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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. 36500 - Reply to Objections to KCS Waiver

My name is Leslie Nicholson and my business address is 25 Sheppard Avenue West, North York, Ont. M2N 6S8, Canada. I am the Sr. Vice President, Supply Chain Operations and Business Digital Transformation for Nestlé Canada Inc. In my role, I am responsible for Supply Chain and Digital Transformation.

Nestlé Canada has previously submitted to the Board a letter supporting approval of the proposed CP-KCS combination, and I have attached a copy of that letter for the Board's convenience. As expressed in our previous letter, Nestlé Canada supports swift approval of the CP-KCS combination because of the significant benefits we expect to realize from this transaction.

Nestlé Canada is aware that several parties have filed objections to the application of the pre-2001 merger rules to the CP-KCS transaction under the "waiver" issued in 2001 for transactions involving KCS. Nestlé Canada wishes to reply to those objections by urging the Board not to revoke the KCS waiver. The pre-2001 rules provide the Board and all interested parties all the tools that are needed to fully evaluate the proposed transaction.

We are fully cognizant of the Board's mandate to ensure that Class I mergers are in the public interest, and do not risk significant disruptions in the railway system. From our perspective, the unique nature of the CP-KCS transaction alleviates the concerns that motivated the new rules adopted in 2001. Reviewing the CP-KCS combination under the tried and true pre-2001 merger standards will



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prevent undue delay, while still allowing for a thorough public interest assessment by the Board.

As we have mentioned in our March 29th, 2021 letter, the end-to-end CP-KCS transaction will improve service options, with new single-line hauls and broader access to markets across North America. Our experience shows us that single-line rail service options are far superior to public and private fleets. The unique synergies of a CP-KCS combination promise significant public benefits to Nestlé Canada and similarly situated shippers, which we are eager to see realized as soon as possible, without the delays and additional burdens that would result from applying the 2001 rules for the first time ever to this transaction.

Nothing about the CP-KCS transaction raises the kinds of concerns that would flow from a merger of the much larger Class I railroads. The issues should be simple - the transaction improves competitive options and service - and any concerns any party has should be easy to address under the pre-2000 rules. The 2001 rules were designed for much more complex transactions raised much more serious issues, and they should not be tested out in this case.

Nestlé Canada and our shipping partners are looking forward to a stronger CPKC network that will increase our access to diversified market opportunities. As such, we urge the Board to apply the KCS waiver provision it thoughtfully included in its 2001 Major Merger Rules. An elongated period of review will delay and potentially reduce the positive synergies this merger promises. The KCS waiver will allow the Board to conduct a thorough but efficient and fair review and allow for the benefits of the new CPKC network to come to fruition more quickly.

Nestlé Canada is additionally concerned that applying the 2001 Major Merger Rules to the CP-KCS merger, a transaction the rules were not designed for, would lead to precedent with unintended consequences and might also create an easier path for some other Class I merger proposals that would be problematic in ways CP-KCS is not. The CP-KCS merger is unlike other Class I merger combinations, in that it is a straightforward transaction between the two smallest U.S. Class I railroads, and it promises substantially more benefits than risks to the public interest. We also know that this transaction, among all possible Class I mergers, is unique in not posing any serious concerns about lost competition, service disruption, or other harms. Interpreting and applying the 2001 rules to this transaction could encourage other Class I railroads to see an easier path for their own



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Class I merger proposals without the same unique benefits of the CP-KCS transaction.

For these reasons, Nestlé Canada urges the Board to maintain the KCS waiver and reject calls to revoke it, and to proceed to review and approve the CP-KCS proposed combination as expeditiously as possible. We look forward to seeing CPKC as a stronger competitor in the industry.

Yours sincerely,

Leslie Nicholson
Sr. VP, Supply Chain Operations & Digital Business Transformation

CC: Parties of Record



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March 26, 2021

Jim Wells
Nestlé USA
5750 Harper Rd
Solon, OH 44139

STB Finance Docket No. 36500
CP-KCS Proposed Combination

To Whom It May Concern:

I am writing to provide my written support for the combination of Canadian Pacific Railway (CP) and Kansas City Southern (KCS). I believe this combination of railroads will benefit not only Nestle by creating more efficient supply chains throughout North America, but also open up new opportunities and new markets for businesses.

Nestle is supportive of the transaction because it will allow a combined CPKC to provide new, more efficient and reliable rail service options. This will strengthen the North American supply chain. For example,

- CPKC's new single-line haul offerings will expand market reach and offer new competitive transportation options for our intermodal shipments between Canada, the US and Mexico.
- We are particularly enthusiastic about the role new CPKC single-line routes will play in expanding access to growing markets across the United States, Mexico and Canada under the USMCA trade agreement. It is beneficial to have a true USMCA railroad option.
- CPKC's new service offerings will improve transit times and reliability, which will reduce our inventory costs and improve our efficiency. By having a single source solution that avoid interchanges. This will further enable reliable service to our customers.

Furthermore, as North America's two safest railroads, we firmly believe that CP and KCS will provide Nestle with safe, efficient and fast service that will allow us to achieve the goal of reducing carbon intensity and improving the North American supply chain's environmental footprint. Nestle urges the STB to approve CP's acquisition of KCS as swiftly as possible so that these systems can be integrated and the end-to-end benefits of this deal can be realized for the benefit of all shippers across the USA, Mexico and Canada.

Sincerely,

Jim Wells

Chief Supply Chain Officer

Nestle USA