



6/11/2021

RE: CN (Canadian National) proposed Merger with KCS Railroad

STB (Surface Transportation Board)

395 E Street SW

Washington, DC 20423

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To whom it may concern:

We are writing this letter today to the STB to express and voice our grave concern over the proposed merger of CN with KCS Railroad. As an active shipper on Class 1 railroads throughout the country our company relies on competitive freight rates from the various carriers. The consolidation of these two companies would wipe away competition and lead to unfair pricing and practices. It's really simple when you look at the rail map and see that this transaction would allow CN/KCS the ability to control the largest portion of goods moving from Canada/U.S./Mexico. By definition this is a monopoly!

Furthermore it's obvious the use of a voting trust by CN **should not be allowed** for this merger. Even the *DOJ in a letter to the STB on May 14th, 2021 stated the following.....* "The Department's concerns regarding the use of a voting trust in the proposed CP transaction apply with greater force to CN's proposed acquisition of KCS because it raises additional potential competitive concerns. As the Department explained in its prior submission, even two railroads that are "end to end"—i.e., that do not compete to offer parallel single-line service between the same origin and destination pairs—may still compete with one another in important ways. See Exhibit A at 8-10. CN insists that these competitive concerns are irrelevant to the analysis of the voting trust because the trust is structured so as to prevent the acquiring firm from exercising any control during the pendency of the Board's review. This argument misses the point: the unity in ownership will diminish the parties' incentives to continue to engage in such competition even if the trust successfully prevents the acquiring firm from exercising any actual control.

Even though the Board was not persuaded that these incentive concerns should preclude the use of a trust in a CP-KCS merger, a CN-KCS transaction poses additional dangers to competition stemming from the potential elimination of direct, "parallel" competition on routes served by both railroads, for example between Baton Rouge and New Orleans. In addition, even parallel lines that do not presently serve the same origin-destination pairs may be used to compete to attract "build outs" from a shipper served by one railroad to the network of the other, for example on north-south routes through much of Mississippi. These threats to competition would be present immediately after the CN voting trust is consummated. CN managers would have diminished incentives to compete aggressively against KCS in areas served by both railroads because winning business away from KCS would now hurt CN's shareholders, and vice versa. These specific competitive concerns presented by CN's proposed

transaction magnify the general risks associated with voting trusts described in the Department's prior filing. Given the larger number of competitive concerns presented by CN's proposed acquisition, the Department respectfully submits that CN's use of a voting trust would be even more problematic than the use of a voting trust by CP. Also allowing CN to utilize a voting trust would thus appear inconsistent with the Board's view that trusts should "not be used routinely," and only be available on "rare occasions when their use would be beneficial."¹ In order to preserve the Board's ability to protect competition and to thoroughly review the issues presented by a CN acquisition, the Board should not permit CN to enter into a voting trust."

For all of the reasons above and many more it's our hope that the STB will recognize these major implications and the ultimate DECLINE of a competitive landscape in Class I railroads and **deny** the merger of CN and KCS.

Thanks for your attention to this urgent matter.

Sincerely,

Matt Friedrich
President/CEO
U.S. Salt
9661 Newton Ave S
Bloomington, MN 55431

CC: All Parties of Record