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Before the
Surface Transportation Board

Docket No. FD 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC.

—CONTROL—

KANSAS CITY SOUTHERN; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; GATEWAY EASTERN RAILWAY COMPANY; AND THE TEXAS MEXICAN RAILWAY COMPANY

and

Docket No. FD 36514

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND CN'S RAIL OPERATING SUBSIDIARIES

—CONTROL—

KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

The American Chemistry Council (ACC) is concerned about further consolidation in the freight railroad industry. Past mergers between Class I railroads have concentrated railroad market power and diminished the ability of rail customers to access competitive rail service. ACC fully supports the Surface Transportation Board's 2001 merger rules that set a higher bar for future merger approvals, and believes the Board should apply these rules to its review of all pending and future Class I railroad mergers.

Two Class I railroads, Canadian National (CN) and Canadian Pacific (CP) are now competing to acquire another, the Kansas City Southern (KCS). ACC appreciates Chairman Oberman's commitment that the Board will "scrutinize the transactions carefully and diligently, in keeping with the applicable statutory and regulatory frameworks" and will ensure "meaningful opportunities for public participation and stakeholder comment." While ACC is not taking a position on either merger proposal at this time, we wish to highlight principles that should guide the STB's review of either merger proposal.

Specifically, the STB should make any approval contingent upon conditions to address the following issues.

- Maintaining access to existing gateways: Gateways must remain both physically and commercially open. Following a merger, the combined railroad could close gateways for traffic that today has access to a competing Class I carrier beyond the gateway. Such closures can occur either physically, by refusing to interchange traffic at the gateway, or commercially, by pricing gateway movements non-competitively. To prevent such gateway closures, a merger approval must include plans to preserve access to all existing interchange options.

- Rate protection for service to/from gateways: As part of maintaining commercially viable access to gateways, shippers must be able to obtain separate rates for service to and from gateways ("bottleneck rates"), and to seek regulatory review of such rates. Bottleneck rates must be subjected to effective regulatory constraints to preserve pre-merger competition over the non-bottleneck segments.

- Enhanced competition: The 2001 merger rules include a requirement that the transaction will enhance competition. Reciprocal switching provides the most direct means to enhance rail-to-rail competition. As a condition of a merger approval, a railroad should agree to provide customers with reasonable access to reciprocal switching at existing interchanges with other Class I railroads.

- Preventing Service Disruptions: Consistent with the 2001 rules, merger applications should include Service Assurance Plans, including plans to cooperate with other carriers to overcome serious service disruptions during the transitional period and compensation to shippers injured by such disruptions. To strengthen these protections, the Board should require railroads to provide defined service metrics and require a streamlined process for customers to recover damages for service failures.

- Reasonable railroad practices: The STB has a broad obligation to consider whether a rail merger is in the public interest. While not explicitly addressed in its rules, the Board should consider whether a merger would lead to the expansion of railroad practices that may be adverse to the public interest. Shippers should have the ability to address such concerns within the context of a merger review process.

Thank you for your consideration of these comments. If you have questions about this submission, please contact Jeffrey Sloan, Senior Director of Regulatory Affairs (202-249-6710, jeffrey_sloan@americanchemistry.com).

cc: All Parties of Record