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BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
June 1, 2021
Part of
Public Record

Finance Docket No. 36514

CANADIAN NATIONAL RAILWAY COMPANY, ET AL. – CONTROL – KANSAS CITY SOUTHERN, ET AL.

CANADIAN PACIFIC APPLICANTS' SUBMISSION OF STATEMENTS OPPOSING APPROVAL OF VOTING TRUST

Canadian Pacific Railway Limited and its U.S. rail carrier subsidiaries[1] are submitting for the Board's consideration 131 statements of shippers and other stakeholders that express opposition to approval of Canadian National's proposed voting trust. For the Board's convenience, we have provided an index of those statements below.

[1] Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively "Canadian Pacific" or "CP").

Respectfully submitted,

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Attorneys for Canadian Pacific

May 31, 2021

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AEG Fuels LLC	Greg D. Bartness
Ag Transfer LLC/Stone Arch Commodities LLC	Revis L. Stephenson
Albatrans Canada Inc.	Branko Jevtovic
Alberta Prairie Steam Tours Ltd. d/b/a Alberta Prairie Railway	Bob Willis
All American Track, Inc.	Ardella Fernow
Alliance Recycling Group	Shane L. Betz
American Bean LLC	Laurie Schumer
ASL Distribution Services Ltd.	Manny Calandrino
Automoves Limited	Andrejs Ludzeneks
Axis Warehouse LLC	Daniel Goldberg
Bay & Bay Transportation	Matt Carlton
Beamish Construction Inc.	Michael Andrighetti
Bestway Cartage Limited	Frank Figliomeni
Bison Transport	Brad Chase
BMA Transport Inc.	Stéphane Caron
Border City Concrete	Brian Morrison
Boundary Trail Railway Company	Travis Long
Brentwood Enterprises	Jamie Littke
Canada Drayage Inc.	Gianna Primiani
Canadian Heartland Training Railway Services	Kevin Budd
Cecchetto & Sons Ltd	Vaughn Blacklock
Central Canadian Railway Inc.	H.J. Koberinski
Central Farm Service	Dennis C. Inman
Central Midland Railway	Jordan Buck
Centurion Lumber	Chris Calverley
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Chicago, St. Paul & Pacific Railroad and Chicago Jct. Railway	Phil Smailes
Consolidated Fastfrate Inc.	Manny Calandrino
Continental Logistics Ltd.	Chad Nielson
Crow Wing Recycling	Grant VanWyngeeren
Custom Bulk Inc.	Trevor McPherson
Dakota Gold Transfer-Plaza, LLC.	Cody Moe

Entity	Witness
Davenport Industrial Railroad	Steve Berish
E.J.R. Reload Inc.	Edward Kaletzke
Ellwood Robinson	John Thomas
Ethier Sand and Gravel	Dan Ethier
Farmers Co-Operative of Hanska	Jerry Svoboda
Farmers Co-Operative of Hanska	Lee Beer
Fastfrate Integrated Logistics	Frank Figliomeni
Federal White Cement Ltd.	Art DeVecchis
Feldspar Inc.	Dave Kohlruss
Fisher Wavy Inc.	Trevor Lalonde
F.J. Robers Co., Inc.	John Noyes
Fordville Coop Marketing Association	Phillip Jallo
Forest River Bean Co., Inc.	Brian Schanilec
Forty Mile Rail	Larry Robinson
Galaxy Plastics & Bren Technologies	Stephanie Keway
Grand Prix Inc.	Robert D. Thomas
Great Northern Trans-Port Inc.	Dana Wakefield
Great Western Railway Ltd.	Andrew Glastetter
Greenlight Traffic and Distribution Inc.	Augustin Martin
Greenway Animal Nutrition Inc.	Andrea Adam
Guanajuarto Energy Terminal	Adam Altsuler
Harbour Metals Recycling Ltd.	James White
Hopewell Logistics Inc.	Kevin Roy
Horizon Grains Ltd.	Iftikhar Wainse
Iron Horse Transloading	Shawn Murray
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Kallio Capital	Kristin Wallace
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Keltic Transportations	Orlando Mazzuca
KP Building Products Ltd.	Lionel Dubrofsky
Lake Line Railroad Inc.	Art Stacey
La Milanaise Inc.	Steve Castegan
Logistics Helper Inc.	Rumana Sobhan
Logistique Canamex Inc.	Sylvain Jarry
Long Creek Railroad Company Inc.	Kathy L'Hirondelle

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Maple Ridge Aggregates	Rick MacDonald
Matrix Chemical, LLC	Tatiana Dowd
Micro Oil Inc.	Jeffrey Stromberg
Midwest Bulk Transload	Ted Kennedy
Mikrut Properties, LLP	Rich Mikrut
Miller Precast Ltd.	Tracy Miller
More Than Just Feeds	Andrew Barwegen
Nestle Canada Inc.	Leslie Nicholson
New Brunswick Premier	Blaine M. Higgs
Nichol and Diamond Consulting Limited	Michelle Toma
Northern Brick	Kim Birmingham
Northern Ski Company Limited	Jamie Wallace
Ostara Nutrient Recovery Technologies Inc.	Patrick Mitchell
Palmer Construction Group Inc.	Terry Rainone
Park Farm Grains Ltd.	Bill McLeod
Paterson GlobalFoods Inc.	Shane M. Paterson
Pattison Sand Company	Kyle Pattison
PFL Petroleum Services Limited	Curtis R. Chandler
Phoenix Park (Canada) Energy Marketing Ltd.	Donnie Schubert
Pioneer Construction Inc.	Malcolm Croskery
Pipeline Foods	Steve Hanson
Pique Supply Corporations	Stephanie Kennedy
Port Arthur Terminal	Keith Benson
Progressive Rail Incorporated	Dave Fellon
R.G. Phillips Group of Companies Inc.	Greag Phillips
Rail & TransLoad Inc	Mark K. Smith
Red Leaf Pulp	Joe Hinz
Red Maple Capital	Jeff Wallace
Redhead Equipment	Craig Slobodian
Re-Transportation, Inc.	Brian Johnson
Routes Transportation Group	W.G. Wallace
Seven Rivers Intermodal Terminals, LLC	Laurie Rath
Silver Peak Capital	Martin Gran
Simba Transload Ltd.	Marvin Trimble
Simpson Seeds Inc.	Jordan Fehr
Southland Pulse Inc.	Shawn Madsen

Entity	Witness
Southwest Terminal Ltd.	Robert Chapman
SPAAR	Steffen Holdt
State Representative, 4th Assembly District	David Steffen
Stewart Southern Railway	Glenn Pohl
Superior Pulses	Aftab Ghouri
Target Transportation Ltd.	Murray Crane
TexasDeepwater Partners LLC	Josh Ruple
TExpress Logistics	Robert Martin
Timiron LLC	Timothy A. Chutz
Torch River Rail Inc.	Ronald Shymanski
Transcare Logistics Corporations	Steve Taylor
Transload Logistics Corp.	G. Ben Docktor
Transmark Ltd.	Dallas Sherwood
Transport Services and Logistics Canada Ltd.	Craig Bailey
Up On Me Imports Inc.	Ron Hoyda
U.S. Salt	Matt Friedrich
USD Group	Bill Frerking
V Modal Mexicana S.C.	Francisco Javier Vera Lima
VanKam Freightways Ltd.	Derek Power
Veikle Grain Ltd.	Carl Veikle
Western Asphalt Products	Dean Arnill
Weyburn Industrial Transload Inc.	Carter Stewart
Wheaton Dumont Co-Op Elevator	Philip Deal
Wilton Farmers Union Cooperative Elevator	Michael Bernhardt
WTC Group Inc.	Jordan Atkins

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Canadian Pacific's Submission of Statements Opposing Approval of Voting Trust to be served electronically or by first class mail, postage pre- paid, on all parties of record in this proceeding.

/s/ *Freesia Ferrantino*
Freesia Ferrantino

May 31, 2021

May 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express 5 Suns Transloading Ltd's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation

of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control

transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment

of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal

offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Shawn Murray

Cc: All Parties of Record

1725091 ALBERTA LTD.

OFFICE 5016 48th St., Lloydminster, AB T9V 0H8

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

1725091 Alberta Ltd. is an investment company with operating companies in the supply of concrete and aggregate products in Western Canada. We have actively sought markets in the United states and Mexico for our products and many of our equipment supplies and materials come in by rail.

If CP were to acquire Kansas City Southern this would allow us to have real competition along the rail network with CN which would provide us with better access to markets, betting pricing, and service but if CN completes this acquisition this would not be the case. We are concerned that if CN were given a monopoly over its competition that prices would increase and service would suffer. They would not be accountable to their customers because the customers would have nowhere else to turn. As a result, we would have serious cost shocks because of increased pricing, supply shocks that would be difficult to overcome and markets that would be more difficult to reach as a result. We are pro-business but we are also pro-competition and if CN were allowed to proceed with this transaction it would have a devastating impact on the competitiveness of the rail industry and would precipitate further requirements for the rail consolidation increasing this issue further. This would result in higher input prices for us and higher export prices for the world if customers can even access the network which could be closed for all but the biggest customers.

I am writing to express 1725091 Alberta Ltd.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would

be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

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to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

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We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

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In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Gord Wallace,
1725091 Alberta Ltd.

Cc: All Parties of Record

24 MAY 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

AEG Fuels LLC is a US headquartered global aviation fuel distributor. We use the railroad for transportation of products between the US and Canada. Our business activities rely on a competitive rail industry.

I am writing to express AEG Fuels' perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they

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were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf

of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

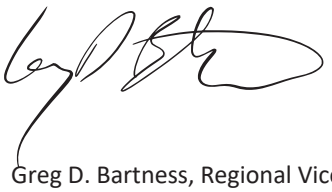
No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,



Greg D. Bartness, Regional Vice President

Cc: All Parties of Record

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Ag Transfer LLC and its parent company Stone Arch Commodities LLC are exporters of containerized agricultural commodities.

I am writing to express Stone Arch's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have

to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these

circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment,

downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Revis L. Stephenson III
President, Ag Transfer LLC

ALBATRANS

Professional service with a personal touch

International Freight Forwarders

May 27th, 2021.

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

On behalf of Albatrans Canada Inc.,

I am writing to express Albatrans Canada's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

Albatrans Canada Inc.
124 Merton Street, Suite 400, Toronto, ON M4S 2Z2 – Phone: +1 (416) 923-6006 – Fax: +1 (416) 923-6051
info.yto@albatrans.com

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Branko Jevtovic
Director, Finance & Operations

Albatrans Canada Inc.

cc: All Parties of Record

ALBERTA PRAIRIE

RAILWAY EXCURSIONS

P.O. Box 1600
Stettler, Alberta, Canada
T0C 2L0

Telephone (403) 742-2811
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Facsimile (403) 742-2844
e-mail: info@absteamtrain.com

May 25, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Alberta Prairie Steam Tours Ltd., operating as Alberta Prairie Railway, is a Canadian short line railway requiring access to US and Mexican markets.

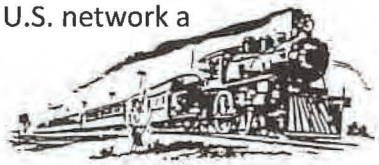
I am writing to express Alberta Prairie Railway's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In our view the use of a trust in this proceeding would not be in the public interest.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the *adverse impact that would have on existing competition between KCS and CN.*

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for *KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.*

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a



shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential *financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.* The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

General Manager and VP Alberta Prairie Steam Tours Ltd./
Alberta Prairie Railway

Cc: All Parties of Record

Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

All American Track, Inc.
PO Box 186
Ash Fork, AZ 86320

I am writing to express All American Track, Inc.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

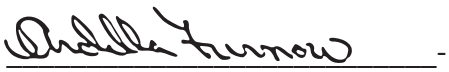
We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Ardella Fernow
President
All American Track, Inc.



cc: All Parties of Record

ALLIANCE
RECYCLING GROUP

May 24, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Alliance Recycling Group's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

115 31st Avenue N Minneapolis, MN 55411 phone 612-588-2721 fax 612-588-2724

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.
But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service.

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ALLIANCE
RECYCLING GROUP

Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

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RECYCLING GROUP

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Shane L. Betz
President & CEO
115 31st Avenue North
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Cc: All Parties of Record

American Bean LLC
105 Osk St
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MAY 26, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

As a shipper and a small business we at American Bean LLC attempt to find the most affordable way for shipping our products. We find that transporting and delivering by rail is the least expensive method as well as the most efficient way. A CPRS/KSC merger would provide a supply chain that would benefit us as well as our customers.

About 70% of our product is conveyed to Mexico via rail. In the past 5 years we have seen a gradual decline in shipments to Mexico and Texas. One of the principle reasons behind this is our transportation rates do not compare with our competitors. Our main competitors are on the BNSF rail line and as of now we can't rival. At times we have needed to absorb the expense contrast so we can move our product which leads to a loss in revenue for our company. We have attempted to find alternative methods for transportation, however as you are probably aware, rail is more fuel efficient than trucking which in turn leads to non-competitive rates when compared to rail.

Our product that moves south into Texas and Mexico by rail is as of now transporting on 2 separate railroads. Canadian Pacific services our facility here in Oslo, MN. From here Canadian pacific will interchange to either Union Pacific or to Kansas City Southern rail road. Generally speaking we are already utilizing both Canadian Pacific and Kansas City Southern Rail railways, but without the advantages of better rates.

The network will fit nicely with one another and help fill out North America with rail service. We are of the assumption that a CP/KCS solidification will bring us better rates, faster services, and assist us with developing our clients, producers and buyers.

I am writing to express American Bean LLC's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

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CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both

concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Laurie Schumer
Plant Manager – Oslo,MN

Laurie Schumer

ASL Distribution Services Ltd.

ASL Distribution Services Ltd
2160 Buckingham Rd.,
Oakville On L6H 6M7

BY ELECTRONIC FILING

May 21, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express ASL Distribution Services Ltd. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of

KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have

to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

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transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

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transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

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of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

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picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal

offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Manny Calandrino
President & CEO

Cc: All Parties of Record

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

I am representing Automoves Ltd., a regular intermodal shipper utilizing CP Rail network for the purpose of transporting automotive parts across Canada. We are working towards expanding our shipping capabilities further south, including shipments between Canada and Mexico. This lane would help accommodate the need for growing cooperation between the suppliers of both countries in the automotive sector. The deal between CP Rail and KCS has direct impact in our ability to facilitate this growth.

I am writing to express Automoves perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest. We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have

to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to

apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the adverse impact that would have on existing competition between KCS and CN.

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.
CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another

if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason not to let CN use a voting trust, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved. The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Andrejs Ludzeneks / Automoves Ltd.

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Cc: All Parties of Record

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Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express AXIS WAREHOUSE LLC, perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way

to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Daniel Goldberg
Axis Warehouse LLC
500 Country Club Drive
Bensenville IL, 60106

cc: All Parties of Record

Letter to STB commenting on CN Trust Proposal

5/21/21

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Bay & Bay's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the

benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed***

charges" and the "financial integrity" of the rail carriers involved. The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Matt Carlton

Bay & Bay Transportation

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Cc: All Parties of Record

Beamish CONSTRUCTION INC.
2589 Ida Street – Sudbury, Ontario P3E 4W9
Telephone:(705) 522-6340
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MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Beamish Construction is an Ontario based road paving company. Many of our raw materials, including aggregates, fuel, equipment, and liquid asphalt are shipped in by rail. We have also looked at export markets into the United States. If CP were to acquire Kansas City Southern this would allow us to have real competition along the rail network with CN but if CN completes this acquisition this would not be the case. We are concerned that if CN were given a monopoly over its competition that prices would increase and service would suffer to the point that it would cause significant price increases and supply chain disruptions for our business.

I am writing to express Beamish Construction Inc's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

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of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for

transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Michael Andrighetti,
Beamish Construction Inc.

Cc: All Parties of Record

Ship Via:
BESTWAY

BESTWAY Cartage Limited
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BY ELECTRONIC FILING

May 21, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Bestway Cartage Limited perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages

additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree

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with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of

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We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Frank Figliomeni
President

Cc: All Parties of Record

Letter to STB commenting on CN Trust Proposal

Friday, May 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Brad Chase of Bison Transport and my business address is 1001 Sherwin Road, Winnipeg Manitoba. I am Sr. Vice President of Logistics and Multimodal. In my role, I am responsible for Brokerage, Intermodal and Warehouse Operations.

I am writing to express the Bison Transport perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to

divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS;s shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

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CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without

an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

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We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Brad Chase

_____-

Cc: All Parties of Record

TRANSPORT BMA

LA FORCE D'UNE ÉQUIPE ! THE STRENGHT OF A TEAM!

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown

Chief, Section of Administration, Office of Proceedings

Surface Transportation Board

395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am VP of BMA Transports Inc. We work extensively with both CP and CN rail. I feel this letter is essential for our business going forward.

I am writing to express BMA Transport Inc perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

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We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Stéphane Caron Vice-Président

cc: All Parties of Record

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MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Border City Concrete is a concrete producer located on the Alberta/Saskatchewan border and serves the local markets in both provinces. We have produced materials for both CN and CP, including railway ballast and concrete. As well, many of our products support industry that import directly around the continent and world by rail while our raw materials and equipment come in by rail.

We are very concerned with the proposed merger between CN and Kansas City Southern because we feel that our already precarious access to a broad and competitive rail network is under threat. There are existing signs that CN has used its market position in a predatory way and while partially kept in check by a recently strengthened CP if CN is allowed to increase its competitive position we have strong concerns that recent gains could be undone. On the other, hand CP has already had a beneficial impact on the marketplace and giving them a combined platform with KCS would provide another true competitor in the North American rail marketplace reducing prices and increasing service for all.

I am writing to express Border City Concrete's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place

"heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same

points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for

KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Brian Morrison,
President,
Border City Concrete

Cc: All Parties of Record

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express the Boundary Trail Railway Company's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

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btrcadmin@mymts.net
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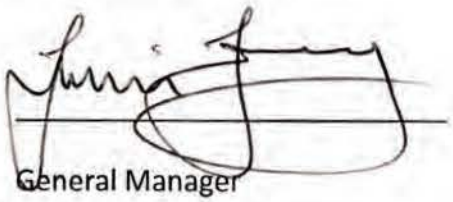
Fax (204) 242-2348

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,



General Manager

cc: All Parties of Record

Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Brentwood Enterprises' perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

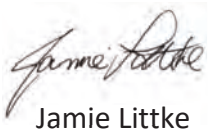
We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or

extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,



Jamie Littke

President

Brentwood Enterprises LP

cc: All Parties of Record

Canada Drayage Inc.

BY ELECTRONIC FILING

May 21, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Canada Drayage Inc. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would

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www.canadadrayage.com

inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

Canada Drayage Inc.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Gianna Primiani
Vice President, Central & Eastern Canada

Cc: All Parties of Record

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CANADIAN HEARTLAND TRAINING RAILWAY

May 26, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration Office of Proceedings
Surface Transportation Board
395 E St, SW Washington, DC 20423

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

Canadian Heartland Training Railway Services provides freight agency services for a short line railway that connects with Canadian Pacific Railway (CP). This letter is to state our position with the respect to Canadian National (CN's) proposed use of a voting trust as a part of its proposed acquisition of Kansas City Southern Lines (KCS). We support the STB's decision to adopt a "more cautious approach" to CN's proposed use of a voting trust, and that the use of a voting trust will be evaluated in terms of whether it would be in the public interest using the 2001 Major Merger Rules.

We believe that allowing CN to use a voting trust to complete its acquisition has the potential for negative consequences for the shippers and the rail industry at large. There is a substantial amount of overlap between the CN and KCS lines in the south-central United States. If we understand how voting trusts work correctly, if CN controlled KCS, CN would receive dividends from KCS's profits. If that is the case, there would be no incentive for the two railways to compete for business. In fact, it could be in each company's interests to increase freight rates where possible, and perhaps no incentive to invest capital accordingly.

Under these circumstances, we would imagine that there is a reasonable likelihood that the Board would reject CN's proposed acquisition of KCS as the new merger rules emphasize the need for "enhanced" rather than reduced competition. If that were to happen, the damage would already have been done to the shipping community, and the opportunity will have been lost to create additional competition that a CP-KCS merger would generate.

If CN is required to divest of KCS some 18 months in the future, it is difficult to see how CN would be able to recoup the high premium being paid, leading to unintended financially driven consequences not necessarily in the interest of many industry stakeholders.

We believe that the STB should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so. Nothing would prevent KCS and its shareholders from

deciding to pursue the proposed CN/KCS transaction without allowing CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in this important decision about the future competitiveness of the rail industry, and which path forward for KCS is in fact superior.

Accordingly, we ask the STB to reject CN's motion to approve its proposed voting trust.

This letter is sent with the utmost respect to all stakeholders, and we thank you for the opportunity to provide these comments.

Respectfully,

CANADIAN HEARTLAND TRAINING RAILWAY SERVICES INC.

Kevin Budd
Managing Director
Kevinbudd@chtrs.ca
1 587 839 9978

cc: All Parties of Record

Cecchetto & Sons Ltd
6 Sutherland Avenue
Sudbury, ON P3C 3A6
705-673-4168

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Cecchetto and Sons Limited is a key service provider to the nickel mining industry of northern Ontario. In addition, our company constructs key infrastructure such as water and wastewater treatment plants and other industrial projects throughout Ontario.

Much of our raw materials, supplies, and equipment are transported by rail. If CN is successful in its acquisition of Kansas City Southern, we are concerned that the resulting monopoly would restrict competitive pricing of transportation, and limit our access to essential equipment and materials that are more cost effectively transported by rail.

I am writing to express Cecchetto and Sons Limited's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed

transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for

shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not

investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan

that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Vaughn Blacklock
Cecchetto and Sons Limited

Cc: All Parties of Record

Central Canadian Railway Inc.

1700 – 242 Hargrave Street, Winnipeg, MB R3C 0V1
(204) 509-9048 (289) 251-4063 admin@ccrail.ca

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Central Canadian Railway's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the

public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

H.J. Koberinski

_____

cc: All Parties of Record

CENTRAL FARM SERVICE

MAY 25, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown

Chief, Section of Administration, Office of Proceedings

Surface Transportation Board

395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Dennis Inman, I am the Vice President of Grain for Central Farm Service based in Truman, Minnesota. We are a farmer owned cooperative serving over 4,000 farmers in South Central and Southeastern Minnesota and North Central Iowa. We offer grain marketing, agronomy products such as seed and fertilizer, livestock feed, refined fuels and propane. We rely heavily on rail transportation to both ship and receive grain, fuel and fertilizer.

I am writing to express Central Farm Service's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later.

CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS

would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to

divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

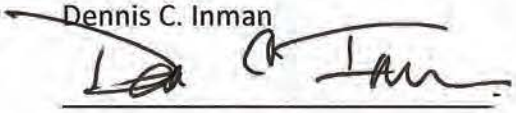
In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Dennis C. Inman



Cc: All Parties of Record

CENTRAL MIDLAND RAILWAY

May 26, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:
My name is Jordan Buck and I am Director of Marketing for the Central Midland Railway which operates a Class 3 railroad in Missouri. We interchange carload rail traffic with both the Canadian National and the Kansas City Southern in St. Louis, Missouri.

I am writing to express my perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. I have worked in railroad marketing in the Midwest for the past 34 years and, based on my knowledge and experience in this transportation marketplace, I believe that this voting trust will be anti-competitive and will not be in the public's best interest.

The traffic lanes between the Midwest and the Gulf Coast and between the Midwest and Mexico are extremely critical lanes to the economy of the Midwest. Currently that traffic enjoys the direct competition between the KCS and the CN as they both serve the ports and the heavily industrialized areas of the Gulf Coast. In addition, traffic moving in or out of Central and Southern Mexico enjoys the competition between direct KCS/KCSM routing and routing via CN utilizing the CG Railway trans-Gulf rail barge service. To place these competing routes under common control via a voting trust will endanger the CN and KCS's desire to compete with each other for this traffic and eliminate competition in a very strategic corridor for this region.

On the other hand, common control between the KCS and Canadian Pacific will enhance competition in our region. The KCS and CP do not currently compete in any traffic lane. In fact, traffic now moving via a KCS-CP route provides competition for CN routing between the St. Louis area and the Upper Midwest or Canada. The introduction of CP into the St. Louis market via a merger with KCS will only enhance rail competition by proving another single line option to all of CP's markets.

For these reasons, I would urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Jordan O Buck

Jordan Buck
Director Marketing
jbuck@progressiverail.com

Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Good afternoon. My name is Chris Calverley and I am General Manager Transportation and Logistics at Centurion Lumber.

I am writing to express Centurion Lumber's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

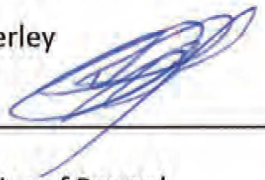
In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Chris Calverley



cc: All Parties of Record

"Better People, Better Service"

CFR Chemicals Inc.
1920, 525 – 8th Avenue SW, Calgary, AB
Calgary, AB T2P 1G1

Thursday, May 27, 2021

Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

CFR Chemicals

I am writing to express CFR Chemicals perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

"Better People, Better Service"

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Kim Ludtke,

CFR Chemicals Inc.
#1920, 525 – 8th Avenue SW, Calgary AB, T2P 1G1
Ph: (877) 269-3419 Fax: (403) 233-7787
www.cfrchemicals.com

"Better People, Better Service"

Vice President, Operations & Supply Chain

_____-

cc: All Parties of Record

CFR Chemicals Inc.
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Ph: (877) 269-3419 Fax: (403) 233-7787
www.cfrchemicals.com

CHICAGO,
ST. PAUL & PACIFIC
RAILROAD

May 26, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

My name is Phil Smailes – Director of Marketing for the Chicago St. Paul & Pacific Railway that operates in Bensenville IL and the Chicago Jct. Railway that serves the nation's largest industrial park in Elk Grove Village IL. Both are key rail points within the larger Chicago market. From these rail lines we interchange rail traffic with all N. American Class I carriers including both the Canadian Pacific (CP) and Canadian National (CN).

I writing to give my view on the CN's proposal to use a voting trust in connection with its proposed acquisition of the Kansas City Southern.

I have over 30 years of marketing experience within the Chicago and upper Midwest rail transportation markets and understand how critical this north/south corridor, running from the upper Midwest into Central and Southern Mexico, would be to effectively serve our customers within these markets. The importance will only be magnified as volumes are projected to increase greatly in coming years.

It is my view that the CN's proposed acquisition of the Kansas City Southern was a commercial reaction to the CP's proposed merger and was not done to add additional efficiencies or add competition to current routes, but instead was done simply to block the CP and would reduce competition not only into Mexico but also for the Chicago, Central IL, St, Louis, port and rail dense areas in LA, MS and East Texas markets.

The proposed Canadian Pacific and Kansas City Southern merger that I support, has zero redundancy and as a result would provide both additional operational efficiencies and competition but another rail option to my customers. The combined rail network will offer a fourth single line route from Midwest origins to the southern markets adding competition and needed capacity.

For these reasons, I would urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully,

Phil Smailes
Director Marketing
psmailes@progressiverail.com

BY ELECTRONIC FILING

May 21, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Consolidated Fastfrate Inc. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of

KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both

concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to

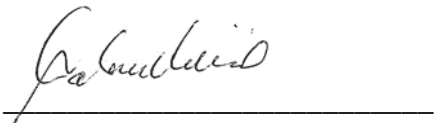
get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Manny Calandrino
President & CEO



Cc: All Parties of Record

Letter to STB commenting on CN Trust Proposal

Continental Logistics Ltd
2021-05-21

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express **Continental Logistics LTD** perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of

having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

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CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Director
Chad Nielson

Cc: All Parties of Record

Crow Wing Recycling
714 Industrial Pk Rd SW
Brainerd, MN 56401
(218)828-0048 (218)825-0919
crowwingrecycling@brainerd.net

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Grant VanWyngeeren and my business address is 714 Industrial Pk Rd SW, Brainerd, MN 56401. I am the Vice President of Crow Wing Recycling.

Crow Wing Recycling is a family-owned business that buys, processes and sells scrap metals—ferrous and nonferrous—from automobiles, trucks, appliances, machines that are generated by industry through construction or deconstruction of facilities. Our material is shipped throughout North America.

I am writing to express Crow Wing Recycling's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

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use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

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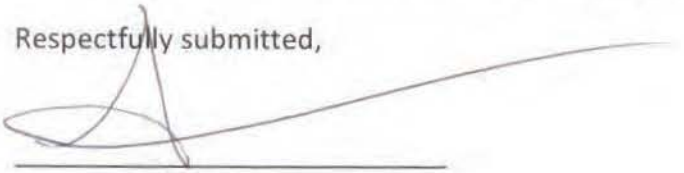
Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,



Grant VanWyngeeren
Vice President
grant@crowwingrecycling.com

Cc: All Parties of Record

Custom Bulk Inc
920Flemming Ave.
Penhold AB.

MAY 26TH 2021
BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Custom Bulk Having US customers shipping products via Rail.

I am writing to express Custom Bulk Inc. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation

of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control

transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment

of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can

deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Cc: All Parties of Record

Dakota Gold Transfer-Plaza, LLC.
6286 41st St. NW Plaza, ND 58771

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Dakota Gold Transfer-Plaza perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of

billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

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CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

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A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to

combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.
We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.
We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its

investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Cody Moe

Cc: All Parties of Record

DAVENPORT INDUSTRIAL RAILROAD (DIR)
Main Office: 300 Weatherstone Dr., #116, Wadsworth, OH 44281
Yard Office: 2701 Enterprise Way, Davenport, IA 52806

May 27, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

My name is Steve Berish and I am the General Manager/Co-Owner of the Davenport Industrial Railroad (DIR). DIR is a Class III Common Carrier Railroad located in Davenport, Iowa that has been keeping a close eye on the proceedings of the proposed Canadian Pacific (CP) and Canadian National's (CN) mergers with Kansas City Southern (KCS).

I am writing to express DIR's perspective on Canadian National's proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

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In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

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* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully,

Steve Berish
General Manager/Co-Owner
May 27, 2021

CC:
John Howell, DIR Member Representative
Bob Lowe, DIR Member Representative
All Parties of Record

RELOAD INC.

250 Sutherland Ave. Winnipeg, MB R2W 5M2
Phone (204) 582-2341 Fax (204) 582-7169
Email: ekaletzke@mymts.net

May 27, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

E.J.R. Reload Inc. (EJR) operates as the Canadian Pacific (CP) Transload Centre in Winnipeg, Manitoba. Our facility handles / receives shipments originating from the southern United States and Mexico and thus feels a vested interest in the ongoing proceedings regarding the Kansas City Southern (KCS) rail line. EJR believes that the proposed Canadian National Railway (CN) voting trust would have an adverse impact on existing competition between the rail lines and would eliminate the opportunity of the strong competitive benefits of a CP-KCS combination.

I am writing to express EJR's perspective on Canadian National's proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+

months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Edward Kaletzke
Vice President
E.J.R. Reload Inc.
cc: All Parties of Record

2075 Great Northern Road,
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Telephone:(705) 969-4461
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MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Based in Sault Ste. Marie, Ontario, Ellwood Robinson is a road paver and asphalt tack coat service provider. Much of our equipment and asphalt cement comes in by rail. Our markets would be positively impacted by an increase in inbound and outbound products by rail. If CP were to acquire Kansas City Southern this would allow us to have real competition along the rail network with CN which would provide us with better access to markets, betting pricing, and service but if CN completes this acquisition this would not be the case. We are concerned that if CN were given a monopoly over its competition that prices would increase and service would suffer. They would not be accountable to their customers because the customers would have nowhere else to turn. As a result, we would have serious cost shocks because of increased pricing and supply shocks that would be difficult to overcome.

I am writing to express Ellwood Robinson Inc's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed

transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for

shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not

investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan

that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

John Thomas,
Ellwood Robinson Inc.

_____

Cc: All Parties of Record

ETHIER
SAND & GRAVEL

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Telephone: (705) 522-6340
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MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Ethier Sand and Gravel is a Canada based producer and supplier of aggregate material for residential, commercial, and industrial markets. We also are a leading supplier of winter salt/sand mix for our market, and many of these raw materials have been shipped in by rail. We also receive many of our equipment supplies from the United States by rail. If CP were to acquire Kansas City Southern this would allow us to have real competition along the rail network with CN but if CN completes this acquisition this would not be the case. We are concerned that if CN were given a monopoly over its competition that prices would increase and service would suffer to the point that we would have difficulty operating our business with the price increases that CN would need to put through to recover their investment and they would be able to do it because there would be no alternatives along their route network.

I am writing to express Ethier Sand & Gravel's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be

reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

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CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

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We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

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* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Dan Ethier,
Ethier Sand & Gravel

Cc: All Parties of Record

FARMERS CO-OPERATIVE OF HANSKA

BY ELECTRONIC FILING

May 27, 2021

The Honorable Cynthia T. Brown

Chief, Section of Administration, Office of Proceedings

Surface Transportation Board

395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am the General Manager of the Farmers Co-operative of Hanska with headquarters in Hanska, MN. We are a farmer owned cooperative providing grain marketing and handling services to our members. We also load shuttle train loads of grain from our facilities in New Ulm, MN and ship to markets most advantageous to our farmer-owners. Historically, our best shipping destination has been the Pacific Northwest export market. We have not been able to access grain markets in Mexico in any economical way because our servicing railroad, the Canadian Pacific Railway, needs to hand off our grain cars to the Kansas City Southern railroad in Kansas City and incur the high costs associated with that. It is our expectations that shipping our member's grain on a railroad system with one owner from source to destination would be significantly less expensive thus enabling grain from the entire Midwest to reach the largest and most consistent corn purchaser of US corn. Currently, our farmer-owners do not enjoy access to the Mexican market on our servicing railroad without their needing to hand off the train to another railroad company which results in higher freight costs than would be incurred on a single owner railroad.

I am writing to express the Farmer's Co-operative of Hanska's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to

consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

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FARMERS CO-OPERATIVE OF HANSKA

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CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

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Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

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PHONE: 507-439-6244 FAX:507-439-6542
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A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment

whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Jerry Sulada - 5/27/21

Cc: All Parties of Record

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FARMERS CO-OPERATIVE OF HANSKA

Dear Ms. Brown:

Farmers Coop of Hanska (New Ulm Minnesota)

I am writing to express Farmers Coop of Hanska's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have

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to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south-central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities.

Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high-capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

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In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Lee Beer Lee Beer 5/26/2021

Grain Division Manager

Cc: All Parties of Record

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FASTFRATE

BY ELECTRONIC FILING

May 21, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Fastfrate Integrated Logistics perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of

KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS;s shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

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Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not

investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Frank Figliomeni
President

Cc: All Parties of Record

Date: May 26th, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Art DeVecchis and I am the VP Sales, Marketing & Logistics of Federal White Cement Ltd. Our cement plant is located on CP. We shipped 2,700 carloads of white Portland cement from our Zorra ON plant to various destinations on CP and foreign lines in the United States annually. We also use CP for inbound material shipments, such as clay.

I am writing to express Federal White Cement Ltd.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so,

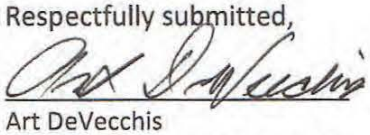
and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about which path going forward is better for this railroad.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,



Art DeVecchis
VP Sales, Marketing & Logistics
Federal White Cement Ltd.

cc: All Parties of Record

May 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Feldspar Inc., located in Lloydminster, Alberta, is a supplier of ballast products to the railway industry, a provider of construction to the oil and gas industry, residential building contracting, and agriculture markets. Many of our supplies and equipment come in by rail and much of our production is focused in exports to the United States and beyond.

While the proposed merger between CP and Kansas City Southern would provide us with a broadened and strengthened platform to compete with an already stronger CN the opposite would have negative effects and could have devastating impacts on rail access for our products.

I am writing to express Feldspar Excavating and Redi-Mix's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

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We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under

the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to***

let CN use a voting trust, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

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Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot

be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Dave Kohlruss,
General Manager,
Feldspar Excavating & Redi-Mix

Cc: All Parties of Record

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MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Fisher Wavy has long been a supplier of ballast to both CN and CP railways. In addition, Fisher Wavy operates a cement terminal which supplies crucial cement and shotcrete to mines in the Sudbury district. This cement is shipped by CP Rail and is maintained at our silo storage in Sudbury, Ontario. We have actively evaluated outbound products as well into the United States and Mexico. If CP were to acquire Kansas City Southern this would allow us to have real competition along the rail network with CN which would provide us with better access to markets, betting pricing, and service but if CN completes this acquisition this would not be the case. We are concerned that if CN were given a monopoly over its competition that prices would increase and service would suffer. They would not be accountable to their customers because the customers would have nowhere else to turn. As a result, we would have serious cost shocks because of increased pricing, supply shocks that would be difficult to overcome and markets that would be more difficult to reach as a result. We are pro-business and anti-regulation but we are also pro-competition and if CN were allowed to proceed with this transaction it would have a devastating impact on the competitiveness of the rail industry and would precipitate further requirements for the rail consolidation increasing this issue further.

I am writing to express Fisher Wavy Inc's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I

am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

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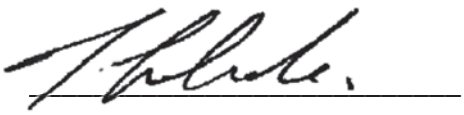
Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Trevor Lalonde
Controller
Fisher Wavy Inc.



Cc: All Parties of Record

Ph: (608) 784-1711 Established 1916 Fax (608) 784-1712

F. J. Robers Co., Inc.

Intermodal Commodity Barge Terminal
P.O. Box 484 – 816 Bainbridge Street
La Crosse, WI 54602-0484

May 21,2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is John Noyes and I am the Owner and President of FJ Robers Co Inc. We are a transloader with rail, barge, and interstate highway access. We move a variety of commodities between the three modes of transportation. Our facility is CP served.

I am writing to express FJ Robers Co Inc.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

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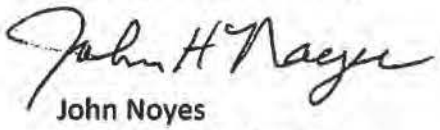

John Noyes
Owner & President
May 21st, 2021

Cc: All Parties of Record

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PHONE: 701-229-3293
FAX: 701-229-3294

May 24, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am Phillip Jallo, general manager of the Fordville Coop Marketing Assn. We are a bulk shipper of grain commodities by rail on the Canadian Pacific Railway.

I am writing to express the Fordville Coop Marketing Assn's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public

interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity

across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle

benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup

them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Phillip Jallo 5-24-2021

Phillip Jallo, General Manager

Cc: All Parties of Record

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BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Brian Schanilec. I am the President and Owner of Forest River Bean Co., Inc. Our business address is 600 Carpenter Ave E, Forest River ND 58233. In my role, I am responsible for overseeing all aspects of business, management, and marketing.

I am writing to express Forest River Bean's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

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The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see several realistic concerns that arise immediately if CN were allowed to use a trust.

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CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

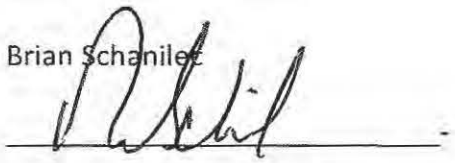
In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Brian Schanilec



Cc: All Parties of Record

Letter to STB commenting on CN Trust Proposal
FORTY MILE RAIL INC.
25/05/2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Forty Mile Rail's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation

of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

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of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

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offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

SIGNED

Cc: All Parties of Record

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BY ELECTRONIC FILING

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Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

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Dear Ms. Brown:

I am writing to express Galaxy Plastics & Bren Technologies perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it

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www.galaxyplastics.com

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www.bren-tech.com

231 King Street
Barrie, Ontario L4N 6B5
Tel: 905 951 7662
Fax: 905 951 2215

reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Stephanie Kenney May 25th, 2021

cc: All Parties of Record

121 Ferry St. Van Buren, ME 04785
207-868-2937

April 29, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown

Chief, Section of Administration, Office of Proceedings

Surface Transportation Board

395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Grand Prix's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. We currently move forest products to/from our location in Van Buren Maine to points in the US and Canada. Grand Prix Inc. has a growing relationship with CP as a result of CP's recent acquisition of the CMQ Railway. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it

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required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS;s shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

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CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as

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"geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice

VAN BUREN, ME.
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investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Robert D. Thomas

Logistics

Cc: All Parties of Record

GREAT NORTHERN TRANS-PORT INC
"An Intermodal Marketing Company"
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MAY 26, 2021
Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

GNT IMC

I am writing to express GNT's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to

divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these

circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment

of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal

offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Dana Wakefield

Cc: All Parties of Record

Great Western Railway Ltd
PO Box 669, 254 Centre Street
Shaunavon, Saskatchewan
Canada S0N 2M0

May 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Great Western Railway Ltd owns and operates over 440 miles of track in southern Saskatchewan, Canada. We ship a variety of freight products from both the agriculture and energy industries which originate on our line and terminate at various points around the world. Much of our freight ends up at points within the United States, and Mexico. Aside from the Great Western Railway Network, we also own and operate the Fife Lake Railway, also in southern Saskatchewan, and Great Western Commodities Ltd, a commodity trading and coordination corporation serving customers both local and worldwide. I am familiar with the various class one railroads competitive factors and operating networks from Canada, through the United States and into Mexico, as we have experience in seeking rates and service in these corridors several times in the past.

I am writing to express Great Western Railway's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed

its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

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This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Andrew Glastetter
General Manager, Great Western Railway Ltd.

Cc: All Parties of Record

GLTDI

GREENLIGHT TRAFFIC AND DISTRIBUTION INC

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

We ship to various location in the Midwest and Mexico. The CN acquisition would be a major blow to the rail sector as it would create a major monopoly and leave no room for competition.

I am writing to express Greenlight Traffic and Distribution Inc. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of

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KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both

concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to

get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Augustin Martin

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ANIMAL NUTRITION INC.

282 Huron St, PO Box 1753, Clinton ON, N0M 1L0. Phone: 519 606-4929

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am the Operations Manager for Greenway Animal Nutrition. We work extensively with both CP and CN rail. I feel this letter is essential for our business going forward.

I am writing to express Greenway's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of

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the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Andrea Adam

cc: All Parties of Record

May 28, 2021

By Electronic Filing

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Adam Altsuler, and my business address is 811 Main St, Suite 2800, Houston, TX 77002. I am Senior Vice President and Chief Financial Officer of Guanajuato Energy Terminal ("GET"). I am responsible for accounting, financing, and treasury activities for GET. GET owns and operates a rail terminal in Guanajuato, Mexico that provides SIT rail services for customers. As a wholly owned subsidiary of USD Group LLC ("USDG"), we benefit from the network of rail terminals USDG owns and operates in the United States, Canada, and Mexico, and the relationships that help grow our business.

GET has enjoyed a good relationship with many railroads as our midstream business provides rail solutions to the market. Those include solutions for railroads such as SIT activities with plans to expand to include other services for shippers. We currently enjoy strong relationships with the Kansas City Southern Railway ("KCS"). These services require close and ongoing operational collaboration and/or negotiations with these rail carriers. Maintaining competition among carriers is important to our business.

I am writing to express GET's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. While neither GET nor I have expertise in the application of the "new" 2001 Major Merger Rules nor in the intricacies of the voting trust implications, we have obtained some background into them in light of these proposed mergers. Alternatively, we clearly understand railroads and the significance of relationships, competition, markets, how they provide services and pricing, and in how mergers create intended and foreseeable consequences, as well as unintended and unforeseeable ones. In Decision No. 3, the Board explained that it expects to adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a voting trust in this proceeding seems to have the very real potential to:

- diminish existing, healthy competition;
- make the Board's review and decisions on the merits of the transaction more complex;
- make it more difficult for the Board to reject the transaction or approve it with all of the mitigations the Board may think appropriate; and
- financially hamper CN regardless of whether the merger is ultimately approved or rejected.

For those reasons, which are further elaborated below, and others, we do not see how approving the voting trust will be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We do not believe that the Board can (nor should) pre-judge whether CN's proposed control transaction will ultimately be found consistent with the public interest. The heightened review process under the new merger rules is needed to make such determination and without that process it is not clear why the Board would allow a voting trust to be established in this instance. We do not believe that the Board should allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – likely more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – seem likely to encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to approve use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also seems to have the potential to limit the Board's freedom to apply the 2001 merger rules the way they were intended, which was make disapprovals or extensive conditions much more likely.

We think it is likely that the risks and costs of allowing a voting trust in this instance may significantly outweigh any of the perceived benefits of doing so. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be any great risks for KCS's shareholders either, and thus, no need for a voting trust.

The risks and costs of allowing a voting trust here, however, seem potentially significant. In addition to the concerns about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, **the most significant risk/cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the adverse impact that would have on existing competition between KCS and CN.**

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south-central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors, and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, CN and KCS serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodities across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would end this competition. It may be possible to remedy some of the lost competition with targeted access for other rail carriers, but we believe that only an independent KCS will prevent all of the perceived harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" competition.

Some of the harm would likely come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering reduced or diminished service. Why would either of them sharpen their pencils against one another if the profits ended up the same place (CN)? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would **eliminate the opportunity for *KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high-capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific. We ask that you consider the historic competition between CP and CN and how that will be impacted with the voting trust and ultimately on the merits of the merger being reviewed.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would greatly diminish, if not eliminate, this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network and customers, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or ultimately disallow the transaction entirely. We see that as a reason to not allow *CN to use a voting trust*, so that there is no pre-judgment of the outcome of that first-ever application of new rules, and no foreclosure of a potential CP/KCS transaction and the more obvious competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction would be in the public interest. It seems to us that the alternative of allowing the voting trust in this instance would impose additional financial burden on the railroad and its customers prior to evaluation of the transaction.

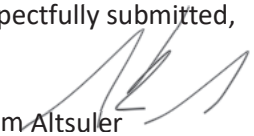
We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it must divest KCS. No matter what showing CN makes in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and later defend its acquisition.

Regardless of how strong CN's balance sheet might be, the reported price premium it is paying and massive debt burden it will undertake will create immediate incentives for CN to extract more revenues from its existing customers. CN won't be able to capture any of its planned merger "synergies" for several years, so it will have ongoing incentives to improve financial performance through charging higher prices to CNs current customers or undertaking less investment in CN's network. These incentives exist regardless of whether or not CN ultimately must divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS. This may occur sometime in 2023. It is hard to imagine CN would be able to get a price for KCS that approaches the premium it agreed to pay. In that scenario, CN would be saddled with significant amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without significant financial harm, what if the economic picture in 2023 and beyond is not particularly strong? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

Accordingly, for the reasons described above and others, we urge the STB to carefully consider the implications on this proposed transaction and those that will follow, both short-term and long-term, before approving CN's motion to approve its voting trust. We believe it more prudent and consistent with the new merger rules to reject CN's motion to approve its proposed voting trust. The Board does not need to take significant risks with the U.S. rail network. It can mitigate that risk by simply denying CN's proposed voting trust and allowing CN the opportunity to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the premium CN is paying to KCS's shareholders is not contrary to the public interest. If the Board believes that CN does so during their review, then CN should be allowed to proceed with its acquisition to acquire KCS, subject to whatever modifications the Board believes necessary.

Respectfully submitted,



Adam Altsuler
Senior Vice President and
Chief Financial Officer
Guanajuato Energy Terminal

Cc: All Parties of Record

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MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Harbour Metals Recycling Ltd. ships the majority of our products via private gondola cars by rail with CP Rail. We currently ship processed scrap metals including steel, stainless steel aluminum and copper bearing products from our CP served facility in Thunder Bay, Ontario Canada to customers in Ontario, Manitoba, Saskatchewan, Ohio, Michigan, Indiana, Illinois, Minnesota, Wisconsin and Iowa.

I am writing to express Harbour Metals Recycling Ltd perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to

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use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not to be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example,

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they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

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In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

James White

Cc: All Parties of Record

Hopewell

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Hopewell Logistics Inc. is a Third Party Logistics firm (3PL) offering a complete suite of Supply Chain Solutions supporting Traditional and Omni-Channel fulfillment for Fast-moving consumer goods (FMCG) customers.

I am writing to express Hopewell Logistics' perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a

precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Kevin Roy

Hopewell Logistics

cc: All Parties of Record

HORIZON GRAINS LTD.
Suite 200, 1001 - 1 Street SE Calgary, Alberta T2G 5G3

May.21, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Horizon Grains perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control

transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the

economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Cc: All Parties of Record

IRON HORSE
TRANSLOADING

May 27, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Iron Horse Transloading's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

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of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

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Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for

transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Shawn Murray

Cc: All Parties of Record

J Carpenter Environmental, LLC

A Subsidiary of Carpenter Brothers, Inc.

Letter to STB commenting on CN Trust Proposal
DATE: MAY 21ST, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

J Carpenter Environmental, LLC. is a subsidiary of Carpenter Brothers, Inc. We sell products and equipment that are used by manufacturers and contractors for waste treatment, pollution control, liners, hydraulic barriers, waste solidification, drilling and Frac Sand Production. Our line of business involves project-based work and we are often quoting to different destinations throughout North America.

I am writing to express J Carpenter Environmental, LLC.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to

divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these

circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment

of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will provide incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

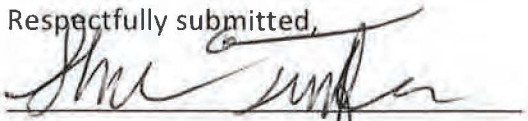
In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal

offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,



Shane Fulfer
Logistics Management Specialist
J Carpenter Environmental, LLC.

Cc: All Parties of Record

KALLIO CAPITAL

OFFICE 5016 48th St., Lloydminster, AB T9V 0H8

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Kallio Capital is a Canadian investment company with operating companies with businesses in the construction and agriculture space. We have actively sought markets in the United states and Mexico for our products and many of our equipment supplies and materials come in by rail.

If CP were to acquire Kansas City Southern this would allow us to have real competition along the rail network with CN which would provide us with better access to markets, betting pricing, and service but if CN completes this acquisition this would not be the case. We are concerned that if CN were given a monopoly over its competition that prices would increase and service would suffer. They would not be accountable to their customers because the customers would have nowhere else to turn. As a result, we would have serious cost shocks because of increased pricing, supply shocks that would be difficult to overcome and markets that would be more difficult to reach as a result. We are pro-business but we are also pro-competition and if CN were allowed to proceed with this transaction it would have a devastating impact on the competitiveness of the rail industry and would precipitate further requirements for the rail consolidation increasing this issue further. This would result in higher input prices for us and higher export prices for the world if customers can even access the network which could be closed for all but the biggest customers.

I am writing to express Kallio Capital's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I

am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

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Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers

or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Kristen Wallace,
Kallio Capital

Kristen Wallace

Cc: All Parties of Record

KAYCAN

KAYCAN LTD.
3075 Trans-Canada HWY
Pointe-Claire, Québec H9R 1B4
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www.kaycan.com

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:
I am writing to express Kaycan's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the

KAYCAN

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regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Lionel Dubrofsky, Kaycan Ltd.

cc: All Parties of Record

KAYTEC

105 rue des Industries
Cowansville, Qc
J2K 3Y4

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:
I am writing to express Kaytec's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

KAYTEC

105 rue des Industries
Cowansville, Qc
J2K 3Y4

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Lionel Dubrofsky, Kaytec Ltd.

cc: All Parties of Record

KELTIC LOGISTICS & WAREHOUSING

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L6H 1A7

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Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Keltic Transportations perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS

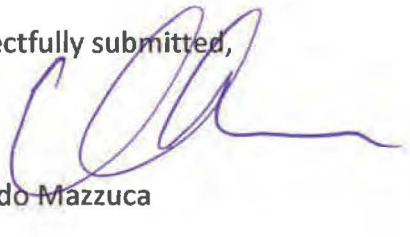
shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,



Orlando Mazzuca

General Manager

cc: All Parties of Record

KP | BUILDING PRODUCTS

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:
I am writing to express KP Building Products' perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

KP | BUILDING PRODUCTS

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Lionel Dubrofsky, KP Building Products Ltd.

cc: All Parties of Record

LAKE LINE RAILROAD INC.

1700 242 Hargrave Street, Winnipeg, Manitoba R3C 0V1

May 27, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Lake Line Railroad Inc.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or

extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

LAKE LINE RAILROAD INC.

Per:

Art Stacey, President

cc: All Parties of Record

MAY 21, 2021
BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Steve Castegan and my business address is 820 Lucien-Beaudin, Saint-Jean-sur-Richelieu, Quebec, Canada. I am the Executive Vice-President and General Manager of La Milanaise Inc., and currently acting as CEO. In my role, I am responsible for all aspects of managing the company's business. La Milanaise Inc. is one of Canada's leading processors of organic cereal grains.

As expressed in our initial letter to the Board dated March 26, 2021, La Milanaise supports the approval of the CP-KCS combination because of the significant benefits the combination would bring, including expanded markets and port options, improved service options, and invigorated transportation competition. The combination of CP and KCS would allow La Milanaise to grow our market share in the United States and Mexico and create additional opportunities for import of cereals from the United States.

I am writing to express La Milanaise's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's

2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail

transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

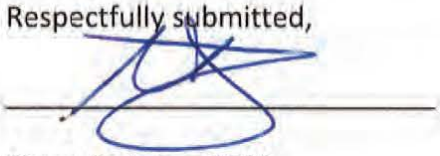
In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems

designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,



Steve Castegan MBA

Cc: All Parties of Record

LOGISTICS HELPER INC
Logistics Helper Inc.
307 Grey Silo Road,
Waterloo, ON, N2K0C9
Tel: (437) 343-8788
https://logisticshelper.com/

May 26, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

On behalf of Logistics Helper Inc. I am writing to express Logistics Helper Inc's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a

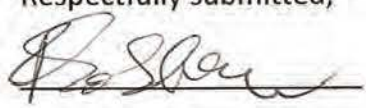
voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,



Rumana Sobhan

President

cc: All Parties of Record

CANAMEX logistique

Letter to STB commenting on CN Trust Proposal

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Logistique Canamex Inc.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest

1933, Lionel-Bertrand, Boisbriand (Québec) J7H 1N8
Tél.: 450 434-1939 • CDA/USA 1 888 434-1939 • Fax: 450 434-7990 • www.groupecanamex.com

KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Sylvain Jarry

President

Logistique Canamex Inc.

cc: All Parties of Record

1933, Lionel-Bertrand, Boisbriand (Québec) J7H 1N8

Tél.: 450 434-1939 • **CDA/USA** 1 888 434-1939 • **Fax:** 450 434-7990 • **www.groupecanamex.com**

LONG CREEK RAILROAD
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BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Long Creek Railroad Company Inc perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

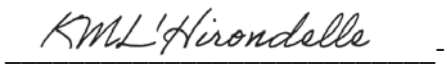
In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the

public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Kathy L'Hirondelle



cc: All Parties of Record

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Maple Ridge is a supplier of aggregate and sand products in Thessalon, Ontario. We currently distribute materials that are produced locally as well as products that are shipped in by lake freighter, but our division has sought rail transportation options for inbound and outbound products as well. If CP were successful in acquiring Kansas City Southern, the enhanced market access may make this option more economical and might allow for product shipments inbound and outbound that are currently not possible and would not be possible if CN were successful, given that it already has access to these markets.

I am writing to express Maple Ridge Aggregates' perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to

use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Rick MacDonald
Maple Ridge Aggregates

Rick MacDonald

Cc: All Parties of Record

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Tatiana Dowd and my business address is 5960 W. Parker Road, Suite 278 #235, Plano, TX 75093. I am Railroad Logistics Coordinator of Matrix Chemical. In my role, I am responsible for overseeing Chemical's rail logistic across North America, Mexico and Canada, coordinating smooth logistic solutions for Matrix's customers. Matrix Chemical, LLC is long standing customer of both CP & KCS railroad. We ship primarily MEK, IPA & Acetone to variety of our customers in Mexico, USA and Canada

I am writing to express Matrix Chemical, LLC perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it

reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads,

alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail

network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract

more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Tatiana Dowd

Matrix Chemical, LLC.

Tatiana V. Dowd

Cc: All Parties of Record

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Micro Oil Inc.

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micro.oil@sasktel.net

BY ELECTRONIC FILING

May 21, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Micro Oil Inc. has previously expressed support of a CP/KCS merger, which will expand our market reach and offer new competitive transportation options for our shipments of oil from the the southern USA to our facility in Floral, SK.

I am writing to express Micro Oil's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have

to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

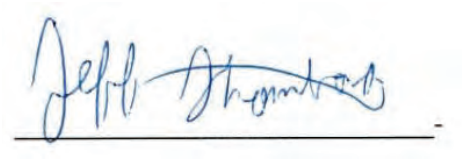
No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,



Jeffrey Stromberg, CPA, CA
Micro Oil Inc.

Cc: All Parties of Record

Midwest Bulk Transload

2100 Clearwater Drive, Suite 320

Oak Brook, IL 60523

847-373-5938

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Midwest Bulk Transload's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending

tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

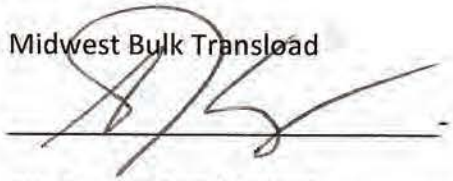
Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Ted Kennedy

CEO

Midwest Bulk Transload



cc: All Parties of Record

MIKRUT PROPERTIES, LLLP
1355 Grandview Court
Minnesota City, MN 55959
May 24, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

I am writing to express Mikrut Properties, LLLP perspective on Canadian National's ("CN's) proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt "a more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definite view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden(s) on merger applicants to show that a major rail consolidation is consistent with the public interest". And give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more that a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS share in the hands of CN all that time – would inevitably encumber the Boards evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

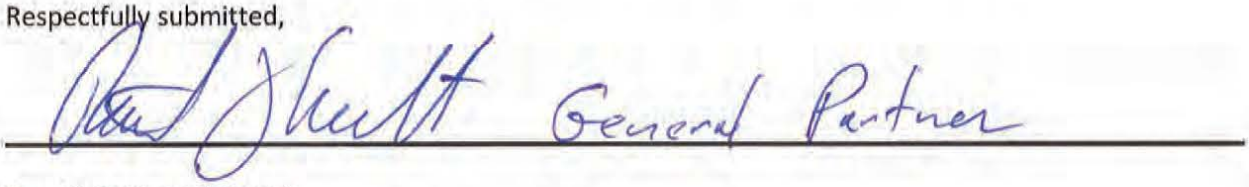
In addition, this is the first time the Board will be applying merger rules, both on the merits and in considering whether to allow voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages

additional rail mergers and limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that It must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,



Cc: All Parties of Record

807-939-2655
www.millerprecast.ca
58 Cooper Road, Rosslyn, Ontario, P7K 0E3

Letter to STB commenting on CN Trust Proposal

DATE: MAY 21ST, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Miller Precast Ltd. is a one-stop-shop for all precast concrete needs. We supply Thunder Bay and the greater Northwestern Ontario and receive bulk cement via rail. We are CP served, but open to CN via CTA switch.

I am writing to express Miller Precast Ltd.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

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58 Cooper Road, Rosslyn, Ontario, P7K 0E3

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation

markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

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58 Cooper Road, Rosslyn, Ontario, P7K 0E3

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

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58 Cooper Road, Rosslyn, Ontario, P7K 0E3

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will provide incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Tracy Miller

Tracy Miller
Owner & President
Miller Precast Ltd.

Cc: All Parties of Record

MORE THAN JUST FEED

BY ELECTRONIC FILING
May 26, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

More Than Just Feeds is a private Transload facility serviced by CP at Monarch, AB. We handle grain and grain products, transloading directly from rail to truck. We work closely with CP on growth opportunities at our facility, which includes importing and handling new commodities (such as fertilizer). A CPKC service offering provides more viable options for expanding our market reach.

I am writing to express More Than Just Feeds perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending

MORE THAN JUST FEED

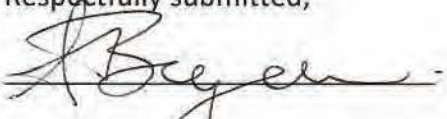
tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,



Andrew Barwegen
More Than Just Feeds, VP of Procurement

cc: All Parties of Record

Good food, Good life

Letter to STB commenting on CN Trust Proposal

Nestlé Canada Inc.
25 Sheppard Avenue West
North York, ON
Canada
T +1(416) 218 3030

IMPACT ON NEW RULES VERSION

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Nestle Canada Inc.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

Good food, Good life

Nestlé Canada Inc.
25 Sheppard Avenue West
North York, ON
Canada
T +1(416) 218 3030

In

addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Leslie Nicholson

SVP, Supply Chain Operations & Digital Business Transformation

Leslie Nicholson

_____

cc: All Parties of Record

New Nouveau Brunswick
CANADA

April 30, 2021

Mr. Martin J. Oberman, Chairman
US Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Mr. Oberman:

Our two countries enjoy a unique and long-standing history, and the largest trade relationship in the world. Our economies are closely intertwined, and shared prosperity requires our continued partnership and collaboration. Therefore, important regulatory decisions in one country can have a ripple effect in the other.

It is for that reason that I write to express my enthusiastic support for the merger agreement between Canadian Pacific Railway Limited (CP) and Kansas City Southern (KCS).

The proposed combined network would create the first rail network connecting the United States, Mexico and Canada. Moreover, it will provide increased competition and support North America's economic growth.

CP Rail's return to service in our province of New Brunswick is proving to be an economic game-changer and is providing much-needed competition to the other Class 1 railroad operating in our region, Canadian National Railway (CN).

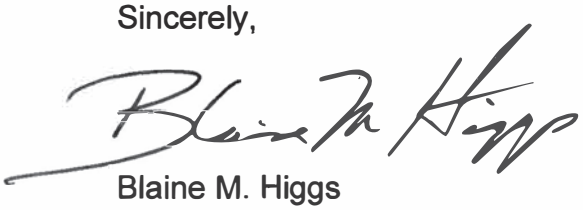
The Port of Saint John is a deep-water port, capable of handling a variety of cargo types, and together with CP, shippers can access domestic, North American and international markets. This return to service by CP also offers a connection to the Port of Searsport, Maine, which will drive economic growth along the US eastern seaboard.

Office of the Premier / Cabinet du premier ministre
P.O. Box/C. P. 6000 Fredericton New Brunswick/Nouveau-Brunswick E3B 5H1 Canada
Tel./Tél. : (506) 453-2144 Fax/Téléc. : (506) 453-7407
Email/Courriel : premier@gnb.ca/premier.ministre@gnb.ca

I urge the U.S. Surface Transportation Board to reject CN's request for a voting trust structure and reject any waiver from a full public interest review for CN's voting trust proposal. On the other hand, since CP's proposed acquisition of KCS raises none of the same competition concerns and would in fact enhance competition and further level the playing field for rail shippers in North America, the Board should approve its proposed voting trust.

Thank you in advance for your consideration.

Sincerely,



Blaine M. Higgs
Premier

Letter to STB commenting on CN Trust Proposal

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Nichol and Diamond Consulting Limited o/a NDC

I am writing to express NDC perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of

KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS;s shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control

transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment

of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal

offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Michelle Toma VP/Controller NDC

Cc: All Parties of Record

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Northern Brick is a supplier of landscape, masonry and related supplies in North Bay, Ontario. Our division supplies residential, commercial, and industrial customers in our territory. Many of the products that we carry are, or could be, transported by rail if the proper network existed economically. We are concerned that if CN is successful in acquiring Kansas City Southern, many of our products will see cost increases that we won't be able to effectively pass on to our customers.

I am writing to express Northern Brick's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

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We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Kim Birmingham
Northern Brick

Cc: All Parties of Record

Northern Ski Company Limited

1 Ceasar Rd.,
Sudbury, ON P3E 5P3

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Northern Ski Company is a Canadian based investment company which holds an interest in various Canadian corporations, including CP Rail.

A great number of Canadian (and in fact, American) companies would stand to benefit by CP's acquisition of Kansas City Southern. The increase in rail access that would be created by the proposed merger would expand markets on both sides of the border, and allow, safe, efficient, and environmentally responsible transportation of goods.

I am writing to express Northern Ski's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

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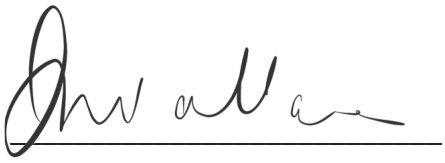
Respectfully submitted,

Jamie Wallace,
Northern Ski Company Limited



Cc: All Parties of Record

Letter to STB commenting on CN Trust Proposal

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown

Chief, Section of Administration, Office of Proceedings

Surface Transportation Board

395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Ostara Nutrient Recovery Technologies and Ostara USA LLC are in support of the Canadian Pacific Railroad's proposed acquisition of Kansas City Southern. Our business relies on a competitive rail transportation industry and we believe a CP and KCS merger would provide that and allow our business to continue to grow within North America as a whole.

I am writing to express Ostara's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in

our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Patrick Mitchell
Director, Supply Chain

Cc: All Parties of Record

Ostara Nutrient Recovery Technologies Inc.
490 – 1122 Mainland Street, Vancouver BC V6B 5L1 Canada
URL www.ostara.com

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Palmer Construction is an aggregate supplier in Sault Ste. Marie, Ontario. We have sought the potential of shipping our products to other markets, both in Canada and the US, by rail. If CP were to acquire Kansas City Southern this would allow us to have real competition along the rail network with CN which would provide us with better access to markets, betting pricing, and service but if CN completes this acquisition this would not be the case. We are concerned that if CN were given a monopoly over its competition that prices would increase and service would suffer. They would not be accountable to their customers because the customers would have nowhere else to turn. As a result, we would have serious cost shocks because of increased pricing, supply shocks that would be difficult to overcome and markets that would be more difficult to reach as a result.

I am writing to express Palmer Construction Group's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

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CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not

investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

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We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan

that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Terry Rainone,
Palmer Construction Group

Cc: All Parties of Record

Park Farm Grains Ltd.

Date: May 21st, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Bill McLeod and I am the Owner and President of Park Farm Grains Ltd. Park Farm Grains Ltd. is a transloader in Ayr ON, served by the Canadian Pacific (CPRS). We transload inbound bulk dried distillers' grains into containers for intermodal export and are planning to expand our commodity offering to include Portland cement.

I am writing to express Park Farm Grains Ltd.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

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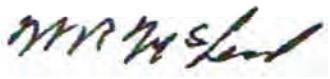

Bill McLeod
President, Park Farm Grains Ltd.
May 21st, 2021

Cc: All Parties of Record

1962 Greenfield Road, Ayr ON N0B 1E0
(519)658-3307

Paterson GlobalFoods

May 25, 2021

By Electronic Filing

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Dear Madam:

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

I am writing to express Paterson GlobalFoods Inc.'s ("Paterson") perspective on Canadian National Railway's ("CN") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern ("KCS"). In Decision No. 3, Paterson was pleased to see the Surface Transportation Board (the "Board") explain that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN or CP's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether the proposed CN/KCS transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

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We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. Such a scenario could have significant negative consequences for rail shippers in Canada and throughout North America. The unpredictable consequences of such a divestiture, and of leaving ownership of KCS shares in the hands of CN all that time – could encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

Finally, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. A cautious approach is warranted given the precedent setting nature of the decision and the complex issues raised. In these circumstances Paterson does not see any public interest benefit to the use of a trust. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the Board is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is appropriate.

Accordingly, we urge the Board to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

PATERSON GLOBALFOODS INC.

per:

Shane M. Paterson,
Director of Trading and Transportation

Cc: All Parties of Record

Operations
701 First Street
Clayton, Iowa 52049
(563) 964-2860
(563) 964-2616 fax

Accounting
701 King Street - Box 670
Fayette, Iowa 52142
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Fax (563) 425-4090

STB Finance Docket No. 36500
CP-KCS Proposed Combination

May 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Kyle Pattison and my business address is 701 1st Street, Clayton Iowa, 52049. I am of Owner of Pattison Sand Company. In my role, I am responsible for the operation and oversite of the company.

Pattison Sand Company (PSC) is Iowa's only Frac Sand Producer and is an Iowa based family business that roots date back to 1950s & Ag Business. PSC started producing sand in 2008. The quality and value of our product has resulted in a steady growth in our sales. We are located in Northeast Iowa and are exclusively served by Canadian Pacific. We primarily furnish sand to the oil and gas industry in, North Dakota, Texas and Oklahoma via multiple railroads. Over the years, CP has provided us with good service, but its market reach is limited, as its lines only go as far south as Kansas City. CP must interline with other railroads to reach destinations beyond Kansas City that we ship to. These complications of multiple railroads in the route limits our ability to expand the markets we serve and puts us at a competitive disadvantage to our competitors who have single-line rail options at their origins.

I am writing to express PSC's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just, where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS, it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

However, some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. That is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's

proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It will not be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy. CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is

not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Cc: All Parties of Record

Kyle Pattison

Pattison Sand Company, LLC

Letter to STB commenting on CN Trust Proposal

MAY 24, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express PFL Petroleum Services Limited's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

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The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Curtis R. Chandler,
President of PFL Petroleum Services Limited

cc: All Parties of Record

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BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Phoenix Park's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust

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as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we

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would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

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We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN

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might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Donnie Schubert
President

Cc: All Parties of Record

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MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Pioneer Construction ("Pioneer") has operations across Ontario. Pioneer has extensive aggregate properties throughout this area and has long sought to bring crushed hard stone to markets in other parts of Canada and the US where such materials are scarce. In addition, Pioneer has constructed railway sidings throughout Ontario. Many of our supplies of equipment and asphalt cement also come from the rail network from the United States. If CP were to acquire Kansas City Southern this would allow us to have real competition along the rail network with CN which would provide us with better access to markets, betting pricing, and service but if CN completes this acquisition this would not be the case. We are concerned that if CN were given a monopoly over its competition that prices would increase and service would suffer. They would not be accountable to their customers because the customers would have nowhere else to turn. As a result, we would have serious cost shocks because of increased pricing, supply shocks that would be difficult to overcome and markets that would be more difficult to reach as a result.

I am writing to express Pioneer Construction Inc's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers

or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Malcolm Croskery,
Chief Operating Officer
Pioneer Construction Inc.

Cc: All Parties of Record

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MAY 23, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Pipeline Foods is an organic grain company that owns 2 assets in Canada and has 3rd party agreements with others, all of which happen to be on a CP Rail lines. Pipeline Foods buys organic grain from Canadian farmers and sells that grain across the globe and definitely via rail to the U.S. Given Pipeline is situated on CP Rail lines, allowing the CN to purchase the KCS would effectively eliminate any access to customers throughout and beyond the KCS rail line.

I am writing to express Pipeline Foods perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+

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months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

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shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

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This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for

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several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Cc: All Parties of Record

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BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Pique Supply Corporations perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and

there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

May 25th, 2021

cc: All Parties of Record

Port Arthur Terminal

May 28, 2021

By Electronic Filing

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Keith Benson, and my business address is 811 Main St, Suite 2800, Houston, TX 77002. I am Vice President and General Counsel of Port Arthur Terminal LLC ("PAT"), responsible for, among other things, the legal affairs of PAT. PAT has enjoyed good relationships with Canadian Pacific Railway ("CP") and Kansas City Southern Railway ("KCS"), providing our customers with services that involve rail solutions for DRUbit™ and Dilbit in the United States and Canada. These services require close operational collaboration and/or negotiations with both rail carriers. As a wholly owned subsidiary of US Development Group, LLC ("USDG"), we benefit from the network of rail terminals that USDG owns and operates in the United States, Canada, and Mexico, and the relationships that help grow our business. Maintaining competition among carriers is important to our business.

I am writing to express PAT's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. While neither PAT nor I have expertise in the application of the "new" 2001 Major Merger Rules nor in the intricacies of the voting trust implications, we have obtained some background into them in light of these proposed mergers. Additionally, we clearly understand railroads and the significance of relationships, competition, markets, how they provide services and pricing, and in how mergers create intended and foreseeable consequences, as well as unintended and unforeseeable ones. In Decision No. 3, the Board explained that it expects to adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express PAT's view that the use of a voting trust in this proceeding seems to have the very real potential to:

- diminish existing, healthy competition;
- make the Board's review and decisions on the merits of the transaction more complex;
- make it more difficult for the Board to reject the transaction or approve it with all of the mitigations the Board may think appropriate; and
- financially hamper CN regardless of whether the merger is ultimately approved or rejected.

For those reasons, which are further elaborated below, and others, we do not see how approving the voting trust will be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We do not believe that the Board can (nor should) pre-judge whether CN's proposed control transaction will ultimately be found consistent with the public interest. The heightened review process under the new merger rules is needed to make such determination and without that process it is not clear why the Board would allow a voting trust to be established in this instance. We do not believe that the Board should allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – likely more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – seem likely to encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to approve use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also seems to have the potential to limit the Board's freedom to apply the 2001 merger rules the way they were intended, which was make disapprovals or extensive conditions much more likely.

We think it is likely that the risks and costs of allowing a voting trust in this instance may significantly outweigh any of the perceived benefits of doing so. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be any great risks for KCS's shareholders either, and thus, no need for a voting trust.

The risks and costs of allowing a voting trust here, however, seem potentially significant. In addition to the concerns about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, **the most significant risk/cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the adverse impact that would have on existing competition between KCS and CN.**

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south-central United States. Our experience in rail

transportation markets confirms that competition between two railroads serving the same points, corridors, and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, CN and KCS serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodities across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would end this competition. It may be possible to remedy some of the lost competition with targeted access for other rail carriers, but we believe that only an independent KCS will prevent all of the perceived harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" competition.

Some of the harm would likely come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering reduced or diminished service. Why would either of them sharpen their pencils against one another if the profits ended up the same place (CN)? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would **eliminate the opportunity for *KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high-capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific. We ask that you consider the historic competition between CP and CN and how that will be impacted with the voting trust and ultimately on the merits of the merger being reviewed.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would greatly diminish, if not eliminate, this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network and customers, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or ultimately disallow the transaction entirely. We see that as a reason to not allow *CN to use a voting trust*, so that there is no pre-judgment of the outcome of that first-ever application of new rules, and no foreclosure of a potential CP/KCS transaction and the more obvious competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction would be in the public interest. It seems to us that the alternative of allowing the voting trust in this instance would impose additional financial burden on the railroad and its customers prior to evaluation of the transaction.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it must divest KCS. No matter what showing CN makes in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and later defend its acquisition.

Regardless of how strong CN's balance sheet might be, the reported price premium it is paying and massive debt burden it will undertake will create immediate incentives for CN to extract more revenues from its existing customers. CN won't be able to capture any of its planned merger "synergies" for several years, so it will have ongoing incentives to improve financial performance through charging higher prices to CNs current customers or undertaking less investment in CN's network. These incentives exist regardless of whether or not CN ultimately must divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS. This may occur sometime in 2023. It is hard to imagine CN would be able to get a price for KCS that approaches the premium it agreed to pay. In that scenario, CN would be saddled with significant amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without significant financial harm, what if the economic picture in 2023 and beyond is not particularly strong? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

Accordingly, for the reasons described above and others, we urge the STB to carefully consider the implications on this proposed transaction and those that will follow, both short-term and long-term, before approving CN's motion to approve its voting trust. We believe it more prudent and consistent with the new merger rules to reject CN's motion to approve its proposed voting trust. The Board does not need to take significant risks with the U.S. rail network. It can mitigate that risk by simply denying CN's proposed voting trust and allowing CN the opportunity to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the premium CN is paying to KCS's shareholders is not contrary to the public interest. If the Board believes that CN does so during their review, then CN should be allowed to proceed with its acquisition to acquire KCS, subject to whatever modifications the Board believes necessary.

Respectfully submitted,

Keith Benson
Vice President and
General Counsel
Port Arthur Terminal LLC

Cc: All Parties of Record

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

May 24, 2021

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

Your collective stewardship of America's railroads, both big and small, couldn't be more mission critical than right now. Your task ahead of deliberating and making the right decision as to which railroad will be allowed to purchase the Kansas City Southern Railway (KCS) and Kansas City Southern De Mexico Railway can deliver so much good or epic levels of bad, potentially reseting everything for a very ugly new world.

In my humble opinion as a railroad owner of over 25 years, I believe my voice deserves to be heard. The following fact-based review of the Canadian National's (CN) track record is telling and, more importantly, consistent with every railroad acquisition that they have completed.

The Ugly:

[1] The CN's acquisition of the Wisconsin Central Limited came with a promise that the local service would be preserved and investments would continue - a good thing for Michigan and Wisconsin. Sadly, the CN rapidly demarketed huge swaths of small to medium-sized customers, parked log cars, stopped investing in boxcars, and picked winners and losers. In no way whatsoever did the CN live up to their publicly touted promises, nor even came close to their common carrier responsibilities.

[2] The CN's approach to the Elgin, Joliet & Eastern Railway followed the CN playbook of demarketing, but with a twist. The CN canceled long term agreements with other competing railroads, created interchanges that were both more expensive and less safe, and, once again, did not follow the spirit of what was sold to the governing stakeholders.

[3] The CN's acquisition of the Illinois Central Gulf did not even begin to stay true to their promise to keep a significant headquarter presence in Chicago, Illinois. Demarketing customers, disinvestment in railroad cars, and service curtailments all attributed to more broken promises made pre-acquisition.

[4] The CN's acquisition of the Duluth Missabi & Iron Range Railroad (DMIR) has taken a railroad that once served all industries in their service territory and stripped it down to basically a conveyor belt serving the iron ore mines to the Port of Duluth and Port of Two Harbors, Minnesota. Where are the industrial development promises? Where are the new job promises? What happened to that little lumber yard located on the DMIR/CN? Unfortunately, they are now trucking all of their materials.

[5] The CN's view of business is to expand via acquisitions and cut to the marrow on costs. In that world, there simply isn't time to develop brand new, small carload accounts. The focus is solely on intermodal, unit, and premium service operations. Common carrier responsibilities to serve customers both big and small is not a concern for the CN. They can say they serve a small cannery, but do they really? The tracks may still be there, but do they have plenty of boxcars? Are their rates attractive? Will they serve the plant more than a few times a week? The answer is no, but the Wisconsin Central (WC) did. The DMIR paid attention to all accounts. The Illinois Central (IC) was truly an "all shippers matter" railroad. Perhaps it's worth a call to a few former WC, DMIR, and IC railroad shippers to see how their world is going today with the CN.

The Bad:

[6] Allowing the CN to take control of the KCS/KCS De Mexico will allow the CN to reduce what little remains of true competition. The doom cycle of CN's acquisition track record will only drive, literally, more merchandise traffic to the highways at a great environmental, economical, and sociological expense to mankind.

[7] At the end of the day, the environment needs to be first and foremost on everyone's priority list. CN's constant elimination of small and medium-sized shippers that don't fit within their prescribed wheelhouse creates a higher demand for more carbon-spewing tractor trailer rigs. Again, in my humble opinion, the Surface Transportation Board Members have the ability to guide the citizens of America to a cleaner, safer, and more economically focused rail network..

The Good:

[8] The potential Canadian Pacific Railway/Kansas City Southern Railway/Kansas City Southern De Mexico Railway partnership infuses more competition within the rail industry. With that, we all have less carbon in our world.

[9] The Canadian Pacific Railway/Kansas City Southern Railway/Kansas City Southern De Mexico Railway partnership is forged with two quality carriers that commit to their promises. Their collective history of taking small to medium-sized accounts has continuously proven to be a game changer for welcoming new business off the highways and onto the railways.

For all of the above reasons, I urge the Surface Transportation Board to reject CN's motion to approve its proposed voting trust. I'm available for a continued thoughtful and objective conversation if you so desire.

Respectfully submitted,

Dave Fellon
President
612-791-3255
dfellon@progressiverail.com

R. G. PHILLIPS GROUP OF COMPANIES INC.

STB Finance Docket No. 36500
CP-KCS Proposed Combination

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

RG Phillips Group of Companies Inc. has leased and located our Transload operations at Ingersoll, ON. We service inbound steel among other commodities for the transload and delivery in the local area. These shipments originate from all over North America.

I am writing to express RG Phillips perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not to be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

R. G. PHILLIPS GROUP OF COMPANIES INC.

STB Finance Docket No. 36500
CP-KCS Proposed Combination

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from

Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment

whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Greag Phillips

Cc: All Parties of Record

5-28-21

RAIL & TRANSLOAD INC
RAIL TO TRUCK | TRUCK TO RAIL | CHEMICAL STORAGE | BLENDING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Rail & TransLoad, Inc's. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS

546 WEST STREET, WATERTOWN, WI. 53094
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WWW.TRANSLOADWI.COM

shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully,

Mark K. Smith
President

546 WEST STREET, WATERTOWN, WI. 53094
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Red Leaf Pulp

BY ELECTRONIC FILING

May 27, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Red Leaf Pulp is a company developing the first non-wood pulp mill in Canada, producing a unique unbleached product demanded by the US$250 Billion paper and packaging market. With a focus on rail shipping efficiencies and customer service to pulp agents and buyers in central United States and overseas markets.

I am writing to express Red Leaf Pulp's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS

[illegible] Tue Street, Kelowna, BC [illegible]
redleafpulp.com

shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Joe Hinz
Red Leaf Pulp – Director of Project Development

cc: All Parties of Record

RED MAPLE CAPITAL

OFFICE 5016 48th St., Lloydminster, AB T9V 0H8

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Red Maple Capital is an investment company with operating companies in many businesses across western Canada in the agriculture, oil and gas, and construction space. Many of our raw materials and equipment come in by rail and many of our products are exported to the United States.

If CP were to acquire Kansas City Southern this would allow us to have real competition along the rail network with CN which would provide us with better access to markets, betting pricing, and service but if CN completes this acquisition this would not be the case. We are concerned that if CN were given a monopoly over its competition that prices would increase and service would suffer. They would not be accountable to their customers because the customers would have nowhere else to turn. As a result, we would have serious cost shocks because of increased pricing, supply shocks that would be difficult to overcome and markets that would be more difficult to reach as a result. We are pro-business but we are also pro-competition and if CN were allowed to proceed with this transaction it would have a devastating impact on the competitiveness of the rail industry and would precipitate further requirements for the rail consolidation increasing this issue further. This would result in higher input prices for us and higher export prices for the world, if customers can even access the network which could be closed for all but the biggest customers.

I am writing to express Red Maple Capital's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would

be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed

to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its

existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Jeff Wallace,
Red Maple Capital

Cc: All Parties of Record

May 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Redhead Equipment is an equipment dealer which provides agricultural and construction equipment as well as heavy trucks, together with parts and service support, to the entire province of Saskatchewan through its eight branches in the province. The products that are produced with our equipment are shipped around the world. Redhead has long received the equipment from OEM manufacturers, primarily located in the US, to its various branches in Saskatchewan by rail and most of the outgoing export of agriculture products is by rail.

If CP were to acquire Kansas City Southern this would allow us to have real competition along the rail network with CN which would provide us with better access to markets, betting pricing, and service but if CN completes this acquisition this would not be the case. We are concerned that if CN were given a monopoly over its competition that prices would increase and service would suffer. They would not be accountable to their customers because the customers would have nowhere else to turn. As a result, we would have serious cost shocks because of increased pricing, supply shocks that would be difficult to overcome and markets that would be more difficult to reach as a result. We are pro-business but we are also pro-competition and if CN were allowed to proceed with this transaction it would have a devastating impact on the competitiveness of the rail industry and would precipitate further requirements for the rail consolidation increasing this issue further. This would result in higher input prices for us and higher agriculture export prices for the world.

I am writing to express Redhead Equipment's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

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This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

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We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

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Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Craig Slobodian, Chief Operating Officer
Redhead Equipment

Craig Slobodian

Cc: All Parties of Record

Letter to STB commenting on CN Trust Proposal

ReTrans
A Kuehne+Nagel Company

5/21/2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Re-Transportation perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

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of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

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transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

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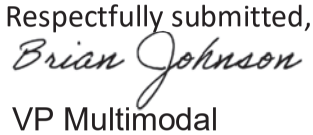
Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal

offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,



VP Multimodal
855 Ridge Lake Blvd. Memphis, TN 38120

Cc: All Parties of Record

ROUTES
TRANSPORT GROUP

May 21, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:
AS senior Vice President of Routes Transportation Group I feel it is important to state my feelings as to the now proceedings on this very important Docket
I am writing to express Routes Transport perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS.

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The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

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CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

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ROUTES
TRANSPORT GROUP

In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

W.G. { Bill } Wallace FRSA

Senior Vice President

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SEVEN RIVERS
Intermodal Terminals, LLC

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Seven Rivers Intermodal Terminals, LLC perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

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In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Tommi Roth General Manager 5/26/21

cc: All Parties of Record

SILVER PEAK CAPITAL

SILVER PEAK CAPITAL

OFFICE 705.688.4444
OFFICE 1 Ceasar Road, Sudbury, Ontario P3E 5P3

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Silver Peak Capital is an investment company with operating companies in the transportation, construction, agriculture and heavy equipment industries, throughout Canada. We are actively examining transactions that would allow us to invest in the United States and into Mexico. One of our potential transactions is with a product that is shipped by rail through the United States and into Mexico. If CP were to acquire Kansas City Southern this would allow us to have true competition along the rail network we are looking at with CN but if CN completes this acquisition this would not be the case. We are concerned that if CN were given a true monopoly over it's competition that prices would increase and service would suffer to the point that we would not be able to pursue our investment.

I am writing to express Silver Peak Capital's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place

"heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same

points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for

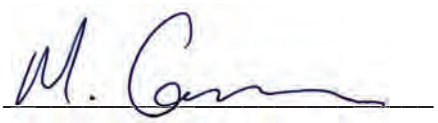
KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Martin Gran,
Chief Financial Officer,
Silver Peak Capital



Cc: All Parties of Record

SIMBA
TRANSLOAD LTD.

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May 27, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Simba Transload Ltd.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We are concerned that the public interest may not be well represented because KCS has required CN to use a voting trust for CN's proposed acquisition of control of KCS, and we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of

the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is in fact in the public's best interest. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south-central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific

shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high-capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, but it will also leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both

concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

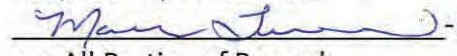
We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying, and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.
Respectfully submitted,


- Marvin Trimble - President

cc: All Parties of Record

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www.simpsonseeds.com

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Simpson Seeds Inc. is Canada's largest independent family owned pulse crop processor and exporter. Two of our three facilities are solely situated on CP rail lines with little option to ship on CN lines. As it currently stands, CN has a competitive advantage over CP when shipping to Mexico thanks to their existing American assets. The potential addition of the KCS to the CN network would only help to further make CP uncompetitive into Mexican markets, creating a near monopoly for Canadian grain and pulse shipments destined there. This would be to the absolute detriment of Canadian farmers, Canadian Jobs and Public Interest.

I am writing to express Simpson Seeds' perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers

of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for

transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment,

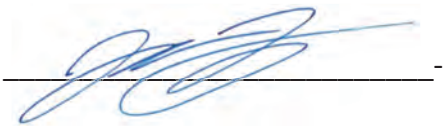
downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Jordan Fehr



Cc: All Parties of Record

Southland pulse Inc.
A Grower's Gateway to the Globe
PO Box 879 Hwy 39 NW Estevan SK, S4A 2A7
Phone: 306-634-8008 Fax:306-634-8007
Email: shawn.southland@sasktel.net

BY ELECTRONIC FILING

May 26, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

For Southland Pulse Inc. CP is a vital part of our supply chain with over 80% of our business shipped on rail. A very high percentage of our business heads on the rail west to Vancouver as going south (US/Mexico) has never been an easy option with multiple carriers adding expense. A CP/KCS merger would greatly expand our market reach into areas we are not able to economically serve today

I am writing to express Southland Pulse's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Southland Pulse, Operations Manager

cc: All Parties of Record

tel: 306.672.4112
fax: 306.672.4166
toll free: 888.672.4112
Box 719, Gull Lake, SK S0N 1A0

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

SWT, Box 719, Gull Lake, Sask. Canada

I am writing to express SWT's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

tel: 306.672.4112
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In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Robert Chapman - Sr Manager Business Development & Trade

cc: All Parties of Record

SPAAR

12222 44 St SE
Calgary, AB T2Z 4A2

MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

SPAAR is an industry leading envelope construction provider in the Alberta Marketplace. We work with several suppliers whom rely on both CN and CP for the movement of numerous supplies from various US rail networks, including but not limited to wallboard (drywall).

I am writing to express SPAAR's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation

of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control

SPAAR
12222 44 St SE
Calgary, AB T2Z 4A2

transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment

SPAAR

12222 44 St SE
Calgary, AB T2Z 4A2

of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It will not be able to do that with any of the merger "synergies" it plans for several years, so incentives will be to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal

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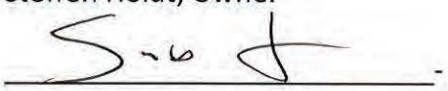
offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Steffen Holdt, Owner



Cc: All Parties of Record

DAVID STEFFEN
STATE REPRESENTATIVE • 4TH ASSEMBLY DISTRICT

MAY 26, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

As you are considering the proposed acquisition bids of Kansans City Southern by Canadian National and Canadian Pacific, I hope you will look favorably upon CP's offering and reject CN's proposal to use a voting trust. The CP proposal is better for shippers and consumers.

The Board has explained it plans to adopt a more cautious approach to CN's proposed voting trust and decide whether this trust is in the public's best interest – the clear answer is the use of a trust in this proceeding will do little in favor of public interest.

This is the first time the Board will be applying the 2001 merger rules. I want to note a quick check-off to allow a voting trust does not serve the public interest and creates a precedent that encourages railroad mergers and severs the Board's freedom to apply the 2001 rules in the way initially intended.

I hear often from shippers the need to inject more options and greater competition into the marketplace. That's why the most troubling factor associated with the proposed CN's voting trust is the effect it will have on existing competition between KCS and CN. It becomes rather apparent competition between the two railroads is already aggressive – if they were to merge, the points, corridors, and regions that are served by both lines would suffer. As two separate entities, alternative solutions for shippers are available, and the two can discipline each other when they are not competing for business. I do not want to see competition between the two done away with.

The Board has specifically noted cause for concern relating to CN's proposal to issue $19 billion of new debt to finance its purchase of KCS. I share this concern with the Board, primarily

because this massive debt burden will create immediate incentives for CN to raise revenue – which means higher prices for its current customers.

As I mentioned, there is a better alternative in terms of public interest. A CP-KCS merger promises to create new, better single-line routes from the Midwest and Canada all the way to the Gulf of Mexico. Competition between rail lines would increase and offer a robust market that better serves the public. A CP-KCS merger would still be the smallest Class 1 railroad by revenue, a stark difference from what would be the third largest Class 1 railroad if CN acquired KCS.

I urge the STB to reject Canadian National's motion to approve its proposed voting trust. Denying the trust will allow CN to make its case that its proposal offers public benefits – something we have yet to see.

Respectfully submitted,

David Steffen
State Representative

STEWART SOUTHERN RAILWAY
BOX 12, Fillmore, SK, S0G 1N0 - PH: (306) 722-0000 FAX: (306) 722-1200

May 21 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Stewart Southern Railways perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both

encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN?

Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a

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CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so CN will be incented to do it through higher prices for their current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome these burdens.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Glenn Pohl. General Manager SSR

Cc: All Parties of Record

Letter to STB commenting on CN Trust Proposal

MAY 21,2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown

Chief, Section of Administration, Office of Proceedings

Surface Transportation Board

395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Aftab Ghouri of Superior Pulses and my business address is 01 Railway Ave, Verwood, Saskatchewan.

I am writing to express Superior Pulses perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants.

to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would

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Plant: 01 Railway Avenue, Verwood, SK. S0H4G0, Canada

inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

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We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

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Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal

offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Cc: All Parties of Record

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target TRANSPORTATION
CELEBRATING 25 YEARS IN BUSINESS 1996 – 2021

Letter to STB commenting on CN Trust Proposal
MAY 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Target Transportation Ltd moves product extensively within the United States and Mexico. Competitive pricing, capacity, and consistent service are key to our success.

I am writing to express Target Transportation Ltd.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

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We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use of a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of

KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS; s shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south-central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without

an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high-capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Bord noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Murray Crane
Logistics Manager Engineering Solutions
Target Transportation

CC: All Parties of Record

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May 28, 2021

By Electronic Filing

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Josh Ruple and my business address is 811 Main St, Suite 2800, Houston, TX 77002. I am a President of TDWP Partners LLC ("TDWP"). In my role, I am responsible for all business affairs of TDWP.

TDWP has long enjoyed good relationships with many railroads, including Kansas City Southern Railway ("KCS"), providing our customers services that often involve rail solutions in the United States and Mexico for various commodities, including refined products. These services require close operational collaboration and/or negotiations with rail carriers. Through our affiliated entities we are impacted commercially by the rail carriers that service the network of facilities we may coordinate with to provide commercial solutions including storage-in-transit and transloading services in the United States, Canada, and Mexico. Maintaining competition among carriers is important to our business.

I am writing to express TDWP's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. While neither TDWP nor I have expertise in the application of the "new" 2001 Major Merger Rules nor in the intricacies of the voting trust implications, we have obtained some background into them in light of these proposed mergers. Alternatively, we clearly understand railroads and the significance of relationships, competition, markets, how railroads provide services and pricing, and in how mergers create intended and foreseeable consequences, as well as unintended and unforeseeable ones.

In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a voting trust in this proceeding seems to have the very real potential to:

- diminish existing, healthy competition;
- make the Board's review and decisions on the merits of the transaction more complex;
- make it more difficult for the Board to reject the transaction or approve it with all of the mitigations the Board may think appropriate; and
- financially hamper CN regardless of whether the merger is ultimately approved or rejected.

For those reasons, which are further elaborated below, and others, we do not see how approving the voting trust will be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We do not believe that the Board can (nor should) pre-judge whether CN's proposed control transaction will ultimately be found consistent with the public interest. The heightened review process under the new merger rules is needed to make such determination and without that process it is not clear why the Board would allow a voting trust to be established in this instance. We do not believe that the Board should allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – likely more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – seem likely to encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to instinctively approve use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also seems to have the potential to limit the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think it is likely that the risks and costs of allowing a voting trust in this instance may significantly outweigh any of the perceived benefits of doing so. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be any great risks for KCS's shareholders either, and thus, no need for a voting trust.

The risks and costs of allowing a voting trust here, however, seem potentially significant. In addition to the concerns about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, **the most significant risk/cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the adverse impact that would have on existing competition between KCS and CN.**

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south-central United States. Our experience in rail transportation

markets confirms that competition between two railroads serving the same points, corridors, and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, CN and KCS serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodities across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would end this competition. It may be possible to remedy some of the lost competition with targeted access for other rail carriers, but we believe that only an independent KCS will prevent all of the perceived harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" competition.

Some of the harm would likely come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering reduced or diminished service. Why would either of them sharpen their pencils against one another if the profits ended up the same place (CN)? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would **eliminate the opportunity for *KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new and better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high-capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would greatly diminish, if not eliminate, this opportunity for enhanced competition. Not only that, but it will also leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network and customers, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve

as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or ultimately disallow the transaction entirely. We see that as a reason to not allow *CN to use a voting trust*, so that there is no pre-judgment of the outcome of that first-ever application of new rules, and no foreclosure of a potential CP/KCS transaction and the more obvious competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction would be in the public interest. It seems to us that the alternative of allowing the voting trust in this instance would impose additional financial burden on the railroad and its customers prior to evaluation of the transaction.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it must divest KCS. No matter what showing CN makes in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and later defend its acquisition.

Regardless of how strong CN's balance sheet might be, the reported price premium it is paying and massive debt burden it will undertake will create immediate incentives for CN to extract more revenues from its existing customers. CN won't be able to capture any of its planned merger "synergies" for several years, so it will have ongoing incentives to improve financial performance through charging higher prices to CNs current customers or undertaking less investment in CN's network. These incentives exist regardless of whether CN ultimately must divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS. This may occur sometime in 2023. It is hard to imagine CN would be able to get a price for KCS that approaches the premium it agreed to pay. In that scenario, CN would be saddled with significant amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without significant financial harm, what if the economic picture in 2023 and beyond is not particularly strong? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, for the reasons described above and others, we urge the STB to carefully consider the implications on this proposed transaction and those that will follow, both short-term and long-term, before approving CN's motion to approve its voting trust. We believe it more prudent and consistent with the new merger rules to reject CN's motion to approve its proposed voting trust. The Board

does not need to take significant risks with the U.S. rail network. It can mitigate that risk by simply denying CN's proposed voting trust and allowing CN the opportunity to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the

premium CN is paying to KCS's shareholders is not contrary to the public interest. If the Board believes that CN does so during their review, then CN should be allowed to proceed with it acquisition to acquire KCS, subject to whatever modifications the Board believes necessary.

Respectfully submitted,

Josh Ruple
President
TDWP Partners LLC

Cc: All Parties of Record

Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

TExpress

I am writing to express TExpress's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that

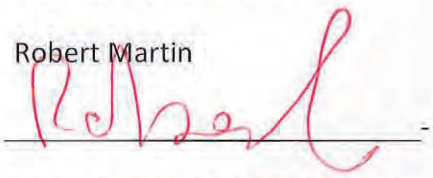
disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Robert Martin



cc: All Parties of Record

TIMIRON LLC
20 STANWIX STREET
SUITE 630
PITTSBURGH, PA 15222-1355

25 May 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

TIMIRON LLC, dba TIMIRON TRADING, is a crude oil and natural gas trading company based in Pittsburgh, Pa. Our business is boutique in nature, meaning we specialize in custom opportunities, buying and selling petroleum products in small batch quantities, usually in spot market situations where "big oil" values our assistance in dealing with less than unit train volumes in difficult to serve markets, either logistically or in time sensitive situations.

I am writing to express our perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to

use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal

offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Timothy A Chutz - Managing General Partner

TIMIRON LLC

CC: ALL PARTIES OF RECORD

BY ELECTRONIC FILING

Torch River Rail Inc.
PO Box 368
Choiceland, SK S0J 0M0
torchriverrail@gmail.com

May 26, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Torch River Rail Inc.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or

extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Ronald Shymanski
Torch River Rail Inc.

cc: All Parties of Record

TRANSCARE
Logistics Corporation

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Transcare Logistics Corporations perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to

worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Steve Taylor

Vice President,

Transcare Logistics Corporation

cc: All Parties of Record

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Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Transload Logistics Corp. – Interested Party

I am writing to express Transload Logistics Corp. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers

of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for

transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will be incentivized to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Per G.Ben Docktor

Cc: All Parties of Record

FRIDAY, MAY 21, 2021

BY ELECTRONIC FILING
Letter to STB commenting on CN Trust Proposal
The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:
I am writing to express Transmark's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have

to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

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CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

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No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

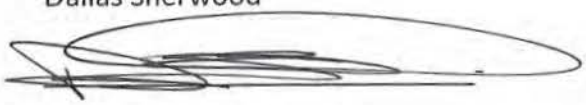
In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Dallas Sherwood



Cc: All Parties of Record

Transport Services & Logistics Canada Ltd.

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Richmond, British Columbia
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Letter to STB commenting on CN Trust Proposal

MAY 26, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Transport Services and Logistics Canada Ltd. is a global transportation provider. Our head office is in Saskatoon, Saskatchewan Canada, supplying agricultural and value-added products to the world, including North America. Our clients continue to look for opportunities to expand their reach, particularly into the USA. It is our firm belief that, CP offers the best alternative for our clients to have a single line service from their Canadian plants, distribution centers into the USA. We do not believe the same synergies can be achieve through a CN/KCS merger.

I am writing to express Transport Services & Logistics Canada Ltd., perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+

months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same

commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple

railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that

showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Craig Bailey

Cc: All Parties of Record

Up On Me Imports Inc.
PH: 780-220-1840
7741 Wagner RD
Edmonton, AB
T6B 5B1

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Up On Me Imports Inc has concerns that CN monopoly if they are allowed to buy Kansas City South in Canada

I am writing to express Up On Me Imports Inc perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to

worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.
But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates

or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in

our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Cc: All Parties of Record

Ron Hoyda
CEO
May 21, 2021

05/27/2021
BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

U.S. Salt is a shipper of various salt products utilizing many of the Class 1 railroads located in the domestic U.S.

I am writing to express U.S. Salt's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to

divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

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CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these

circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment

of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal

offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Matt Friedrich
CEO-President
Salt Source, LLC/ U.S. Salt
Cc: All Parties of Record

May 28, 2021

By Electronic Filing

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Bill Frerking, and my business address is 811 Main St, Suite 2800, Houston, TX 77002. I am Vice President and Chief Administrative Officer of USD Group LLC ("USDG"). In my role, I am a member of the executive leadership team and directly or indirectly responsible for many of the capabilities that support the ongoing business of USDG, including EH&S, sustainability, Insurance and risk, IT, legal, HR, and others. We currently own and operate multiple rail terminals providing transloading and SIT services in the United States, Canada, and Mexico. Those include our Hardisty Crude Terminal in Alberta, Canada, the multi-modal Port Arthur Terminal being constructed in Port Arthur, Texas, and a network of terminals in the U.S. and Mexico for servicing our customers.

USDG has enjoyed a good relationship with many railroads as our midstream business provides rail solutions to the market. Those include solutions for railroads such as SIT activities. They also include the movement of commodity products by rail for shippers, including crude oil, various petroleum products, and ethanol. We currently enjoy strong relationships with the Canadian Pacific ("CP") and Kansas City Southern Railway ("KCS") providing our customers services that involve rail solutions for various commodities in the United States, Canada, and Mexico, including Dilbit, DRUbit™, refined products, and propane. These services require close and ongoing operational collaboration and/or negotiations with these rail carriers. Maintaining competition among carriers is important to our business.

I am writing to express USDG's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. While neither USDG nor I have expertise in the application of the "new" 2001 Major Merger Rules nor in the intricacies of the voting trust implications, we have obtained some background into them in light of these proposed mergers. Alternatively, we clearly understand railroads and the significance of relationships, competition, markets, how they provide services and pricing, and in how mergers create intended and foreseeable consequences, as well as unintended and unforeseeable ones. In Decision No. 3, the Board explained that it expects to adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a voting trust in this proceeding seems to have the very real potential to:

- diminish existing, healthy competition;
- make the Board's review and decisions on the merits of the transaction more complex;

- make it more difficult for the Board to reject the transaction or approve it with all of the mitigations the Board may think appropriate; and
- financially hamper CN regardless of whether the merger is ultimately approved or rejected.

For those reasons, which are further elaborated below, and others, we do not see how approving the voting trust will be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We do not believe that the Board can (nor should) pre-judge whether CN's proposed control transaction will ultimately be found consistent with the public interest. The heightened review process under the new merger rules is needed to make such determination and without that process it is not clear why the Board would allow a voting trust to be established in this instance. We do not believe that the Board should allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – likely more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – seem likely to encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to approve use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also seems to have the potential to limit the Board's freedom to apply the 2001 merger rules the way they were intended, which was make disapprovals or extensive conditions much more likely.

We think it is likely that the risks and costs of allowing a voting trust in this instance may significantly outweigh any of the perceived benefits of doing so. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there should not be any great risks for KCS's shareholders either, and thus, no need for a voting trust.

The risks and costs of allowing a voting trust here, however, seem potentially significant. In addition to the concerns about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, **the most significant risk/cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the adverse impact that would have on existing competition between KCS and CN.**

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south-central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors, and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, CN and KCS serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodities across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would end this competition. It may be possible to remedy some of the lost competition with targeted access for other rail carriers, but we believe that only an independent KCS will prevent all of the perceived harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" competition.

Some of the harm would likely come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering reduced or diminished service. Why would either of them sharpen their pencils against one another if the profits ended up the same place (CN)? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would **eliminate the opportunity for *KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high-capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific. We ask that you consider the historic competition between CP and CN and how that will be impacted with the voting trust and ultimately on the merits of the merger being reviewed.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would greatly diminish, if not eliminate, this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network and customers, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or ultimately disallow the transaction entirely. We see that as a reason to not allow *CN to use a voting trust*, so that there is no pre-judgment of the outcome of that first-ever application of new rules, and no foreclosure of a potential CP/KCS transaction and the more obvious competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction would be in the public interest. It seems to us that the alternative of allowing the voting trust in this instance would impose additional financial burden on the railroad and its customers prior to evaluation of the transaction.

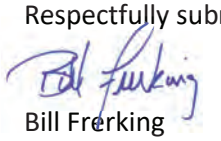
We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it must divest KCS. No matter what showing CN makes in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and later defend its acquisition.

Regardless of how strong CN's balance sheet might be, the reported price premium it is paying and massive debt burden it will undertake will create immediate incentives for CN to extract more revenues from its existing customers. CN won't be able to capture any of its planned merger "synergies" for several years, so it will have ongoing incentives to improve financial performance through charging higher prices to CNs current customers or undertaking less investment in CN's network. These incentives exist regardless of whether or not CN ultimately must divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS. This may occur sometime in 2023. It is hard to imagine CN would be able to get a price for KCS that approaches the premium it agreed to pay. In that scenario, CN would be saddled with significant amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without significant financial harm, what if the economic picture in 2023 and beyond is not particularly strong? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

Accordingly, for the reasons described above and others, we urge the STB to carefully consider the implications on this proposed transaction and those that will follow, both short-term and long-term, before approving CN's motion to approve its voting trust. We believe it more prudent and consistent with the new merger rules to reject CN's motion to approve its proposed voting trust. The Board does not need to take significant risks with the U.S. rail network. It can mitigate that risk by simply denying CN's proposed voting trust and allowing CN the opportunity to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the premium CN is paying to KCS's shareholders is not contrary to the public interest. If the Board believes that CN does so during their review, then CN should be allowed to proceed with its acquisition to acquire KCS, subject to whatever modifications the Board believes necessary.

Respectfully submitted,



Bill Frerking
Vice President and Chief Administrative Officer
USD Group LLC

Cc: All Parties of Record

VMODAL
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MAY 21, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Francisco Javier Vera Lima and I am the CEO of V Modal Mexicana SC, we are freight shippers and greatly depend on the North America Railway System.

I am writing to express V Modal Mexicana, SC perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS;s shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line

that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

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We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Francisco Javier Vera Lima
Cc: All Parties of Record

VAN-KAM Freightways Ltd.
10155 Grace Road
Surrey, BC V3V-3V7

Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express VanKam Freightways perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed

transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

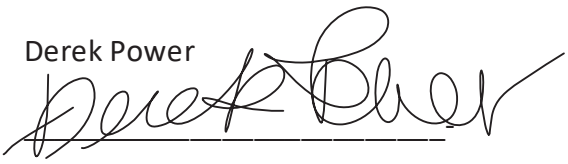
We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

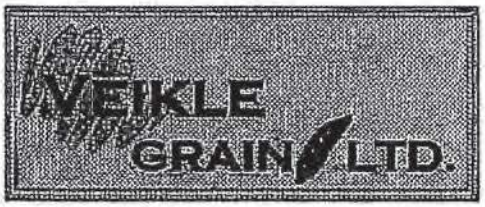
Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Derek Power



cc: All Parties of Record



May 21, 2021
BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:
Veikle Grain Ltd. is located in Cutknife SK and is interested in the U.S rail network as an opportunity to gain access to new markets, especially when it comes to the importing and receiving of fertilizers from the US into Canada.

I am writing to express Veikle Grain Ltd.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to

worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Carl Veikle
Veikle Grain Ltd.

cc: All Parties of Record

Western Asphalt Products
55501 Range Road 203
Bruderheim, Alberta
T0B 0S0
1-780-796-3437

Friday May 21, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Western Asphalt Products perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have

Western Asphalt Products
55501 Range Road 203
Bruderheim, Alberta
T0B 0S0
1-780-796-3437

to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these

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circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

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We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

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* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Dean Arnill
President
Western Asphalt Products

Cc: All Parties of Record

WEYBURN INDUSTRIAL TRANSLOAD INC.

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BY ELECTRONIC FILING

May 26, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Weyburn Industrial Transload Inc. (WIT) is a CP partnered Transload Facility located in Weyburn Saskatchewan.

I am writing to express Weyburn Industrial Transload Inc.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest

WEYBURN INDUSTRIAL TRANSLOAD INC.

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KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Carter Stewart
Weyburn Industrial Transload Inc. – General Manager

cc: All Parties of Record

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BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Wheaton-Dumont Coop Elevator operates a grain-shuttle loading facility in Tenney, MN. We rely on Canadian Pacific to transport several thousand cars of grain to export markets every year.

I am writing to express Wheaton-Dumont Coop Elevator's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed

under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Philip Deal, CEO

Wheaton-Dumont Coop Elevator

Cc: All Parties of Record

WILTON FARMERS UNION
ELEVATOR & AGRONOMY

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BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Wilton Farmers Union Cooperative Elevator opposes the proposed CN/KCS merger and the CN's proposed voting trust.

I am writing to express Wilton Farmers Union Cooperative Elevator's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have

to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

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Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted

cause for concern relating to CN's proposal to issue over $19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

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We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

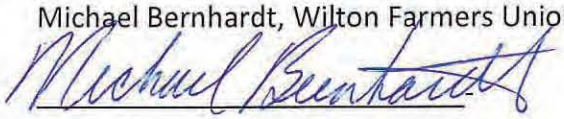
In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Michael Bernhardt, Wilton Farmers Union Cooperative Elevator



Cc: All Parties of Record

WTC Group Inc.
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May 25th, 2021

STB Finance Docket No. 36514
Canadian National Railway – Kansas City Southern

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

WTC Group Inc. ("WTC") has previously communicated support for the CP/KCS transaction and continues to voice that support for approval of the CP/KCS combination. The CP/KCS transaction would provide significantly greater benefits to our company, our shippers and in our opinion Canada in general over the recently announced CN/KCS merger.

WTC Group is a full-service, asset based, import/export logistics company headquartered just outside of Vancouver, British Columbia. With company roots in bulk and package handling in specialty crops and agri-logistics spaces, WTC has grown to become a multi-commodity, end-to-end logistics provider in a little over two decades and operates 3 terminals that collectively handle more than 50,000 TEU of product on an annual basis. CP Rail is WTC's main rail service provider for shipping and receiving a variety of commodities – including grain, plastics, forestry products and general merchandise - between shipping hubs across Canada and the US. We share a very close working relationship and confirm that we are extremely satisfied with their service.

I am writing to express WTC's perspective on Canadian National's proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the

public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

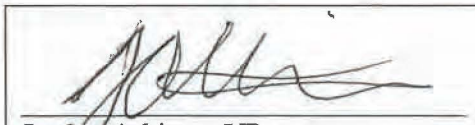
We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended -- meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,



Jordan Atkins – VP
WTC Group Inc.