

March 2, 2023

Mr. Martin J. Oberman
Chairman
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Chairman Oberman,

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306256

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I write to ask that the Surface Transportation Board (STB) use its authority granted under the ICC Termination Act of 1995 to deny the proposed merger between Canadian Pacific (CP) and Kansas City Southern (KCS) railroads. Allowing this merger -- which would combine the sixth and seventh largest U.S. railroads by revenue¹ -- to proceed would reduce competition in an already highly consolidated market and could cause increased shipping costs. Furthermore, the proposed merger could result in significant job losses and service disruptions that negatively impact American supply chains. Finally, the recent East Palestine, Ohio train derailment raised significant questions about the nations' railroad safety, and the extent to which safety concerns have been exacerbated by government deregulation, industry cost-cutting,² and efforts "to squeeze as much productivity out of these workers as they can"³ -- with one former Iowa mayor warns that the merger could ultimately result in "a disaster of monumental proportions."⁴

Under the ICC Termination Act, which created the STB, the board may authorize a merger only if it affirmatively finds that it "is consistent with the public interest,"⁵ and must take into consideration "the effect of the proposed transaction on the adequacy of transportation to the public...the total fixed charged charges that result from the transaction, the interest of rail carrier employees ... [and] whether the proposed transaction would have an adverse effect on competition."⁶ This merger clearly fails the public interest test, and accordingly, I ask STB to uphold the law and deny it.

¹ The Huffington Post, "The Justice Department Is Warning About A Major Rail Merger. It Might Get Approved Anyway," Kevin Robillard, February 27, 2023, https://www.huffpost.com/entry/the-justice-department-is-warning-about-a-major-rail-merger-it-might-get-approved-anyway_n_63fa9a54e4b08b1402de3863.

² The Hill, "Four systemic safety issues the East Palestine crash report may point to," Saul Elbein, February 24, 2023, <https://thehill.com/policy/equilibrium-sustainability/3872035-four-systemic-safety-issues-the-east-palestine-crash-report-may-point-to/>.

³ Associated Press, "Ohio derailment that released toxic chemicals raises railroad safety questions," February 9, 2023, <https://www.pbs.org/newshour/nation/ohio-derailment-that-released-toxic-chemicals-raises-railroad-safety-questions>.

⁴ The Quad-City Times, "Rail merger a disaster of monumental proportions: Eastern Iowans ran against Canadian Pacific merger to federal regulators," Sarah Watson, September 13, 2022, https://qctimes.com/news/local/govt-and-politics/rail-merger-a-disaster-of-monumental-proportions-eastern-iowans-rail-against-canadian-pacific-merger-to/article_5e37142c-f93a-5d74-a8b2-5ee338e1f5b3.html.

⁵ 49 U.S.C. § 11324.

⁶ *Id.*

Since the deregulation of the rail industry by the *Staggers Act* in 1980, consolidation has rapidly accelerated, with the number of Class I railroads decreasing from 33 in 1980 to just 7 now.⁷ This proposed merger would reduce this number to just 6.⁸ If approved, it would join 7,300 miles of KCS's tracks with 15,000 miles of CP's tracks to create the only north-south rail corridor bisecting the whole continent, from Mexico to Canada.⁹ This merger would give the new company additional leverage over competitors, and has shippers worried that they'll be left with no alternative rail shipping options.¹⁰

Recently, the Department of Justice Antitrust Division shared its own serious concerns about increasing consolidation in the industry, noting that the proposed merger could “empower the merged railroad to deny shippers access to the lowest cost or fastest end-to-end routings,” and enable the firm to “foreclose competition in other ways, such as raising costs for their rivals through control over inputs or access.”¹¹ Indeed, like previous railroad mergers, this one could also lead to increased shipping rates across the board.¹² A 2021 analysis for the Rail Customer Coalition found that “freight rail rates and rail industry revenue from monopoly pricing are continuing to climb higher and higher,” and that “[f]rom 2004 to 2019, real rates (adjusted for inflation) for all rail shippers increased 43% [while] [d]uring the same period, real railroad costs rose only 8%.”¹³ These price increases could become even sharper with further consolidation.

Further consolidation in the rail industry also is likely to lead to significant job losses. One study of 20 years of railroad mergers concluded that “large employment declines emanate from mergers,” and.¹⁴ From 1980 to 2020, railroad consolidation coincided with the loss of

⁷ United States Department of Agriculture, “Railroad Concentration, Market Shares, and Rates,” Marvin Prater, Adam Sparger, and Daniel O’Neil, Jr., February 2014, <https://www.ams.usda.gov/sites/default/files/media/Railroad%20Concentration%2C%20Market%20Shares%2C%20and%20Rates.pdf>.

⁸ Federal Railroad Administration, “Freight Rail Overview”, <https://railroads.dot.gov/rail-network-development/freight-rail-overview#:~:text=%5B2%5D%20The%20seven%20Class%20I,and%20Union%20Pacific%20Railroad%20Co.>

⁹ The Kansas City Star, “‘This will kill people’: Small town fights \$31B merger of KC Southern, Canadian Pacific,” Eric Adler, Kevin Hardy, and Mike Hendricks,, December 12, 2022, <https://www.kansascity.com/news/local/article268887372.html>.

¹⁰ E&E News, “Could a rail merger snarl the U.S. freight system?” Mike Lee, September 28, 2022, <https://www.eenews.net/articles/could-a-rail-merger-snarl-the-u-s-freight-system/>.

¹¹ Comment of the United States Department of Justice Before the Surface Transportation Board, Finance Docket No. 36500, January 24, 2023, <https://www.justice.gov/atr/page/file/1567936/download>.

¹² U.S. Senate Committee on Commerce, Science, and Transportation, “The Current State of the Class I Freight Rail Industry,” Sept. 15, 2010, pp. 9-10, <https://www.commerce.senate.gov/services/files/76823478-a901-4b4d-869b-9301bb43343b>; U.S. Gov’t Accountability Office, “Freight Railroads: Industry Health Has Improved, but Concerns about Competition and Capacity Should be Addressed,” October 6, 2006, pp. 13-16, <https://www.gao.gov/products/gao-07-94>.

¹³ Rail Customer Coalition, New Report Finds Rail Customers Paying a Steep Price for Consolidation and Dwindling Competition, July 29, 2021, <https://www.freightrailreform.com/new-report-finds-rail-customers-paying-a-steep-price-for-consolidation-and-dwindling-competition/>.

¹⁴ Journal of Regulatory Economics, “Deregulation, Mergers, and Employment in the Railroad Industry,” David E. Davis & Wesley W. Wilson, January 1999, p. 19, <https://link.springer.com/article/10.1023/A:1008093607129>.

nearly 400,000 jobs.¹⁵ These job losses have been exacerbated by the rising popularity of Precision Scheduled Railroading (PSR) schemes by Class I railroads.¹⁶ These PSR schemes are profit-maximization schemes promoted by Wall Street investors¹⁷ as a means to reduce operating costs and maximize profits, resulting in significant labor cuts that can result in longer trains, maintenance delays, and safety concerns.¹⁸ As Transportation Secretary Pete Buttigieg recently noted, these PSR-driven workforce cuts decrease the number of maintenance and safety workers which can contribute to train derailments like the one this year in East Palestine, Ohio.¹⁹ As consolidation in the industry continues, railroad companies will have a greater ability to pursue these PSR schemes and other monopolistic tactics, resulting in further labor declines and safety concerns – even as data reveals that, over the last decade, the frequency of freight derailments has increased by over 15%.²⁰

Railroad mergers also cause service disruptions and delays, further damaging American supply chains. The 1995 merger between Union Pacific and Chicago & North Western and the Southern Pacific railroads led to significant service disruptions to local commuter rails and increased shipping times.²¹ Similarly, significant delays and cancellations of time-sensitive trains occurred after Norfolk Southern acquired portions of Conrail in 1999.²² This merger could also cause significant service disruptions and safety problems, with the former Mayor of Davenport Iowa warning that “[w]hen one of these trains derailed while passing through this area of mega public events, thousands of people could be killed. This is a disaster of monumental proportions just waiting to happen.”²³ Other communities have also voiced their concerns, noting that the longer, more frequent trains resulting from the merger would increase noise pollution and cause delays in emergency services as a result of blocked intersections.²⁴

¹⁵ U.S. Bureau of Labor Statistics, “Employment in rail transportation heads downhill between November 2018 and December 2020,” Ryan Ansell, October 2021, <https://www.bls.gov/opub/mlr/2021/article/employment-in-rail-transportation-heads-downhill-between-november-2018-and-december-2020.htm>.

¹⁶ Railway Age, “PSR: Short-term gains, but at what cost?” Dennis R. Pierce, April 21, 2019, <https://www.railwayage.com/freight/class-i/psr-short-term-gains-but-at-what-cost/>.

¹⁷ New York Times, “Railroads’ Strategy Thrilled Wall Street but Not Customers and Workers,” September 19, 2022, <https://www.nytimes.com/2022/09/19/business/freight-rail.html>.

¹⁸ U.S. Government Accountability Office, “Freight Rail: Information on Precision-Scheduled Railroading,” December, 2022, pp. 1, 14, <https://www.gao.gov/assets/gao-23-105420.pdf>.

¹⁹ CBS News, “Train that derailed in Ohio highlights cost-cutting strategy in rail industry,” Roxana Saberi, February 22, 2023, <https://www.cbsnews.com/news/ohio-train-derailment-cost-cutting-strategy-rail-industry-east-palestine/>.

²⁰ ABC News, “Union officials say cost cutting led to significant derailment rate increase,” Peter Charalambous, February 22, 2023, <https://abcnews.go.com/US/union-officials-cost-cutting-led-significant-derailment-rate/story?id=97247953#:~:text=National%20union%20officials%20say%20years,for%20whistleblowers%2C%20among%20other%20steps>.

²¹ The Chicago Tribune, “Railroad jammed by mergers loses track of itself,” David Young and John Schmeltzer, December 7, 1997, <https://www.chicagotribune.com/news/ct-xpm-1997-12-07-9712070476-story.html>.

²² The Washington Post, “Rail System Disruptions Reported,” Don Phillips, June 9, 1999, <https://www.washingtonpost.com/archive/business/1999/06/09/rail-system-disruptions-reported/9926fc3e-04d1-4b2d-8af9-241708613188/>.

²³ The Quad-City Times, “Rail merger a disaster of monumental proportions: Eastern Iowans ran against Canadian Pacific merger to federal regulators,” Sarah Watson, September 13, 2022, https://qctimes.com/news/local/govt-and-politics/rail-merger-a-disaster-of-monumental-proportions-eastern-iowans-rail-against-canadian-pacific-merger-to/article_5e37142c-f93a-5d74-a8b2-5ee338e1f5b3.html.

²⁴ *Id.*

The proposed CP-KCS merger would not benefit the public interest, failing the test needed to receive STB approval. Given its adverse impact on competition, service disruptions, jobs, and rail safety, I ask that STB use its authority granted under the ICC Termination Act of 1995 to deny the merger.

Sincerely,


Elizabeth Warren
United States Senator