Finance Docket No. 33388, CSX Corporation, et al. -- Control and Operating Leases/ Agreements -- Conrail Inc. et al., (Decision No. 89 served July 23, 1998) at 78 ("Conrail"). The "principal harms for which conditions are appropriate are a significant loss of competition or the loss by another rail carrier of the ability to provide essential services." Finance Docket No. 33556, Canadian National Railway Company, et al. -- Control -- Illinois Central Corporation, et al., (Decision No. 37 served May 25, 1999) at 21 ("CN/IC").⁹

⁸As discussed in more detail below, the GLT Agreement, at section III., also contains provisions addressing the amendment of certain longstanding anticompetitive trackage rights agreements.

⁹The fact that what the Applicants and GLT are seeking here is a Board condition adopting a settlement agreement does not change the analysis. The Board will impose as a condition a settlement agreement "only if we would have imposed that condition (or a similar condition) even without the settlement agreement (continued...)"

As explained below, the GLT Agreement does not ameliorate a "significant loss of competition." Instead, it promotes a "significant loss of competition." Nor is the Agreement necessary to "provide essential services." Stripped to its core, the Agreement is simply intended to prop-up DMIR's continued monopoly pricing of taconite traffic to the detriment of taconite shippers.¹⁰

A. The Settlement Agreement Blatantly Restrains Competition

A combined CN/WC could compete with GLT in two principal ways. First, CN lines are near northeastern Minnesota DMIR-served taconite facilities. With build-outs, or build-ins, or other track construction, CN could provide origin competition to DMIR. Second, on movements that now move from origins in DMIR/GLT vessel service, CN/WC could participate on what GLT claims are potentially competitive CSX Transportation Inc. ("CSX")/DMIR/CN-WC bridge or destination service alternatives.¹¹

⁹(...continued)
ment." Finance Docket No. 32549, Burlington Northern Inc. et al. -- Control and Merger -- Santa Fe Pacific Corporation et al., (Decision No. 38 served August 23, 1995) at 83 ("BN/SF").

¹⁰The GLT Agreement also is intended to augment GLT monopoly power, post-merger, over taconite traffic. This result violates the basic Board edict that a condition must be narrowly tailored to address the adverse effects of a transaction, and "not be designed simply to put its proponent in a better position than it occupied before the consolidation." CN/IC at 22.

¹¹GLT's filings in this case have identified several such potential routings (according to GLT). See, e.g., GLT Comments on Applicants' Environmental Appendix (June 13, 2001), V.S. Grimes at 12.

The GLT Agreement effectively wipes out both forms of post-merger competition. For example, assume that a shipper now moves traffic over a DMIR/GLT vessel routing. Also assume the shipper, with a build-out, also has a CN/WC/CSX delivery option. If the shipper builds an access line to CN, it could seek competitive bids from (1) DMIR/GLT and (2) CN/WC. However, such actions cannot take place under the terms of the GLT Agreement. Under the GLT Agreement, if the shipper builds out to CN/WC, DMIR acts as CN/WC's "agent" and in effect can quash any competition since it becomes the controlling origin carrier on both hauls.

Indeed, this bizarre occurrence appears to have come about due to last minute changes made by CN/WC and GLT to the Agreement. In GLT's June 26, 2001 Comments, GLT described the DMIR agency arrangement as only applying to taconite traffic "originating" on DMIR. See June 22, 2001 CN/WC letter agreement, at ¶ 3 (attached to Comments of GLT (July 26, 2001)). With a build-out to CN, competitive traffic moving on CN would not "originate" on DMIR, and thus it did not appear that the proposed settlement agreement would thwart build-out competition. However, the July 18, 2001 GLT Agreement changes the scope of the Agreement to include traffic "originating at points served by DMIR." See section II. A. That change precludes build-out competition and, in effect, precludes build-outs themselves since it makes no sense for a shipper captive to DMIR to build out to CN and still, because of the Agreement, remain captive to DMIR pricing.

Secondly, the GLT Agreement quashes any potential bridge carrier competition between CN/WC and the GLT vessel fleet. For example, assume that, pre-merger, a shipper with a movement covered under the GLT Agreement has two routing options: DMIR/GLT or DMIR/WC. Further assume that the shipper seeks separate bids from (1) DMIR/GLT for the DMIR/GLT routing, (2) DMIR for its portion of the all-rail routing, and (3) WC for its portion of the all-rail routing. In this scenario, DMIR would not know what WC's bid was, and, as GLT has repeatedly claimed in this proceeding, this lack of knowledge could possibly result in the DMIR/GLT bid being higher than the DMIR/WC bid. However, this result cannot happen post-merger, because, under the GLT Agreement, DMIR (as CN/WC's "agent") will know what the WC bid will be and can price the DMIR/GLT and the DMIR/WC bids to guarantee whatever result DMIR wants.

The GLT Agreement also thwarts bottleneck relief for bridge/destination hauls. For example, if pre-merger, a DMIR-captive shipper using a DMIR/WC routing obtains a separate contract with WC, it could seek bottleneck rate relief against DMIR.¹² Not so post-merger under the GLT Agreement. With DMIR as WC's agent, there will be no separate WC contract and no

¹²Under the Board's Bottleneck Decision, if a shipper obtains a contract with the destination carrier (and the origin carrier does not serve the destination), the shipper can pursue bottleneck pricing relief at the STB. See Central Power & Light Co. v. Southern Pacific Transportation Co., 1 S.T.B. 1059 (1996), clarified, Nos. 41242 et al. (Decision served April 30, 1997), aff'd on other grounds sub nom. MidAmerican Energy Co. v. STB, 169 F.3d 1099 (8th Cir. 1999).

availability of bottleneck relief on the covered movement. The result will be the expansion of DMIR's monopoly power all the way to the end of CN/WC's lines.

All of these results are blatantly anticompetitive. Indeed, the Applicants themselves recognized this result in their June 19, 2001 Comments. There, the Applicants argued that the relief then being sought by GLT (which relief Applicants have now agreed to provide via the GLT Agreement) was blatantly "anticompetitive" and raised "antitrust" concerns:

there is, in essence, only one way for the Board to assure that GLT absolutely does not face any risk of losing the GLT Movements. Directly or indirectly, the Board would have to preclude Applicants from competing for those movements. . . .

Applicants regret that the good offices of this Board might be used in aid of this sort of anticompetitive initiative in a context where the Board has traditionally sought to protect and encourage competition. . . . Moreover, if nothing else, antitrust principles might prevent us from entering into such an agreement with GLT.

Applicants' Comments on the Status of GLT Issues (June 19, 2001), at 4.

Moreover, in recent merger cases the Board has repeatedly imposed conditions to preserve competition, including, specifically, the preservation of build-out options¹³ and

¹³See, e.g., Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al. (Decision No. 44 served August 12, 1996) at 146 ("UP/SP"); Conrail at 61. Board precedent also clarifies that a shipper seeking such a competitive build-in/build-out "need not demonstrate economic (continued...)"

bottleneck relief options.¹⁴ Here, CN/WC and GLT are asking the Board to approve an agreement expressly designed and intended to prevent competition, and thwart pre-merger build-out and bottleneck relief options.

B. There is No Public Interest Justification for STB Approval of the GLT Agreement

GLT offers three asserted public interest justifications for approval of the GLT Agreement. None is meritorious. First, GLT argues that the GLT Agreement will help GLT to maintain its monopoly control over taconite traffic. See, e.g., Comments of GLT on Applicant's Environmental Appendix (June 13, 2001), at 6. That may be true, but protection of a carrier's monopoly from post-merger competition is not a valid public interest. The mere fact that a condition would benefit the party seeking it is not sufficient justification for imposing it,¹⁵ and the Board will not grant conditions "to indemnify competitors for revenue losses absent a showing that essential services would be impaired." CN/IC at 22 (citing Burlington Northern, Inc. -- Control & Merger -- St. L., 360 I.C.C. 788, 951 (1980)).¹⁶

¹³(...continued)
feasibility; the only test of feasibility is whether the line is actually completed." UP/SP at 146.

¹⁴See, e.g., STB Ex Parte No. 582 (Sub-No. 1), Major Rail Consolidation Procedures (Decision served June 11, 2001) at 26.

¹⁵BN/SF at 93.

¹⁶GLT has made no showing that its services at issue are "essential" nor could it since GLT is attempting to insulate its service from being provided by other carriers.

Second, GLT maintains that the GLT Agreement "preserves the existing commercial situation." GLT Comments (June 26, 2001), at 7. That is simply not true. As noted below, the Minnesota Iron Range taconite movements are already subject to DMIR-imposed traffic restrictions that are blatantly unlawful. The GLT Agreement provides yet another layer of anti-competitive restrictions on Minnesota taconite shippers.

Third, GLT argues that the Agreement helps shippers by providing shippers with "one-stop shopping." Id. at 8. "One-stop shopping" is not what shippers want when they are trying to obtain pricing relief via build-outs and bottleneck relief. To perfect such relief opportunities, shippers must deal separately with the involved railroads. "One-stop shopping" in this context simply limits shippers to shopping at one store -- the DMIR's monopoly store.

C. The Agreement Raises Significant Antitrust Concerns

As noted above, CN/WC stated in their June 19, 2001 STB filing that the relief sought by GLT (which CN/WC later agreed to) raised significant "antitrust" concerns. AK agrees. Most, if not all, Iron Range taconite traffic today moves via rail contract. These contracts are exempt from STB jurisdiction as are the marketplace strategies shippers deploy to obtain contract rates and service.

Via the GLT Agreement, CN/WC and GLT are asking for STB approval of an "agency agreement" that permits the parties to engage in collective activities (e.g., joint pricing of contract

movements) designed and intended to prevent shippers from obtaining the benefit of marketplace competition. Agreements such as this that allocate customers, divide markets and fix prices typically are found to violate the antitrust laws. See, e.g., United States v. Topco Assocs., Inc., 405 U.S. 596, 608-09 (1972). The STB should not allow the CN/WC and GLT to use the offices of the STB to engage in blatant anticompetitive actions that would otherwise raise major antitrust law issues.

D. The STB Should Not Sanction
Additional Secret Agreements

The GLT Agreement authorizes the parties to "amplif[y]" or further define "[t]he commercial and other rights and obligations" through "separate agreement documents." See section IV. H. Such "separate agreements" would be confidential, with disclosure only to be made to outside persons "as required by law" or directly to governmental agencies. See section IV. K.

The Applicants assert that these provisions are permissible, as the provisions "would not preclude review by the Board, if that were deemed appropriate."¹⁷ However, there is no explanation how the Board would know when to request such a review, as it would not otherwise have access to, and therefore knowledge of, the timing and terms of such confidential side agreements.

¹⁷Applicants Reply to Petition of AK Steel Corporation and Eveleth Mines, LLC (July 23, 2001), at 5-6.

The most interested parties -- taconite shippers -- certainly would not be aware of the terms of any such side agreements. AK is concerned that the Applicants and GLT may believe they are authorized via these secret amendment provisions to extend their agency relationship to cover movements to and from other origin/destination points not covered by current Agreement (including AK's current movements).

If the STB approves the GLT Agreement, it should not authorize the use of secret addendums. The affected public should be permitted access to all amendments to the GLT Agreement.

E. The STB Should Not Impose Any Merger Conditions
Limiting Shippers' Rights to Challenge
Anticompetitive Covenant in Trackage Rights Agreements

Page 6 of the GLT Agreement contains the following paragraph:

1. The parties will draft and execute an amendment to the Trackage Rights Agreement between DMIR and WC's railroad subsidiary Wisconsin Central Ltd. ("WCL") dated April 14, 1988, as amended by the Amendment Agreement dated May 9, 1991, pertaining to DMIR trackage between South Itasca, Wisconsin, and Pokegama, Wisconsin (collectively, the "April 14, 1988 WCL Agreement"), to become effective as of the Operative Date. The April 14, 1988 WCL Agreement shall be amended to the following effect: WCL shall have the right to use the trackage rights granted thereunder to interchange all traffic with any other carrier at Pokegama Yard, subject to the restrictions set forth in Section 8 of the April 14, 1988 WCL Agreement and any other restrictions in that agreement that are not inconsistent with such right to interchange. The parties will undertake best and good

faith efforts to execute the amendment by August 31, 2001.

This paragraph refers to amending a trackage rights agreement (referred to as the "April 14, 1988 WCL Agreement") involving traffic moving to CN's Pokegama Yard -- a yard located on DMIR's line. The paragraph states that the provision in the agreement to be amended is subject to "the restrictions set forth in Section 8." Section 8 contains anticompetitive restrictions that preclude WC from using the involved trackage to transport taconite traffic "without first obtaining the consent of DMIR." CN is subject to similar restrictions in separate trackage rights agreements.¹⁸

AK is not asking the Board to litigate the legality of these restrictions now.¹⁹ AK simply asks that if the Board approves the GLT Agreement, it take no action to insulate the restrictions from subsequent legal challenge before the Board or in a Court.

¹⁸This agreement is referenced at page 7 of the GLT Agreement and referred to as the "CN/DMIR Trackage Rights Agreement." The anti-competitive restrictions in both agreements are referenced in Applicant's June 13, 2001 letter to Ms. Phillis Johnson-Ball, STB Environmental Project Manager, at 3-4.

¹⁹These restrictions pre-date the CN/WC merger and are not directly impacted by the merger. The other terms of the GLT Agreement, discussed above, provide yet additional, new merger-related competitive harms and they are subject to review in this case.

CONCLUSION

AK requests that the Board issue a decision consistent with AK's views as set forth in AK's opening and reply comments.

Respectfully submitted,

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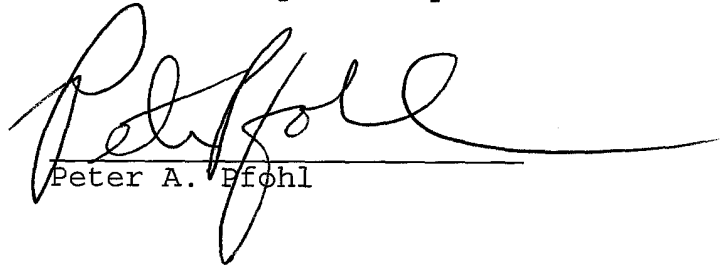
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Dated: July 25, 2001

Attorneys for AK Steel
Corporation

CERTIFICATE OF SERVICE

I hereby certify that this 25th day of July, 2001, I have served a copy of the foregoing document by first class mail, postage-prepaid, or by more expeditious means upon all parties of record in this case.



Peter A. Pfohl