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

**CANADIAN PACIFIC'S REPLY TO CN AND KCS
JOINT MOTION FOR APPROVAL OF VOTING TRUST**

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KANSAS CITY SOUTHERN, ET AL.

**CANADIAN PACIFIC’S REPLY TO CANADIAN NATIONAL’S
MOTION FOR APPROVAL OF VOTING TRUST**

Canadian Pacific Railway Limited and its U.S. rail carrier subsidiaries¹ submit this response to the Joint Motion of Canadian National Railway (“CN”) and Kansas City Southern (“KCS”) for Approval of Voting Trust Agreement (CN-18/KCS-1).

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Board should reject CN’s proposed use of a voting trust to acquire KCS. Use of a voting trust to complete a CN/KCS acquisition would not be consistent with the public interest. Beyond CN’s failure to meet the applicable legal standard (which is by itself enough to end the inquiry), approval of CN’s proposed voting trust would be particularly unwarranted in this unique case, which is both the first-ever test of the Board’s 2001 merger rules and a situation where CP will be presenting the Board with a concrete alternative that would offer the public all of the same benefits without any of the competitive and other public interest harms.

As depicted in Table 1 below, the Board faces a choice between a world where CN cannot close into a voting trust and the Board has complete flexibility to protect the public interest, and an inferior world in which CN is able to use a trust to immediately acquire KCS,

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”).

causing public interest harms that would be outside the Board’s ability to address or remedy in a CN/KCS control proceeding.

TABLE 1

<u>WITH NO TRUST</u>	<u>WITH TRUST</u>
CP/KCS alternative stays alive as option for KCS shareholders and Board.	CP/KCS alternative will disappear for foreseeable future and perhaps forever
Opportunity to reap benefits of CP/KCS transaction if approved by the Board	Permanent elimination of once-in-lifetime opportunity for CP/KCS to invest in new North-South rail corridor.
KCS shareholders able to decide whether regulatory risks of CN proposal offset greater cash consideration	CN option is only rational choice for KCS shareholders because of greater cash consideration.
Board has ability to consider which of CP/KCS and CN/KCS transactions are in public interest.	CN option is only choice for Board other than uncertain and long-delayed divestiture out of Trust.
CN continues to have low debt-to-EBTDA ratios, with no near term financial pressures on investment levels, operating expenses, or rates.	Immediate adverse impacts from CN’s \$19 billion of new debt, with especially worrisome consequences in an economic downturn
CN and KCS continue to compete against one another everywhere.	Immediate softening of CN-vs.-KCS competition, including for shippers on Baton Rouge-New Orleans line to be divested.
No pressure for downstream consolidation unless/until CN/KCS approved.	Immediate pressure for downstream consolidation.

The Board has already determined that the “broad” public interest standard set forth in 49 C.F.R. § 1180.4(b)(4)(iv) governs here, and that the use of voting trusts should be available only for those “*rare occasions* when their use would be beneficial.” Decision No. 3 at 6-7 (emphasis added). Here, the use of a voting trust would not have any public interest benefits, but would entail many significant public interest costs. The only conclusion supported by the record in this case would be a finding of substantial net public interest *harms* flowing from CN’s proposed use of a trust. There are no *public benefits*, let alone public benefits such as might rise to the level of making this the “rare” case where use of a trust under the 2001 rules is justified.

1. The only supposed “benefits” that CN points to *in connection with the voting trust* are not public benefits at all. CN seeks to invoke the private interests of KCS’s shareholders and prejudice the highly uncertain outcome of the Board’s ultimate assessment of the public interest consequences of the underlying CN/KCS control transaction. Neither supports a finding that CN’s use of a voting trust would be in the public interest.

CN and its supporters urge approval of a voting trust so as to allow KCS to choose the bid it judges to be best *for its shareholders*. This “shareholder-first” argument would elevate private benefits to shareholders over the public interest. It would allow the acquirer with the most cash or Wall Street backing to make offers that shareholders cannot refuse, thereby pre-determining what is best for the public interest. Disallowing a voting trust is in fact the best way for the Board to allow KCS and its shareholders to participate in a fair determination of what path forward for KCS is most consistent with the public interest, insofar as it would allow them to consider which proposed acquisition was most likely to be found so by the Board after a full and fair regulatory review.

As for CN’s assertions regarding the public benefits of a CN/KCS combination, those benefits still need to be proven and considered against the public interest costs of the proposed transaction, which are likely great. In fact, all of CN’s benefits likely will have to be rejected under the 2001 merger rules, which state that, “when evaluating the public interest, the Board will consider whether the benefits claimed by applicants could be realized by means other than the proposed consolidation.” 49 C.F.R. § 1180.1(c). Here, of course, the concrete potential of a CP/KCS transaction is precisely such an alternative.

2. Lacking in public benefits, CN’s proposed voting trust should be denied without the need to analyze its costs. But such an analysis would reveal many serious costs.

The CN voting trust proposal would have two categories of public harms: it would have immediate and irreparable adverse impacts on shippers and other stakeholders during the trust period, regardless of the outcome of the Board's decision whether to authorize (and how to condition) CN control of KCS, and, separately, it would place significant constraints on the Board's evaluation of CN's control application under the 2001 merger rules.

3. Many of the public harms from CN's voting trust will begin immediately upon the formation of the trust, without the Board having any opportunity to review them on a full evidentiary record.

a) Allowing CN to use a voting trust to acquire KCS would immediately cause CN to incur more than \$19 billion in new debt, equivalent to all of CN's capital spending on its entire rail system since 2012. The extraordinary premium price CN is offering to try to disrupt CP's proposed combination with KCS is money that CN would pay – and indebtedness it would incur – up-front if allowed to use a voting trust. This unprecedented 45 percent premium is the mechanism by which CN coerces KCS and its shareholders extinguish the new competition that a CP/KCS combination would bring, but it also immediately requires CN to find ways to recoup those extra costs in pursuit of its self-imposed return-on-invested-capital (ROIC) targets. CN's optimistic forecasts about how quickly it will be able to pay down that debt underscore its own understanding of the importance of reducing that debt burden and the substantial risks to the U.S. rail network and shipper community if CN underperforms and needs to find other ways to reduce its leverage and achieve its targeted returns. If CN can use a voting trust, the Board would be denied any meaningful opportunity to assess the public interest costs associated with these financial terms or the risks they pose for a very bad outcome if CN were required to divest its interest in KCS. *See* Section IV.A. below.

b) Allowing CN to use a voting trust to acquire KCS would immediately and irreparably harm the public interest by undermining competition. CN and KCS are horizontal competitors for large volumes of rail traffic, as acknowledged (in small part) by CN's plan to divest KCS's New Orleans-Baton Rouge line. The full scope of the transaction's competitive harms would need to be addressed in detail in the underlying merger proceeding, but the existence of such harm is undeniable. The loss of competition will occur immediately if CN is allowed to acquire KCS and hold its shares in trust. CN's incentives to compete against KCS would be reduced dramatically, as would KCS's incentives to compete against CN, as soon as CN acquires 100 percent ownership of KCS stock, even if the voting trust mechanism works perfectly to keep KCS's management fully independent. Nor will CN's proposed divestiture overcome these harms, as that "remedy" would not kick in until 2023 or later when CN's control transaction might be consummated. *See* Section IV.B. below.

c) Allowing CN to use a voting trust to acquire KCS would immediately create pressure for further rail consolidation. The Board's approval of a voting trust here would set a precedent for the *routine use* of voting trusts in subsequent rail merger proposals upon the demand of target shareholders. An even more immediate concern is that CN's ability to acquire KCS shares – and hold them in trust until the end of 2024 per CN's plan – would leave CP and other industry participants with no choice but to start evaluating a possible future in which CN actually controlled KCS, and CP in particular would have to evaluate its future strategic options against that backdrop. The wheels of further consolidation would start to spin, with unpredictable consequences. *See* Section IV.C. below.

4. CN's proposed use of a voting trust would entail an equally troublesome set of adverse public interest consequences for the Board's own merger review process. Once CN is

allowed to acquire KCS's shares and place KCS into trust, the status quo will be altered irrevocably, potentially preventing the Board from ensuring that the public interest can be served. These constraints on the Board's authority would arise in two ways:

a) First, a voting trust would inherently encumber the Board's ability to decide whether CN should be allowed to control KCS free of any concerns about the consequences of unwinding actions that have already been taken. If the Board were to determine that CN's control of KCS must be disallowed or conditioned so heavily that CN declined to exercise control, CN would have to divest KCS. That divestiture would occur sometime after 2022. Indeed, CN claims the ability to take up to two years – until the end of 2024 – to return KCS to non-CN ownership. There can be no certainty about future economic or other conditions bearing on the success of a divestiture process, which is an inherent risk magnified many-fold in this case by the \$19 billion of new debt CN would assume to carry out its KCS acquisition.

In addition, CN will undoubtedly assert the right to carve KCS's rail network up into pieces if doing so suits its financial interests. CN has already asserted the Board's lack of authority over voting trusts in general.² Against this backdrop, CN seems likely to take the position that the Board would have no say on how it disposes of KCS's Mexican rail subsidiary, no matter how important that part of KCS's system may be to KCS's competitive role in the U.S. rail network. Once CN owns KCS's Mexican railroad affiliate, the Board would have no authority to require that CN dispose of that interest even if CN were unable to control KCS's U.S. rail carrier subsidiaries.

² *Major Rail Consolidation Procedures*, Ex Parte No. 582 (Sub-No. 1), CN Comments (Nov. 17, 2000) at 20-21 (arguing that proposed use of voting trusts is "outside the Board's public interest jurisdiction," which is limited to "the merits of control transactions at the conclusion of the merger proceeding") (excerpts are Exhibit 16 hereto).

The risk of a divestiture mess or a dismemberment of KCS at CN's direction would inevitably cast a shadow on the Board's consideration whether to allow a CN/KCS transaction to proceed, or to condition it heavily. The Board's first-ever application of the new merger rules should not be so encumbered. *See* Section V.B. below.

b) Second, allowing CN to use a voting trust likely would eliminate the procompetitive CP/KCS alternative, and in the process limit the Board's ability to evaluate CN's proposed acquisition of KCS in light of that concrete alternative. Approval of a voting trust would thus set in motion a permanent alteration in the trajectory of rail capacity and competition in America's Heartland, replacing the potential for two strong routes between the Gulf and Canada – with hundreds of millions of dollars of new investments in capacity on the CP/KCS route – with a CN system controlling both the CN “premium service” route via Jackson and a marginalized former-KCS “redundancy line” between Kansas City and Shreveport. *See* Section IV.C. below.

II. THE BOARD HAS CORRECTLY DETERMINED THAT THE SCOPE OF ITS PUBLIC INTEREST REVIEW OF VOTING TRUSTS IS BROAD AND THAT VOTING TRUSTS ARE THE “RARE” EXCEPTION RATHER THAN THE “ROUTINE”

The Board's Decision No. 3 properly lays out the legal standard and CN's burden to justify its proposed voting trust. CN's proposed use of a trust requires affirmative Board approval. The presumption is that voting trusts will not be allowed as a matter of “routine.” Instead, approval will be reserved for the “rare case” where applicants can demonstrate net public benefits from their proposed use of a trust. The public interest considerations that the Board may consider in assessing the potential public costs associated with the use of a trust are “broad,” and the Board's discretion in considering those factors – in the exercise of its plenary authority over rail consolidations – is extensive.

A. The Regulatory Regime Established by the Board's 2001 Rules Makes Use of Voting Trusts the "Rare" Exception

The historical use of voting trusts arose when the ICC, and later the Board, had a policy affirmatively favoring railroad consolidation. But that policy has now been reversed. As the Board explained when it proposed its new merger rules in 2000, the "centerpiece of our proposed rules is a new merger policy statement."³ The previous policy statement, "which ... guided the review by us and by the [ICC] of all rail merger proposals for more than 20 years, [was] decidedly pro-merger." That bias was "predicated upon the notion that there was a pressing need for the nation's rail carriers to reorganize their operations on a more economically efficient and sustainable basis." *Id.* at 9-10. The new policy statement set forth in its 2001 rules marked a "paradigm shift in our review of major mergers." *Id.* at 10.⁴

With the Board's standards for reviewing mergers much more stringent and with greatly increased scope for conditions, it was clear that the Board no longer could as readily assume that proposed transactions would be completed as planned. This sensibly led the Board to conclude that it would be a mistake to allow voting trusts – even ones that effectively insulated the target from premature control – as a matter of routine. Instead, the Board took a "much more cautious approach to future voting trusts in order to preserve our ability to carry out our statutory

³ *Major Rail Consolidation Procedures*, Ex Parte No. 582 (Sub-No. 1), Notice of Proposed Rulemaking (STB served Oct. 3, 2000) at 9.

⁴ Specifically, the Board's policy statement replaced the previous statement that the Board "encourages private industry initiative that leads to the rationalization of the nation's rail facilities and reduction of its excess capacity," 49 C.F.R. § 1180.1(a) (2000), with the following statement: "The Board welcomes private-sector initiatives that *enhance the capabilities and the competitiveness of this transportation infrastructure*. Although mergers of Class I railroads may advance our nation's economic growth and competitiveness through the provision of more efficient and responsive transportation, the Board *does not favor consolidations that reduce the transportation alternatives available to shippers* unless there are substantial and demonstrable public benefits to the transaction that cannot otherwise be achieved." 49 C.F.R. § 1180.1(a) (2001) (emphasis added).

responsibilities.”⁵ This is why the Board established a new obligation to obtain approval for the use of a voting trust and made clear that grants of such approval would be the “rare” exception, not the rule, for transactions governed by the new rules. Henceforth, the use of a voting trust would be a “privilege not a right.”⁶

B. The Board Correctly Found that It Has Broad Discretion to Determine Whether CN’s Proposed Trust Is “Consistent with the Public Interest”

Having determined that the CN/KCS transaction is subject to the 2001 rules, the Board correctly determined that CN would need to demonstrate that its use of a voting trust would be one of those “rare” cases where a voting trust is in the public interest. Though CN aggressively sought to constrain the scope of the Board’s authority to consider public interest considerations in this case,⁷ Decision No. 3 properly put to rest debate over the appropriate breadth of the Board’s public interest review.

In that decision, the Board explained that the 2001 rules “did not codify a previous approach; rather, the Board stated that it was adopting a ‘much more cautious approach to future voting trusts in order to preserve our ability to carry out our statutory responsibilities.’” Decision No. 3 at 6 (citing *Major Rail Consolidation Procedures*, 5 S.T.B. at 567). The Board further indicated that it “expects to take a more cautious approach to a voting trust *here*, and its

⁵ *Major Rail Consolidation Procedures*, 5 S.T.B. 539, 567 (2001).

⁶ *Id.*, 5 S.T.B. 539, 568 (2001); Decision No. 3 at 7.

⁷ As the Board will recall, CN initially argued that it would “not [be] consistent with the public interest or the statutory scheme for the Board to change its settled precedent on voting trusts.” *See* CN Motion for Approval of Voting Trust Agreement (CN-6) (Apr. 26, 2021) at 3-4. Previously, when the new merger rules were under consideration in 2000, CN took the position that the Board lacked authority over voting trusts altogether. *See Major Rail Consolidation Procedures*, 5 S.T.B. at 567 (“CN questions our [Board] authority to rule on, or prevent the use of, a voting trust, but that power is inherent in our statutory authority over rail mergers”), *see also Major Rail Consolidation Procedures*, Ex Parte No. 582 (Sub-No. 1), CN Comments (Nov. 17, 2000) (Exh. 16) at 21-22 (arguing that proposed use of voting trusts is “outside the Board’s public interest jurisdiction,” and that Board is limited to “the merits of control transactions at the conclusion of the merger proceeding”).

consideration of whether the proposed use of a voting trust in a potential CN-KCS transaction is ‘consistent with the public interest’ would be informed by argument on both the potential benefits and costs of such use.” *Id.* at 7 (emphasis added).

The Board was correct in reaching this conclusion, which flows from the statutory mandate to consider the full measure of the public’s interest that may be affected by railroad consolidation;⁸ the extensive history of Board and judicial precedent confirming the breadth of that mandate;⁹ and the Board’s plenary authority to administer its authority over consolidations to ensure that the public interest is safeguarded.¹⁰ The Board’s new voting trust regulation manifestly invoked all of this precedent when it established “consistency with the public interest” as the governing test.¹¹

⁸ See 49 U.S.C § 11324(c).

⁹ See, e.g., *Penn-Cent. Merger & N & W Inclusion Cases*, 389 U.S. 486, 498-99 (1968) (citing *Illinois Cent. R. Co. v. Norfolk & W.R. Co.*, 385 U.S. 57, 69 (1966)) (“We do not inquire whether the merger satisfies our own conception of the public interest. Determination of the factors relevant to the public interest is entrusted by the law primarily to the Commission, subject to the standards of the governing statute.”); *W. Coal Traffic League v. STB*, 169 F.3d 775, 778 (D.C. Cir. 1999) (“Board’s balancing of the various competing interests under the public interest test is entitled to considerable deference” because “determining whether to approve a carrier consolidation is a complex task requiring considerable knowledge of the transportation industry, and ... the wisdom and experience of the expert agency, not of the courts, must determine whether the proposed consolidation is consistent with the public interest.”); *New York Central Securities Corp. v. United States*, 287 U.S. 12, 25-26 (1932) (“[T]he term ‘public interest’” as used in the Interstate Commerce Act’s consolidation provisions (originally in the 1920 Act) “is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the authority conferred.”).

¹⁰ *Major Rail Consolidation Procs.*, 5 S.T.B. at 567; Decision No. 3 at 6. One manifestation of this authority was the Board’s decision to impose a 15-month moratorium on major merger applications pending the updating of its rules, which was upheld by the court of appeals in *Western Coal Traffic League v. STB*, 216 F.3d 1168, 1177 (D.C. Cir. 2000) (deferring to Board’s “‘informed judgment’ ... regarding the need for the moratorium in order to develop new standards for determining the public interest in merger application proceedings” given the “Board’s ‘special cognizance’ over the railroad industry”).

¹¹ The Board’s use of the phrase “consistent with the public interest” in its new voting trust approval regulation was not random. It naturally called upon the meaning of that phrase as used throughout the Board’s statutory and regulatory framework. See, e.g., *Loving v. IRS*, 742 F.3d 1013, 1017 (D.C. Cir.

III. CN CANNOT SATISFY ITS BURDEN TO DEMONSTRATE PUBLIC BENEFITS FROM ITS PROPOSED USE OF A VOTING TRUST

CN's motion does not establish that CN's proposed use of a voting trust will have any public benefits, much less benefits of a magnitude that would support a "rare" deviation from the principle that voting trusts shall not be used routinely.

A. The Desire to Maximize Returns to KCS's Shareholders Is Not a Public Benefit

The central thrust of CN's justification for a voting trust here is that one is necessary to "respect[] KCS's choice of merger partner." CN-18/KCS-1 at 5. There is no secret what this means: KCS wants to be able to accept the bid of the company offering the most money – CN's – and it wants to use a voting trust to neutralize, from the perspective of KCS and its shareholders, all potential public interest downsides (*i.e.*, regulatory risk) associated with that choice.¹²

Both companies' CEOs are quite up front about this. CN's CEO J.J. Ruest contends that if the voting trust is not approved, "KCS would be deprived of its choice of CN as the winning bidder." CN-18/KCS-1, Ruest V.S. at 14. KCS's CEO Pat Ottensmeyer confirms that KCS's

2014) ("[A]n agency's use of a term can be valuable information not only about ordinary usage but also about any specialized meaning that people in the field attach to that term. That is particularly true when, as here, the term is one that the agency uses in a number of contexts."); *Morris v. Nielsen*, 374 F. Supp. 3d 239, 249 (E.D.N.Y. 2019) ("[W]hen a regulation uses a phrase or word with an established legal meaning – a legal 'term of art' – courts should assume the regulation incorporates that meaning absent evidence to the contrary.").

¹² The private interest of KCS's shareholders is also the only rationale offered for approving a voting trust by almost all of CN's supporters. For example, CN's June 17 compilation (CN-21/KCS-4) claimed that 90 letters "support CN's and KCS's request that the Board approve their proposed voting trust agreement." 87 of those letters rely on some version of the notion that KCS shareholders should decide, expressed in varying boilerplate: for 80 of them, a trust "will allow *Kansas City Southern's* shareholders to make a fair and informed decision on combining with Canadian National;" for another five, a "voting trust will allow *Kansas City Southern* shareholders to make a fully informed decision when placing their votes to approve the transaction, and upon approval, to receive the full value of their shares;" and for two more a voting trust will create a "level playing field," which simply means letting KCS shareholders ignore public interest considerations when selecting the highest bid.

goal here is to ensure that KCS be allowed to sell itself to the highest bidder, with the trust enabling KCS to consider CN's higher bid "on the same ground as ... CP." CN-18/KCS-1, Ottensmeyer V.S at 13. Denial of a voting trust, Mr. Ottensmeyer contends, would "effectively override the KCS board of directors' judgment about its preferred merger partner." *Id.* at 6. In other words, KCS's board of directors – in the exercise of its fiduciary responsibility to KCS's shareholders¹³ – wants the most money it can get, and it wants it up front without regulatory uncertainty.

1. The Desire of a Company's Shareholders to Want a Higher Return with No Regulatory Risk Is Both Routine and a Purely Private Interest

There is nothing wrong with wanting more money and desiring to eliminate regulatory uncertainty. The problem for CN is that these entirely private considerations do not bear on the public interest.

First, the Board's determination that the use of voting trusts shall not be allowed as a matter of "routine" necessarily means that the desire to provide shareholders with certainty regarding their near-term financial consideration cannot be a valid justification for the use of a voting trust. That interest would be present *in every case*, because shareholders *always* prefer to receive more money, sooner, and with less regulatory uncertainty. CN's own advocacy makes this very clear: "*No seller* wants to endure uncertainty about whether the sale will close." CN-18/KCS-1 at 41-42 (emphasis added).

Second, even if the interests of the shareholders of this railroad (KCS) were deemed uniquely worthy of protection,¹⁴ theirs would still be at most private rather than public

¹³ See *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986) and its progeny.

¹⁴ The Board may wish to consider that, prior to the March 21 announcement by CP and KCS of their agreement to combine, 89 percent of KCS's shares were held by institutional investors. In the

interests.¹⁵ Board precedent is clear that the financial interests of the merging parties (and their owners) are private interests entitled to no weight in the public interest calculus.¹⁶ This principle flows from the public interest test itself: “Obviously, not every merger or consolidation that may be agreed upon by private interests can pass the statutory tests.” *Penn-Central Merger & N & W Inclusion Cases*, 389 U.S. 486, 500 (1968). Indeed, Board precedent emphasizes that the preference that shareholders or bondholders may have for a particular outcome often must give way to the public interest. For example, when the ICC ordered the inclusion of the New Haven Railroad in the Penn Central merger, the contrary desires of New Haven’s bondholders were merely private interests that could not affect the public interest determination. As the Supreme Court explained: “While the rights of the bondholders are entitled to respect, ... [t]hey certainly do not dictate that rail operations vital to the Nation be jettisoned despite the availability of a feasible alternative. The public interest is not merely a pawn to be sacrificed for the strategic purposes or protection of a class of security holders whose interests may or may not be served by the destructive move.” *Id.*, at 510-11.¹⁷

period since, the number of trades in KCS’s stock has exceeded the total number of shares outstanding. CP estimates that merger arbitrage funds currently own almost a third of all KCS stock. Velani V.S. at 26.

¹⁵ For this reason, the Verified Statement of Joshua Wright is simply not relevant to the Board’s public interest analysis. Mr. Wright focuses only on the *private* interest concerns of compensating KCS shareholders, arguing that the Board’s differential consideration of the CN-KCS voting trust would “threaten the *ability of KCS shareholders* to obtain the benefits of a viable competing bid.” CN-18/KCS-1, Wright V.S. at 6 (emphasis added). His theory that “customers and the public” will benefit from a CN-KCS voting trust “[b]ecause a voting trust ensures that the acquired company’s shareholders obtain full compensation up front . . . allow[ing] the deal to close without risk to the seller . . . [and] the buyer to avoid paying the risk of premium,” *id.* at 2, mischaracterizes the proper considerations of a public interest analysis, and thus carries no weight.

¹⁶ See, e.g., *Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. – Control – Missouri-Kansas-Texas R.R.*, Finance Docket No. 30800, 1988 WL 226818 at *5 (decided May 13, 1988) (“financial benefits for the consolidating carriers that are purely transfers from competing carriers” are “private benefits have not been considered in our analysis of the public benefits of the consolidation”).

¹⁷ Similarly, when the owner of 92 percent of the shares of Milwaukee Road sought ICC approval of its preferred future for that railroad, the ICC rejected the plan. This shareholder’s desire was seen as a

Third, the interests of shareholders are in many cases diametrically opposed to the interests of the public at large. That is surely the case where – as here – the highest bidder for a business is the one who would gain from shutting down competition. It is well accepted in economics that “the party offering the highest compensation to the target’s shareholders might be doing so for anticompetitive reasons.”¹⁸ The potential anticompetitive harms with a CN/KCS transaction – both relative to the status quo and also to a future with the intensified competition that CP/KCS would bring – are substantial.¹⁹ Indeed, those very harms likely explain why CN has offered such a massive premium in order to convince KCS’s shareholders to accept CN’s offer – and keep KCS out of CP’s hands. *See* Verified Statement of Nadeem Velani (“Velani V.S.”) (Exhibit 2 hereto) at 26-29;²⁰ *see also* Verified Statement of Keith Creel (Exhibit 1 hereto) (“Creel V.S.”) at 11.

The Board does not need to prejudge the magnitude of the competitive harms from a CN/KCS combination to recognize that KCS’s shareholders’ interest in receiving CN’s billions may not be aligned – and may indeed be contrary to – the public’s interest in competition and a stronger U.S. rail industry.

“gamble on MILW’s long term stand alone viability” that was “not worth the risk and not in the public interest ... especially considering that there are before us proposals for the integration of MILW into a larger system.” *Chicago, Milwaukee, St. Paul & Pacific R.R. — Reorganization — Acquisition by Grand Trunk Corp.*, 2 I.C.C.2d 161, 260 (1984).

¹⁸ Verified Statement of W. Robert Majure (“Majure V.S.”) (Exhibit 4 hereto) at 13-14 n.19; *see also* FTC & DOJ Horizontal Merger Guidelines (2010) at 4, *available at* <https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf> (“a purchase price in excess of the acquired firm’s stand-alone market value may indicate that the acquiring firm is paying a premium because it expects to be able to reduce competition or to achieve efficiencies”).

¹⁹ *See generally* Majure V.S.; Section IV.B. below.

²⁰ CP’s CFO Nadeem Velani shows that the efficiencies CN expects from its acquisition of KCS leave a substantial rate-of-return gap that is most plausibly explained by CN’s expectation that competition will be reduced. *Id.*

2. *The Claimed Need to “Level the Playing Field” with CP/KCS Does Not Support the Use of a Voting Trust*

Perhaps recognizing that KCS’s desire for more money is not a real public interest benefit, CN and KCS argue that CN’s use of a voting trust is justified because the Board decided *that CP is allowed to use one*. They assert that CN’s proposed voting trust is “identical” to the voting trust already approved for use by CP in its proposed acquisition of KCS, that approving CN’s trust is the only way to “level the playing field,”²¹ and that any different outcome here would be “fundamentally unfair.”²² These pleas for “fairness” and a “level playing field” are not valid public interest justifications, nor do they make sense under the Board’s regulatory scheme, which treats major merger proposals like CN’s under a different set of rules precisely because they pose more inherent dangers to the public interest.

a) *CN’s Argument Is a Rehash of Its Shareholder-Interest Position*

First, CN’s position is really just a repeat of its argument that the Board must respect the decision of KCS’s board of directors to demand a voting trust so that KCS’s shareholders can reap the financial rewards of CN’s higher bid. The private and routine interest of shareholders in maximizing their own consideration does not become a public interest just because they are called upon to compare the highest bid with a lower one that entails fewer regulatory risks.

No public interest benefit is obtained by allowing KCS’s board of directors and shareholders to ignore the public interest harms from a CN/KCS transaction, yet this is exactly what CN and KS’s plea boils down to. In a moment of candor, Mr. Ottensmeyer acknowledges that the real interest at stake here is “determining the market value of KCS” without the “unnecessary intervention and distortion” associated with the burden of not being able to use a

²¹ CN-18/KCS-1 at 49, Ruest V.S at 2, 14, Ottensmeyer V.S. at 3.

²² CN-18/KCS-1 at 41, 49, Ottensmeyer V.S. at 2, 6.

voting trust to neutralize the CN/KCS regulatory risks. CN-18/KCS-1, Ottensmeyer V.S. at 2. “Only with a voting trust structure could KCS’s Board determine the market value of the company in an acquisition transaction.” *Id.* at 3.

b) CN Is Not Competing with a Non-Railroad Acquirer

Second, the precedents CN cites supporting the use of voting trusts in order to allow railroads to compete on a level playing field *with non-railroad acquirers* do not support the use of a trust in these circumstances.²³ CN sidesteps the important fact that its proposal to acquire KCS was *not put forward in competition with a non-rail bid for KCS*. CN’s offer came only after CP and KCS already had a binding agreement to combine. Velani V.S. at 28. When private equity interest in acquiring KCS was announced in August 2020, CP took notice and pursued its own proposal to acquire KCS, *but CN did not*. *Id.* at 28 n.27. The size of CP’s ultimate (and successful) bid was driven by the need to provide more value to KCS shareholders than CP understood to be offered by private equity bidders. *Id.* at 5-6. But CN was nowhere to be seen.

CP’s effort bore fruit with CP and KCS jointly announcing their binding agreement to combine in March. Only then did CN – seeing its principal rival threaten to create a more competitive landscape for north-south rail traffic²⁴ – initiate its own effort to craft a “superior proposal.” *Id.* It is understandable that KCS now wants CN to be able to use a voting trust to

²³ CN-18/KCS-1 at 12, 40.

²⁴ The threat to CN of more intense competition from CPKC would have been immediately apparent to CN’s executives even if CP and KCS’s announcement of the transaction had not pointed out so explicitly the stronger competition CPKC planned to bring to the larger Class I like CN. *E.g.*, Finance Docket No. 36500, Notice of Intent (CP-1/KCS-1) (Mar. 22, 2021) at 4 (“competition will be strongly enhanced, against ... the larger Class I railroads whose lines surround those of Applicants”); Canadian Pacific and Kansas City Southern Agree to Combine Joint Conference Call Transcript (March 21, 2021) at 9 (KCS CEO Pat Ottensmeyer: “truly transformative for North America and provide significant benefit that we believe will increase and enhance competition”).

neutralize the serious regulatory risks associated with a CN bid, but comparing CN's bid to a private equity bid could not have entered into KCS's calculus, since it already was *contractually bound to combine with CP*, not with private equity. Even CN's CEO acknowledges this. As he explained to investors: "We think ultimately KCS will be sold. It's be [sic] CN or CP."²⁵

Indeed, the risk of KCS being sold to a private equity investor is maximized – not minimized – by CN's proposal to use a trust. Were a voting trust allowed, when CN is required to divest KCS from trust, CP likely will be out of the picture and a non-rail acquirer likely would be the most plausible acquirer of KCS.²⁶

c) The CN and CP Voting Trusts Are Not Identical

Third, CN's premise that its voting trust is "identical" to the one the Board approved for CP/KCS is a misrepresentation. While the contract (and trustee) may be the same, this does not mean that the two trusts are the same – or even in the same ballpark – from the standpoint of the Board's public interest review. CN's proposed voting trust warrants different treatment because it is governed by a different legal framework, and presents vastly different public interest implications as a matter of fact.

CN's arguments about a "level playing field" are in fact a back-door attempt to relitigate the Board's determination in Decision No. 3 that the CN/KCS transaction should be evaluated under the 2001 merger rules. The Board's approval of the CP/KCS voting trust – and the different analysis and conclusion it should apply to the CN proposal – are the function of the Board's pre-existing regulatory framework, its previous decisions in this docket and Finance

²⁵ CN Virtual Fireside Chat Hosted by TD Securities Transcript (May 5, 2021) (Exh. 8) at 15 (remarks of J.J. Ruest).

²⁶ See Creel V.S. at 11-12; CN-18/KCS-1, Houle V.S. at 15 (anticipating future interest by "private equity").

Docket No. 36500,²⁷ and CN's own election not to dispute the application of the 2001 rules to its proposed transaction.

In Decision No. 3 the Board relied not only on CN's assent to the application of the 2001 merger rules,²⁸ but affirmatively found (at 4) that the "proposed transaction poses issues that the current merger rules were designed to address." Once the Board made that determination, it followed ineluctably that CN's voting trust proposal would also bear a heightened burden.²⁹

Far from there being any inequality or unfairness, applying a heightened standard to the CN voting trust merely reflects the different posture of the CN and CP trust proposals, both legally and factually. Indeed, KCS went into this with its eyes wide open to the different level of risk posed by the CN voting trust proposal. It was obvious from the outset that the 2001 rules would apply to the CN voting trust.³⁰ In its negotiations with CN, KCS sought twice to negotiate a higher "reverse termination fee" in the event CN failed to obtain voting trust approval, but CN

²⁷ See Finance Docket No. 36500, Decision No. 4 (applying KCS waiver and pre-2001 rules to CP/KCS); Decision No. 5 (approving CP/KCS voting trust); Finance Docket No. 36514, Decision No. 3 (rejecting KCS waiver, applying 2001 rules to CN/KCS).

²⁸ CN's response to comments opposing the application of the KCS waiver in this case was to say that it did "not oppose the requests by multiple parties on April 30 to confirm that CN's application for its proposed combination with KCS would be governed by the Board's current rules for major mergers." CN-11.

²⁹ Under the 2001 rules, the Board's review of any voting trust proposal would reflect a "much more cautious approach" (*id.* at 6), whereas "[t]he rules governing the use of voting trusts in all other control transactions that come before us [including the CP/KCS transaction] would *remain unchanged*." *Major Rail Consolidation Procedures*, 5 S.T.B. at 567 (emphasis added).

³⁰ From the moment CN announced its bid for KCS – before the first negotiation with KCS had occurred – CN made clear that the 2001 merger rules should apply. See CN Notice of Intent (CN-1) at 3-4.

rebuffed those attempts.³¹ In this context, pleas of “fundamental unfairness” should fall on deaf ears.³²

3. *The Best Way to Respect KCS’s Choice of Merger Partner Is to Let KCS’s Board and Shareholders Exercise their Judgment as to the Regulatory Risks Posed by the CN Offer*

One of the ways in which CN seeks to invoke the interests of KCS’s shareholders to support approval of a voting trust is to accuse CP of trying to “weaponize” Board processes in order to “coerce” an inferior and “hostile” and unwanted CP transaction on KCS and its shareholders.³³ That characterization is false. Were CN’s voting trust disapproved, KCS would not be coerced into backing away from the CN/KCS transaction.

First, though KCS’s agreement with CN is conditioned on the use of a voting trust, it gives CN nine months to seek the right to use a trust,³⁴ so KCS would not automatically or immediately be freed from its agreement with CN. Instead, CN and KCS would be free to renegotiate their merger agreement to remove the obligation to use a voting trust and then proceed to seek Board regulatory authority for CN’s acquisition of control. When CN’s and KCS’s CEOs were asked by investors what will happen if their voting trust is denied, this is

³¹ CN F-4 Registration Statement (June 22, 2021) at 49, 51 (excerpts are Exhibit 14 hereto). KCS initially sought to increase the fee to \$2 billion, and later sought an additional \$100 million for every 30 days that went by without voting trust approval). CN instead increased the consideration it was offering in other ways.

³² KCS’s CEO doubles down on this position. Notwithstanding that KCS was well aware of the fact that “the CN/KCS control transaction is being processed under the post-2001 merger rules, and thus the proposed trust must meet the standard under those rules,” KCS still believes that “it would be fundamentally unfair for the Board to approve CP’s voting trust, and then to deny CN’s identical voting trust. This would effectively override the KCS board of directors’ judgment about its preferred merger partner.” CN-18/KCS-1, Ottensmeyer V.S. at 6.

³³ CN-18/KCS-1 at 5, 48.

³⁴ CN-18/KCS-1, Exh. 8, CN/KCS Agreement and Plan of Merger § 7.1(b)(1) (allowing CN nine months to clear closing conditions, including requirement of voting trust approval); *see also* Creel V.S. (Exh. 1) at 12 & Creel Fig. 3.

exactly the answer they gave: they will assess, have further discussions, and decide on a path forward.³⁵

When that reassessment occurs, nobody would hold any gun to KCS's head compelling it to do a deal with CP. KCS may well remain sufficiently beguiled by the extra billions in cash CN is offering and decide to roll the dice on ultimate approval of CN control without a voting trust. The only party seeking to "weaponize" anything is CN, which is trying to claim that its large balance sheet should trump the public interest and compel the Board to approve a trust because KCS's shareholders want to value CN's cash without any deductions for the public interest demerits of CN's proposal. *Creel V.S.* at 11.

Of course, KCS's board (and shareholders) may prefer under these circumstances to enter into an agreement with CP, but doing so would not be under duress. Instead, KCS's altered perception of the relative value of the CP and CN offers would be the result of KCS's new need to assess the regulatory risks of the CN proposal. A KCS choice of CP in that circumstance would confirm that CN's offer was in fact illusory and that a combination with CP was preferable in light of the public interest considerations. That outcome would indeed validate that the public was being served.

Similarly, from CN's perspective, without the "privilege" of using a voting trust, all CN would have to do to preserve a CN/KCS deal is convince KCS's board of directors (and

³⁵ CN 14th Annual Wolfe Research Global Transportation & Industrials Conference Transcript (May 26, 2021) at 6 (J.J. Ruest: "we will reconvene within CN. We'll have a dialogue with KCS, and then we'll decide at that time, what's the appropriate decision at that moment"); 7 (Pat Ottensmeyer: "We would just have to consider the conditions what additional information is behind the STB's decision and make a judgment at that point whether – what the proper – appropriate path forward might be.") (excerpts are Exhibit 11 hereto); *see also* UBS Global Industries and Transportation Virtual Conference Transcript (June 8, 2021) at 13 (J.J. Ruest: "both the board of CN and the board of KCS would consider at that time based on the fact of the time"); *id.* at 12 (Sean Finn: "we'll have a conversation when that happens") (excerpts are Exhibit 13 hereto).

potentially its shareholders) that the CN offer remained superior in financial terms *and also viable as a regulatory matter*. If the public interest concerns posed by CN’s proposed acquisition are as non-existent as CN often claims, CN’s extraordinary price premium might still carry the day. If CN is really saying that a voting trust is indispensable because the regulatory risks associated with its transaction are too big to overcome, that would only reconfirm that CN is aware that public interest harms are what differentiate its bid from CP’s proposal. But this is not a good reason why the Board should let CN use a voting trust – rather, it is a compelling reason *not to allow a trust*.

The bottom line here is that the public interest would be served were KCS’s board of directors to consider the risks of ultimate regulatory approval – and by extension the relevant public interest considerations – when considering the future of that proud company. The right way to test the claimed “superiority” of CN’s proposal is to let KCS’s board of directors and shareholders decide whether they prefer CN’s deal and the regulatory risks and uncertainties that come with it.³⁶ And the way to do this is to disallow a trust, and require the KCS board of directors to assess whether CN is correct in asserting that it can successfully navigate the Board’s 2001 merger rules process.

B. CN Cannot Rely on the Supposed Benefits of a Consummated CN/KCS Transaction to Justify the Use of a Voting Trust

CN’s only remaining argument in favor of its voting trust is rooted in the alleged “public interest benefits of a CN-KCS combination.” CN-18/KCS-1 at 12. CN seeks to bootstrap these claimed public interest benefits into a “public interest” case for a voting trust by asserting that a

³⁶ CN has structured its takeover proposal in a manner that does not allow CN’s own shareholders to vote whether to allow CN to take on the regulatory risks associated with acquiring KCS. Velani V.S. at 24. CN touts this as an “advantage.” CN Analyst Call Transcript at 4 (Apr. 20, 2021) (remarks of CN CEO Jean-Jacques Ruest: “our proposal is not subject to CN shareholders’ approval, removing a condition as compared to the CP transaction”) (excerpts are (Exhibit 6 hereto).

trust is “essential to unlock” those benefits (*id.*) and that all of them “would vanish” were the Board to deny a voting trust. *Id.* at 17. CN’s argument is wrong on at least five levels.

1. *A Voting Trust Is Not Necessary to Allow the Board to Consider the “Benefits” CN Posits*

First, CN’s argument proceeds from the false premise that a CN/KCS transaction would not be possible without the ability to use a voting trust. As shown in the prior section, that is a fiction that CN itself has authored. A decision denying the voting trust will not extinguish CN’s ability to reach agreement with KCS or present a CN/KCS transaction for Board approval.

But if CN is correct that all of the purported “benefits” of a CN/KCS transaction would “vanish” without a voting trust, that can only mean that the public interest case for the transaction is weak. Benefits that “vanish” without a voting trust are not benefits that would withstand a public interest analysis.

2. *Were Applicants’ Belief in the Untested Public Benefits of their Proposed Control Transaction Sufficient, Voting Trusts Would Be Approved in Every Case*

Second, like CN’s arguments about respect for KCS’s decision to accept CN’s offer, this argument would support voting trust approval in every case, thereby failing to demonstrate why this is a “rare” exception to the bias against voting trust approval. Every set of merger applicants would *take the position* – whether correct or not – that their proposed transaction would generate public interest benefits, otherwise they would not have a basis for proceeding to file an application seeking Board authorization for their control transaction, for which public benefits are the *sine qua non*.

3. *Bootstrapping the Use of a Voting Trust on Supposed Control Transaction Benefits Would Require Prejudging those Benefits, which CN Itself Opposes*

Third, the contention that the Board should look ahead to purported benefits from an approved control transaction would put the cart before the horse, prejudging merger benefits that have not yet been proven. The question before the Board is whether the use of a trust has public interest benefits, not whether the *control transaction* – if and only if approved and consummated – might have such benefits.

CN has perhaps been the most vocal advocate of the inappropriateness of prejudging the outcome of the Board’s review of this (or any) control transaction. CN argues that voting trust approval must involve a public interest determination “distinct from the separate question” whether the underlying transaction should ultimately be approved. CN-18/KCS-1 at 35. The voting trust determination, CN contends, must “not prejudice” the facts relating to the public interest effects of the control transaction. *Id.* at 34. And when CN wishes to evade consideration of the competitive consequences of its transaction, it is adamant that to consider such harms at the voting trust stage would be “premature” and that the Board should “in no way prejudice any aspect” of the pertinent public interest facts. *Id.* at 44.

CN cannot have it both ways. Just as considering the full scope of competitive harm associated with CN’s control of KCS would inappropriately prejudice, so too would consideration of CN’s claimed public interest benefits.

4. *The Board Could Not Prejudge the Benefits CN Posits Without Also Prejudging the Likely Net Public Interest Harms from the Control Transaction*

If the Board nonetheless chooses to look ahead at the public interest landscape in CN’s proposed control case, the Board would need to recognize the presence of grave doubts that CN

could prevail in establishing net public benefits supporting approval of its proposed control of KCS.

First, all of the purported public benefits advanced by CN would have to be heavily – if not entirely – discounted as attainable via means other than CN’s proposed transaction. The 2001 merger rules establish that, “when evaluating the public interest, the Board will consider whether the benefits claimed by applicants could be realized by means other than the proposed consolidation.” 49 C.F.R. § 1180.1(c). CN’s claims about the value of new single-line routes connecting the United States, Canada, and Mexico have some merit, but the Board would need to recognize that those same benefits (and more) could be obtained from a CP/KCS combination, which would entail fewer public interest costs. Until CN’s billions persuaded KCS’s board of directors to agree to be acquired by CN instead, KCS had agreed to combine with CP to create – in the words of KCS’s CEO – a “perfect and natural fit” that would have zero competitive overlap and intensify competition in many north-south transportation markets.³⁷ As CP’s CEO Keith Creel explains, a CP/KCS transaction would provide all the same benefits as CN/KCS, with none of the competitive and other harms. Creel V.S. at 3-6.

Second, any look ahead at the public interest consequences of a CN/KCS transaction would reveal serious grounds for concern that the transaction would lead to at least the following harms:

³⁷ See, e.g., Finance Docket No. 36500, CP/KCS Notice of Intent (CP-1/KCS-1) (Mar. 22, 2021) at 4 (“will join two railroads whose networks are a perfect and natural fit”); Canadian Pacific and Kansas City Southern Agree to Combine Joint Conference Call Transcript (March 21, 2021) (Exh. 24) at 3 (KCS CEO Pat Ottensmeyer: “entirely complementary and that’s why we feel so strongly that this combination is very unique”); 4 (KCS CEO Pat Ottensmeyer: “opportunity to create unmatched service offerings”); 9 (KCS CEO Pat Ottensmeyer: “truly transformative for North America and provide significant benefit that we believe will increase and enhance competition”); 12 (KCS CEO Pat Ottensmeyer: “merger that’s different than any other”); 15 (KCS CEO Pat Ottensmeyer: new CPKC single-line routes “unmatched by any other single-line option”).

- Competitive harms (*see* Section IV.B. below).

Unlike the proposed CP/KCS transaction and contrary to CN's assertions, the CN/KCS transaction would combine *horizontal competitors* and thereby cause significant competitive harms.

CN now acknowledges that competition in the 70-mile corridor between Baton Rouge and New Orleans, but the extent of competition between CN and KCS is in fact far greater. And that competition would be undermined as soon as CN became the beneficial owner of 100 percent of KCS shares, notwithstanding the use of a voting trust. CN's proposed divestiture does nothing to solve this problem during the trust period, and nothing to address the competitive harm that would extend well beyond the Baton Rouge-New Orleans corridor. *See* Majure V.S. at 23-30.

A CN/KCS transaction also extinguishes the opportunity for shippers to benefit from the new competitive transportation options that would be created by CP's proposed combination with KCS. Majure V.S. at 36-40. The elimination of that new competition, much of which would be directed at CN's own single-line routes between Canada/Upper Midwest and the South Central United States, appears to be a key motivation for CN's willingness to pay such a high premium to acquire KCS. *See* Velani V.S. at 26-29.

- Pressure for further "downstream" consolidation (*see* Section IV.C. below);

Approving a voting trust, and then allowing a CN/KCS transaction to proceed would be a catalyst for further rail consolidation. A CN/KCS combination would destabilize the basic six-carrier structure of the North American rail network. While a CP/KCS combination would maintain the status quo, a CN/KCS transaction would enable CN to expand to become three times the size of CP. A CN/KCS transaction would also deprive CP of any friendly connection south of Kansas City and pressure CP to explore new ways to stay competitive and deliver on behalf of its customers. Creel V.S. at 7-9.

- Reducing investment in the capabilities and capacity of the U.S. and North American rail network (*see* Creel V.S. at 6-7 & Creel Fig. 1; pages 42-43 below).

A CP/KCS transaction would increase investment and capacity in the U.S. rail network by virtue of their non-overlapping networks, and CP has already publicly committed to investing hundreds of millions of dollars in the network. The opposite is true of a CN/KCS transaction, as CN's natural incentive would be to route as much traffic as possible via its high-density CN North-South "premium service" route,³⁸ reducing traffic and incentives to invest in other routes. CN has publicly depicted the KCS-CN route via Jackson, Mississippi as the preferred

³⁸ CN Bernstein Strategic Decisions Conference Transcript (June 3, 2021) at 4 (remarks of Pat Ottensmeyer) (excerpts are Exhibit 12 hereto).

route connecting KCS's system with the Midwest, tacitly admitting it will downgrade the Shreveport-Kansas City mainline to a "redundancy line."³⁹

- Increasing rail traffic and congestion in and around Chicago (*see* Creel V.S. at 3).

The only CN route between territory served by KCS and the Upper Midwest and Canada passes through the Chicago area. A CN/KCS transaction would divert traffic moving between Mexico/Texas/Gulf States and the Upper Midwest and Canada via CN's own line through Chicago, rather than via CP (or improved CP/KCS) and other routes that bypass Chicago. Communities in the Chicagoland area are intensely concerned about the impacts of this further concentration of rail traffic through the Chicago region.⁴⁰

- Interfering with passenger rail operations.

CN's proposal would dump considerable additional freight traffic on lines used by Amtrak passenger operations, as well as on CN's former-EJE lines in the Chicago area that most Metra commuter lines must cross.⁴¹

³⁹ *Id.* at 11; UBS Global Industries and Transportation Virtual Conference Transcript (June 8, 2021) (Exh. 13) at 7.

⁴⁰ Among the stakeholders emphasizing concerns about these impacts from a CN/KCS transaction are: Village of Barrington Ltr. (filed May 7, 2021); Village of Barrington Ltr. (filed June 23, 2021) at 2 ("Of particular concern to Barrington is the reality that the CN/KCS merger will uniquely double down on increasing the negative community impacts in the Chicagoland area – a region that is already overburdened with rail freight traffic congestion"); Village of Thornton, Grayslake, Richton Park Ltr. (filed May 21, 2021) at 1 ("A CN-KCS merger has the potential to add significantly more rail freight to the greater Chicagoland area when – by CN's own admission – synergistic KCS traffic will be routed through Chicagoland as it travels between Mexico, the Midwest, and both Canadian Coasts."); Mayor of Cary Ltr. (filed June 14, 2021) at 1 (noting "the potential that CN's freight trains will further burden the Chicagoland area with increased road network congestion by adding a significant increase in freight rail volumes."); Village of Orland Park Ltr. (filed May 13, 2021) at 1 ("Whether a particular town has a rail line running through it, a freight rail line creates roadway chokepoints for neighboring towns and communities, or the freight traffic interferes with their Metra commuter trains, the impact stemming from 25% of U.S. rail freight touching the Chicagoland region each day is significant in the daily lives of millions living in the region."); Village of Wayne, Ill. Ltr. (filed June 2, 2021) at 2 (asking the Board to carefully consider the regional concern regarding "[h]ow many grade crossings in the region would become substantially impacted by increased rail traffic stemming from a CN-KCS merger.").

⁴¹ By contrast, CP/KCS would enable CP to offer Amtrak the opportunity to increase train frequencies between Milwaukee and Chicago (Amtrak's Hiawatha Service) and between the Twin Cities and Chicago. CP has also committed to enabling passenger service on KCS's line between Baton Rouge and New Orleans. CP would work with Amtrak and the appropriate funding agencies to secure the capacity improvements to enable these passenger service enhancements while also meeting the current and future needs of freight shippers. Creel V.S. at 3 n.1.

CP expects that these issues will weigh heavily on the Board’s ultimate review of the transaction – as they already have for many of the stakeholders that have filed comments in this proceeding. As a result, a glance in the direction of the public interest consequences of CN/KCS control provides a strong basis for concluding that the transaction might ultimately be disapproved. Far from being a reason to approve a trust, those public interest implications are a compelling reason to disallow one.

C. Canadian Regulatory Practice Does Not Support CN’s Position

Lastly, CN argues wrongly – and irrelevantly – that Canadian regulators would permit the use of a voting trust. CN’s support is an opinion letter from one of the several Canadian law firms working for CN on the KCS transaction, claiming that “voting trust structures” are “routinely used” in Canada.⁴²

Assuming Canadian law and regulatory practice is at all relevant, the former head of the Canadian Competition Bureau, Melanie L. Aitken, explains that Canadian regulatory agencies have policies disfavoring the use of voting trusts and similar mechanisms. Aitken Letter (Exhibit 5 hereto) at 2-5. Canadian competition and transportation regulatory agencies *do not allow the use of* voting trusts except in very narrow circumstances and only after a lengthy and exhaustive review of the potential adverse impacts on competition. *Id.*

In particular, the public interest process for reviewing proposed railroad (and other transportation) mergers under the Canada Transportation Act (“CTA”) does not contemplate and has never permitted the use of a voting trust. The CTA process instead calls for a thorough review of any potential anticompetitive effects *before* any change in ownership takes place.

⁴² CN-18/KCS-1, Letter of Lawson Hunter at 2.

Although CTA reviews can be lengthy, merging parties have shown that they can withstand even very long reviews. *Id.* at 5.⁴³

Canadian practice, to the extent it is relevant at all, thus underscores that the Board should reject CN's proposed use of a trust here, where a thorough review of the competitive and other public interest factors remains to be undertaken by the Board.⁴⁴

IV. CN'S ACQUISITION OF KCS USING A VOTING TRUST WOULD HAVE IMMEDIATE PUBLIC INTEREST COSTS THAT WOULD ESCAPE BOARD REVIEW

The lack of public benefits associated with CN's proposed use of a trust here should end the inquiry under the standards articulated in the Board's Decision No. 3. As the Board explained, voting trusts "should be available only for those rare occasions when their use would be beneficial." *Id.* at 7. Not only is CN's proposed voting trust lacking in public benefits, use of a trust here would be affirmatively harmful to the public interest in ways that would escape the Board's review because they would be set in motion as soon as KCS was acquired and placed into trust.

A. A CN Voting Trust Would Preempt Board Review of the Near-Term Impacts of CN's Proposed Financial Terms

The Board has already expressed public interest concern regarding the extraordinary price premium CN is paying to acquire KCS, and the \$19 billion of new debt CN is taking on to carry out that plan. Decision No. 3 at 6. In response to the Board's concerns, CN offered the testimony of its Chief Financial Officer, Ghislain Houle, touting CN's strong financial position

⁴³ Most recently, Air Canada (which was represented by Stikeman Elliot, another Canadian law firm representing CN in this proceeding) and Air Transat withstood an 18-month review process. *Id.*

⁴⁴ CN's reliance on Mr. Hunter's various assertions regarding the situations where the use of voting trusts is appropriate are thus either misinformed as a matter of fact relating to the Canadian experience or inapplicable to the regulatory and factual context of CN's proposal, or both. *See* CN-18/KCS-1 at 35 n.98; 39 nn.112, 113; 40; 42 nn.122, 123.

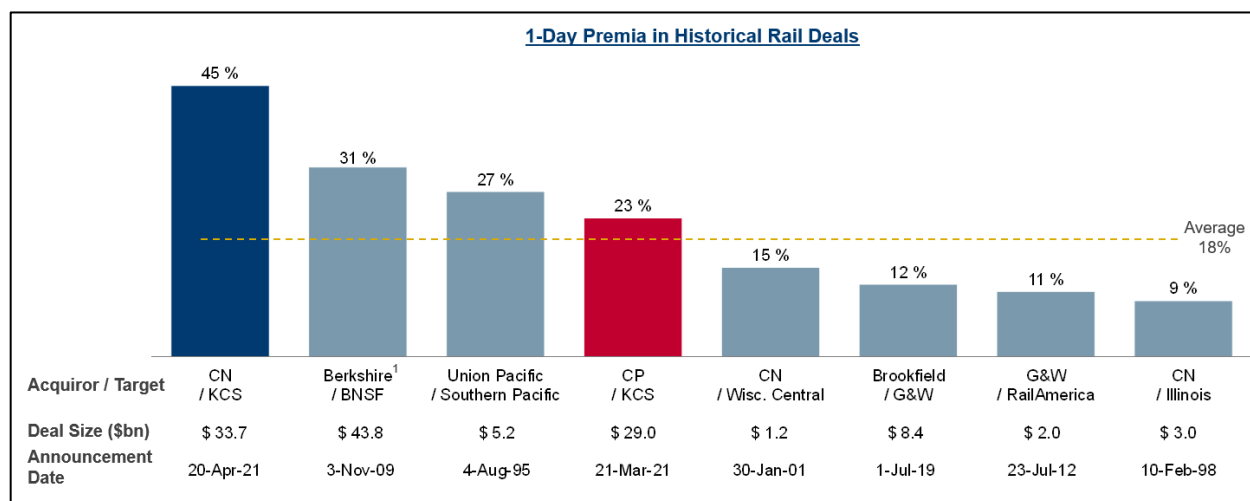
and its ability to weather the consequences were CN required to divest KCS out of trust without “financial peril.” Respectfully, CN’s focus on whether it will survive the KCS acquisition misses the public interest point: heavily burdened with a mountain of new debt and facing an acknowledged need to earn an acceptable return on its massive investment in KCS, CN’s financial imperatives will create risks of reduced investment, further cost reductions, and potential rate hikes. These are costs that the public would bear as soon as CN cuts its check to KCS’s shareholders and before the Board will have had any real opportunity to assess the public interest consequences. And those costs will arise even if the CN/KCS transaction is ultimately approved and no divestiture of KCS is ever required.

By all measures, CN’s \$35 billion purchase price for KCS represents an extraordinary control premium. As CN itself has touted, its proposal represents “an implied premium of 45% when compared to KCS’ unaffected closing stock price on March 19, 2021,”⁴⁵ and a 21% premium relative to the purchase price KCS had agreed to with CP, with \$11 billion more cash than CP’s bid.⁴⁶ As shown in Figure 1 below, CN’s proposed purchase premium greatly exceeds the highest premium ever paid for a U.S. railroad. *Velani V.S. at 3* (Velani Fig. 1). And CN’s premium is at the upper reaches – the 86th percentile – of premia offered in mergers across all industries. *Id. at 4* (Velani Fig. 2).

⁴⁵ CN Foreign Issuer Report (Form 6-K) (May 14, 2021) (Exhibit 10 hereto).

⁴⁶ See CN Analyst Call Transcript at 4 (Apr. 20, 2021) (Exh. 6) at 4; *see also Velani V.S. at 2-3.*

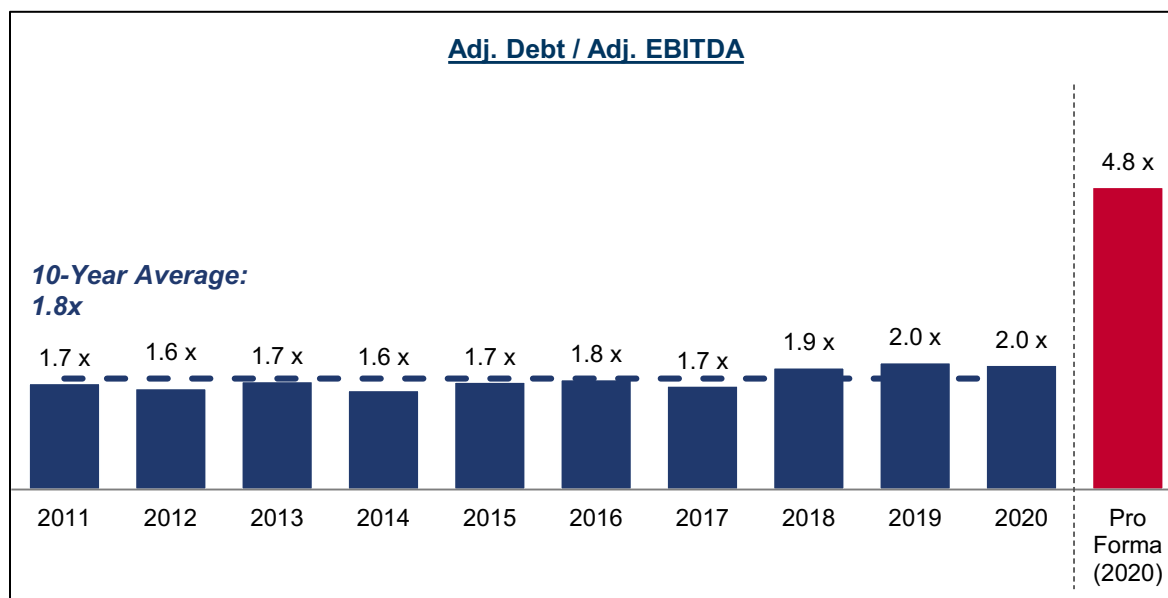
FIGURE 1



(b) CN's extraordinary premium coupled with the high proportion of consideration CN is *paying in cash* rather than CN stock means that CN will take on massive new debt to acquire KCS. Velani V.S. at 4-7. CN's incremental \$19.3 billion in acquisition debt is comparable to the total sum of all of CN's capital expenditures spent on its own rail network *over the past nine years*. *Id.* at 7 & Velani Fig. 3.

This new debt would immediately increase CN's leverage to levels well above the range of CN's recent experience. CN's pre-transaction net debt balance as of the end of 2020 of \$9.3 billion represented approximately 1.7 times CN's 2020 EBITDA of \$5.5 billion. *Id.* at 7. For the same period, taking account of the pro forma impact of the proposed transaction, CN's debt balance would increase to \$32.2 billion, representing a net leverage multiple of 4.6 times the combined CN and KCS 2020 EBITDA of \$6.9 billion, as shown in Figure 2 below. *Id.* at 7-8.

FIGURE 2



Acquiring KCS’s shares at the voting trust stage will immediately drive CN’s leverage well above that of every other Class I railroad. *Id.* at 8-9.

(c) As the Board has recognized, the high purchase price and substantial amount of new debt could have significant public interest implications. Even on CN’s own assumptions of favorable cash flows allowing swift repayment of debt, its leverage will be well above its own “conservative” norms, and rating agencies are accordingly concerned about CN’s elevated debt levels and have downgraded CN’s ratings as a result.⁴⁷

⁴⁷ Velani V.S. at 9. On May 24, Moody’s put CN’s credit rating on review for downgrade stating: “As presented today, CN’s funding of the acquisition could raise the combined company’s adjusted Debt/EBITDA in excess of 4.5x at closing and remain potentially in excess of 3.5x by the end of 2023. If that funding plan is executed and other aspects of the transaction occur as currently expected by Moody’s, CN A2 senior unsecured ratings would likely be downgraded multiple notches, however remain investment grade.” On April 21, 2021, S&P similarly reported: “This incremental debt (before the inclusion of KCS debt) is close to double CN’s total adjusted debt at year-end 2020, which we view as substantial.” And, “while details regarding plans for future deleveraging are limited, we do not envision a path for the company to restore its credit measures to levels that could support the current rating within the next few years in this scenario.” *Id.*

Concerns about the potential real-world adverse impacts of merger premia and associated debt levels are longstanding. When BNSF was acquired by Berkshire Hathaway, at what was at the time a record-setting multi-billion dollar premium (only to be outdone by CN's bid here), numerous stakeholders expressed great concern that the cost of the premium would be passed on to shippers and, by extension, their customers.⁴⁸ In this proceeding, shipper organizations and rail labor organizations have likewise voiced their concern over CN's exorbitant premium and associated debt burden.⁴⁹

(d) The public interest implications of CN's proposed financial terms are magnified by CN's self-imposed imperative to earn a 12 percent rate of return on the \$35 billion it will be investing in KCS. As Mr. Velani explains, CN's statements to investors, as well as its internal management incentives program, treat a return on invested capital (or "ROIC") above 12 percent

⁴⁸ Many of the commenters in *Western Coal Traffic League – Petition for Declaratory Order*, Finance Docket No. FD 35506, expressed concern about the impact of acquisition premia even for traffic that was not subject to the Board's rate regulation. *See, e.g.*, Comments of USDA (Oct. 27, 2011) at 3 ("USDA believes it is unfair to expect American farmers and rural communities to pay higher rates, which reduce their real incomes, because a large acquisition premium was paid for BNSF. For the rate increases that will likely occur from the pass through, farmers and rural communities are not expected to receive improved service levels or benefit from actual railroad investment in infrastructure. Paying for market driven increases in railroad input costs is legitimate, but that is not the case with a passed through acquisition premium. Instead, farmers and rural electric customers will be paying higher rates simply because of an arbitrary acquisition premium.") (excerpts are Exhibit 18 hereto); Testimony of Senator Amy Klobuchar (Mar. 22, 2012) at 1 (expressing concern that "actual cost of the acquisition premium will simply be passed on to BNSF customers") (excerpts are Exhibit 19 hereto).

⁴⁹ *See, e.g.*, Comments of Freight Rail Customer Alliance, *et al.* (SHAS-2) (filed June 7, 2021) at 3; IAM District Lodge 19 Ltr. (filed June 7, 2021) at 2 (expressing concern about the "tremendous debt CN proposes to incur in order to finance the premium stock price CN is offering to KCS"); Transportation Communications Union/IAM Ltr. (filed June 7, 2021) at 2 (expressing concern about the "crushing amount of debt CN will need to take on to finance the premium stock price CN is offering to KCS"); SMART-Transportation Division Ltr. (filed June 13, 2021) at 1 ("Approval of the CN voting trust proposal would harm employees of both KCS and CN due to the amount of debt CN will carry and the real possibility that the CN transaction would fail the regulatory test in the end."); Teamsters Canada Rail Conference Maintenance of Way Employees Division Ltr. (filed with CP-9) at 1 ("If this proposed merger were granted approval of a voting trust, we fully expect job loss on either CN or KCS because it is likely the STB would require further sale or abandonment of competing rail lines over and above what CN recently announced.").

as the hurdle for CN's use of capital, and Mr. Houle expressly represented to investors that a return in that range is CN's expectation for the KCS investment in particular.⁵⁰ Even with CN's anticipated \$1 billion in transaction synergies, CN will not come close to achieving its targeted rate of return because it is paying such a high price for KCS. This will put pressure on CN to boost returns in other ways, such as through cost-cutting or – more plausibly – reaping the benefits of reduced competition between CN and KCS and the elimination of the competitive threat that would have been posed by a CP combination with KCS. Velani V.S. at 11-15, 26-29.

(e) The consequences of CN's high premium and its decision to fund its KCS takeover with \$19 billion in new debt become all the more severe if – beyond CN's or the Board's control – economic conditions turn out not to be as favorable as CN projects, stalling CN's repayment of its debt and further reducing its ROIC. Mr. Houle presented no stress testing of his optimistic forecasts. Velani V.S. at 18. When realistic downside scenarios are considered,⁵¹ CN could end up stuck with sharply elevated leverage ratios and reduced ROIC. Velani V.S. at 18-21. The Board need not prejudge the implications of all of this high price and new debt, and especially the implications they would have in a potential economic downturn, in order to recognize that the proposed use of a voting trust would bake in all of these risks before

⁵⁰ Velani V.S. at 11-15; *see also* CN Analyst Call Transcript at 4 (Apr. 20, 2021) (Exh. 6) at 16 (expected ROIC for KCS acquisition in the 12 percent range).

⁵¹ While the current favorable conditions may persist, scenarios where CN's forecast EBITDA does not grow as rapidly as it forecasts are not at all unrealistic. For example, should CN only match its approximate historical five-year EBITDA compounded annual growth rate ("CAGR") of 5 percent (rather than meet CN's optimistic forecast of 10 percent), CN would generate \$3 billion less cash flow and fall well short of its stated leverage objectives for 2021 through 2024. Velani V.S. at 20. Further, if there were an economic downturn resulting in no growth in EBITDA—a less severe downturn than the 2006-2009 global financial crisis that saw CN's EBITDA decline at a 4 percent CAGR—CN would generate \$6 billion less cash flow over the same time period, putting even more pressure on its balance sheet. *Id.* *See also* Comment of Freight Rail Customer Alliance, et al. (SHAS-2) (June 7, 2021) at 3 ("CN points to its robust health, but it is not evident that its analysis reflects any stress testing").

the Board had a meaningful opportunity to examine them as part of its full review of the control transaction.⁵²

(f) These concerns would be redoubled in the event CN were required to divest KCS following a decision by the Board to deny or heavily-condition CN control. The Board's concern about this scenario is well founded.⁵³ In the event of a divestiture, CN would have paid its premium (and incurred its debt), and might not get any of it back. Velani V.S. at 21-24. Even CN's CFO Houle acknowledges the possibility of a "*no proceeds*" spinoff to CN shareholders as a possible divestiture path. CN-18/KCS-1, Houle V.S. at 15. The consequences of such an outcome would be greatly increased leverage and a hugely negative return on CN's investment in KCS, sharply elevating the pressure on CN to find ways to cut costs and increase revenues. Velani V.S. at 22-24. And an alternative path of a sale to private equity (Houle V.S. at 15) would carry its own risks for the U.S. rail industry.

One of CN's largest shareholders has publicly articulated its grave fear about the consequences of CN's gamble on a KCS acquisition. If CN is required to sell KCS out of trust, "it is quite possible that CN could face a loss in excess of US\$15bn/C\$18bn," which "would almost wipe out CN's entire shareholders' equity that it has taken over 100 years to accumulate" and "could also seriously jeopardise the future of the company."⁵⁴ The Board should not allow a

⁵² The "fairness opinions" CN obtained from its financial advisors (and submitted with CN-20/KCS-3 on June 14) provide no reassurance that bad outcomes will not materialize, as such opinions assume uncritically that projections made by company management (and all requisite regulatory approvals) will be realized. Velani V.S. at 24-25.

⁵³ STB Decision No. 3 at 6 ("call[ing] . . . into question" CN's contention "that there is 'no cause for concern' as to whether a sale out of divestiture would 'harm CN's financial integrity,'" in light of "the level of debt being utilized by CN to fund the proposed merger, as well as the substantial premium CN has offered for KCS").

⁵⁴ Letter from TCI Fund Management Limited to Chairman of CN Board of Directors (May 18, 2021) at 1 (Exhibit 15 hereto)

desire to please shareholders with a voting trust to convert the financial impacts of a CN acquisition into a *fait accompli* that the Board will never have an opportunity to assess.

B. A CN Voting Trust Would Lead to Immediate and Irremediable Adverse Impacts on Competition

CN's proposed control of KCS will eliminate the extensive horizontal competition that exists between CN and KCS today and also eliminate the more intense competition with CN that would arise from a CP/KCS combination. These competitive harms render CN's proposed voting trust contrary to the public interests for two interlocking reasons: (1) competition will immediately be reduced once CN becomes the owner of 100 percent of KCS's shares, because with that ownership comes diminished incentives to compete against itself (*i.e.*, a business it owns outright), and KCS, in turn, would have reduced incentives to compete against CN; and (2) by making it less likely CN's proposed control application will be approved, these competitive concerns would heighten the prospect of a divestiture of KCS out of trust and all of the negative consequences associated with such a step.⁵⁵

We begin by examining the facts concerning competition between CN and KCS today, and the more intense competition that CP's proposed combination with KCS would bring.

⁵⁵ Because of CN's extensive horizontal competitive relationship with KCS, its use of a voting trust raises fundamentally different and greater public interest concerns than did CP's proposal. CN and KCS are head-to-head horizontal competitors today, and that competition would be adversely affected, perhaps permanently, by the change in incentives associated with CN's ownership of all of KCS's stock during the pendency of a lengthy control proceeding. In contrast, the nature of a vertical, end-to-end merger like that proposed between CP and KCS would not implicate these same competitive concerns with use of a voting trust. Majure V.S. at 12-23; 37-39; *see also* Comments of the United States Department of Justice 14 (May 14, 2021) ("DOJ Comment") at 1 ("[T]he Board should not permit the proposed CN voting trust because CN's proposed acquisition of KCS appears to pose greater risks to competition than the risks posed by a CP-KCS merger. Thus, even though the terms of CN's proposed voting trust are similar to the terms of CP's proposed voting trust, the Board has good reason to hold CN's proposed voting trust to a higher bar.").

1. CN and KCS Compete Extensively Today (and CP/KCS Would Compete Even More Extensively against CN)

First, though CN and KCS have from the outset tried to frame their combination as “end-to-end,”⁵⁶ it has always been true that CN and KCS are significant horizontal competitors. Indeed, CN itself has asserted that the Board should “realize that these two railways [compete] today and ... will continue to compete during the voting trust process.”⁵⁷

CN now reconfirms that truth (but only in part) with its commitment to divest KCS’s Baton Rouge-New Orleans line segment. This proposal will not solve the competitive problem, either during the trust period (when there would be no divestiture) or thereafter. CN’s proposed divestiture will not recreate KCS’s competitive role even for the overlaps it purports to address, and it will not address at all the extensive competition between CN and KCS beyond this 70-mile segment.

CN has downplayed the extent of the competitive overlap represented by the Baton Rouge-New Orleans segment as involving a mere “1%” of U.S. route miles, or “0.6%” or shippers. *See, e.g.,* Rennie V.S. at 4, 7, 10.⁵⁸ These are gross understatements of the extent of the competitive traffic on this segment, which is home to major chemical companies and other large shippers.⁵⁹

⁵⁶ CN has continually mischaracterized the CN-KCS Transaction as an “end-to-end” transaction, or even a “true end-to-end” transaction. *See, e.g.,* CN-8 at 4 (“CN-KCS combination is an end-to-end transaction with limited overlap”); CN-18/KCS-1 at 36 (“CN acquisition of KCS is a vertical, end-to-end merger”); CN Bernstein Strategic Decisions Conference Transcript (June 3, 2021) (Exh. 12) at 3 (J.J. Ruest: “combination that is a true end-to-end merger”); UBS Global Industries and Transportation Virtual Conference Transcript (June 8, 2021) (Exh. 13) at 4 (J.J. Ruest: “a true end-to-end merger.”).

⁵⁷ CN Virtual Fireside Chat Hosted by TD Securities Transcript (May 5, 2021) at 5 (remarks of Sean Finn) (excerpts are Exhibit 8 hereto).

⁵⁸ *See also, e.g.,* CN Q1 2021 Earnings Call Transcript (April 26, 2021) (Exh. 7) at 16 (Rob Reilly: “less than 1% of the combined railroads network”).

⁵⁹ This basic fact is echoed in the views of major shippers in this corridor regarding the competitive implications of IC’s 1994 effort to acquire KCS. As they explained:

Second, CN's myopic focus on Baton Rouge-New Orleans is the product of CN's misguided "2-to-1 shipper-facilities-only" view of what rail competition matters.⁶⁰ In fact, the harm would be much broader. Dr. Majure reviews the extensive competition between CN and KCS that arises from the railroads' intersecting lines outside the Baton Rouge-New Orleans corridor, their broadly parallel route structures, and the service they provide in many of the same geographic areas. Majure V.S. at 12-22.

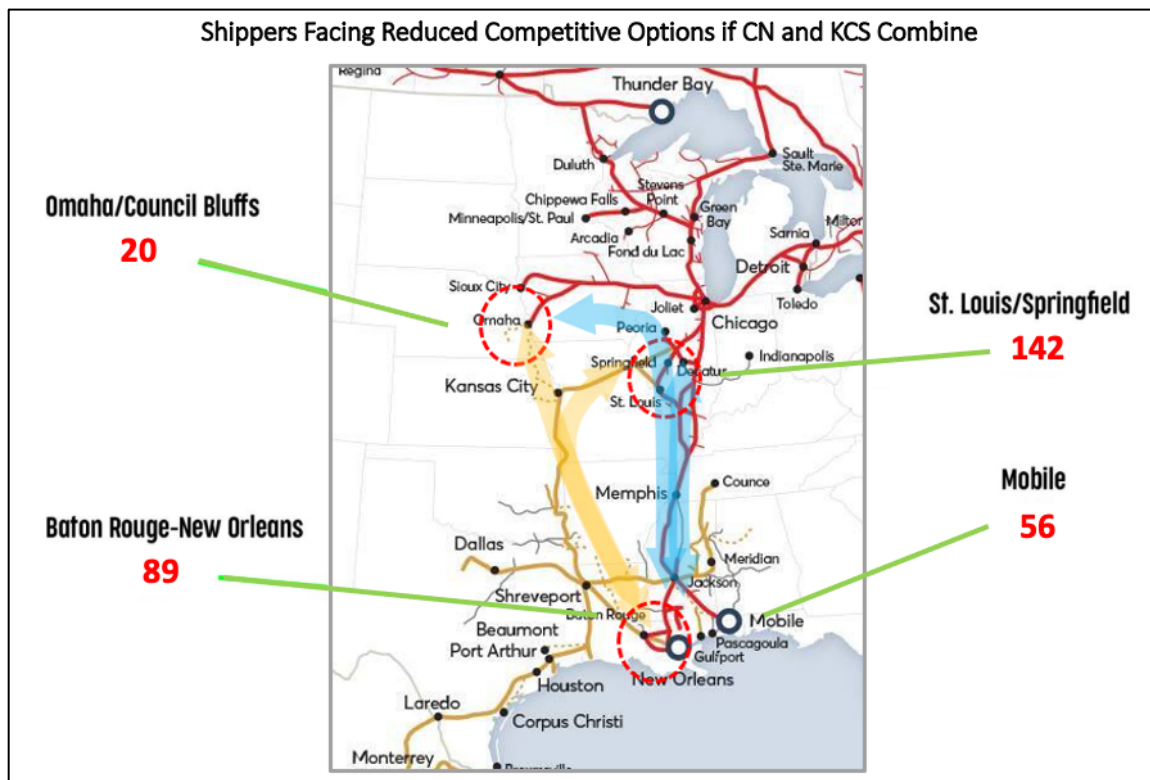
"Petitioners operate major petroleum and petrochemical production facilities in the Baton Rouge-New Orleans corridor and are served by one or both of the rail carriers involved in this merger proceeding. *The ICR and KCSR run parallel routes between New Orleans and Baton Rouge, and are the only two carriers serving the chemical corridor along the east bank of the Mississippi River. While the routes thereafter diverge, they run essentially in parallel into the Midwest.* Analysis of 1992 waybill data reveals approximately \$700 million of traffic originated or terminated in the Baton Rouge-New Orleans corridor, and the chemicals group constituted approximately 44% of that traffic. Petitioners alone account for approximately 5 Billion pounds of freight annually moving by rail in the corridor. *A merger of the ICR and KCSR would have substantial adverse impact upon Petitioners by virtue of elimination of competition, heretofore imminent competition and potential competition in the Baton Rouge-New Orleans corridor.*"

Illinois Central Corp. – Common Control – Illinois Central R.R. & The Kansas City Southern Ry., Finance Docket No. 32556, Petition of Borden, Fina and Shell (Sept. 27, 1994) at 2 (emphasis added) (excerpts are Exhibit 20 hereto). The IC/KCS transaction was abandoned after the ICC sought comment on the proposed trust arrangement.

⁶⁰ CN has repeatedly framed its analysis as a focus only on 2-to-1 shipper facilities, even arguing against the inclusion of 3-to-2 situations on the theory that "[t]he presence of a single rail alternative can provide effective competition because of the characteristics of rail competition." See CN-18/KCS-1, Rennie V.S. at 8–9; see also CN-18/KCS-1, Ruest V.S. at 4 (hinging "1%" overlap assertion on 2-to-1 customers, stating that "CN would propose solutions for the very limited number of customers that are served only by CN and KCS (so called 2-to-1 customers) between Baton Rouge and New Orleans, where the overlap in parallel lines amounts to less than 1% of the total combined network."); CN-8 at 4 ("The CN-KCS combination is an end-to-end transaction with limited overlap – amounting to approximately 1% of their total network and very limited number of customers that are served only by CN and KCS (so called 2-to-1 customers)"); UBS Global Industries and Transportation Virtual Conference Transcript (June 8, 2021) (Exh. 13) at 6 (Sean Finn: "My view is that clearly there are no two-to-one points."); CN Q1 2021 Earnings Call Transcript (April 26, 2021) at 16-17 (Rob Reilly: "[t]he overlap . . . [is] where we do have a few customers that their options will go from two to one" and discussing only two-to-one locations) (excerpts are Exhibit 7 hereto).

Route/Corridor Competition. Direct competition between CN and KCS is not limited to “dually served” shipper facilities. As shown in Figure 3 below, CN’s and KCS’s networks intersect at numerous points, including Omaha/Council Bluffs; Springfield, Illinois; St. Louis, Missouri/East St. Louis, Illinois; Jackson, Mississippi; and Mobile, Alabama, as well as in the corridor between Baton Rouge and New Orleans. All told there are over 300 shipper facilities that are served by both CN and KCS directly or via reciprocal switch or switching railroad access. *See* Verified Statement of Adolph Gameiro and Jon Harman (“Gameiro/Harman V.S.”) at 1-2 & Fig. 1. In addition, there are at least 12 shortlines that have access to both CN and KCS, and post-transaction will lose one of those independent connections. *Id.* at 3-4 & Table 2.

FIGURE 3⁶¹



⁶¹ Gameiro/Harman V.S. (Exh. 3) at 2, Fig. 1.

Not all of the shippers at these points or on these shortlines qualify as “2-to-1” shipper facilities, but that does not diminish the important competitive role that CN and KCS play there by virtue of the broadly parallel nature of CN and KCS’s network in the central United States. Thus, to take one example, CN claims there are at least six railroads that have access to shippers in St. Louis,⁶² but for shipments destined to New Orleans or Mobile or Beaumont, Texas, KCS and CN are among a much smaller group of viable competitive rail options. *See generally* Majure V.S. at 24-38 & Majure Exhs. 4 & 5.

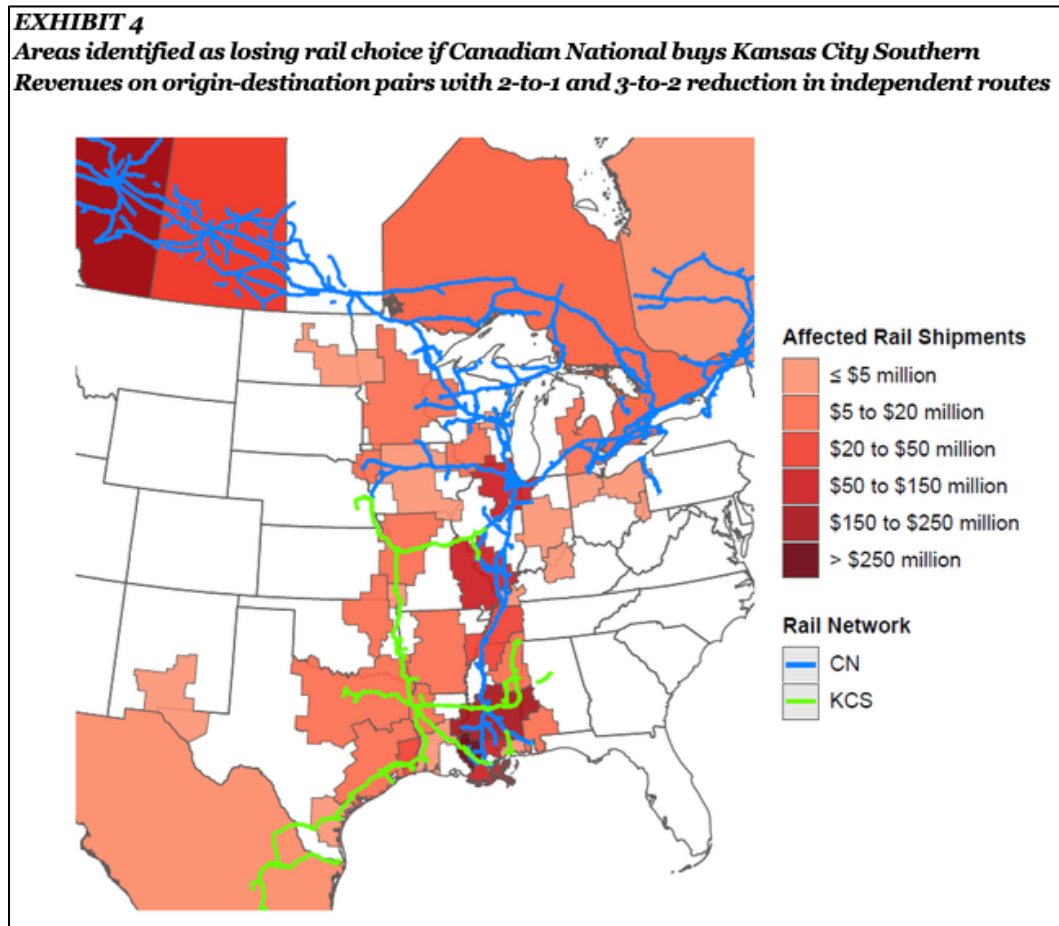
KCS connects CP to destinations in the Gulf states for interline traffic moving from the Upper Midwest and Canada in direct competition with traffic that CN can handle directly. Some of that traffic, like shipments from Alberta to ExxonMobil’s Baton Rouge refinery, is head-to-head competitive between CP-KCS routes and CN-direct routes. In other cases, KCS and CN serve alternative destinations. The critical fact is that KCS offers an independent competitive route into the Gulf and South Central region that CN serves directly. KCS acknowledges the competitive alternative that its routes provide: referring to the KCS-CN route via Jackson and the KCS route via Kansas City, KCS’s CEO highlighted how these were “multiple routes that could be used alternatively.”⁶³

Traffic data confirm the extent and significance of CN’s and KCS’s participation in competitive traffic flows. As Dr. Majure explains, Waybill Sample data shows that substantial flows of traffic would suffer 2-to-1 or 3-to-2 reductions in independent rail routes as a result of a CN/KCS transaction, as shown in Figure 4 below.

⁶² Rennie V.S. at 11.

⁶³ CN Bernstein Strategic Decisions Conference Transcript (June 3, 2021) (Exh. 12) at 13.

FIGURE 4⁶⁴



Thirty-one different corridors would suffer 3-to-2 reductions in independent rail options, and another 31 corridors would experience 2-to-1 reductions. *Majure V.S.* at 21. The confidential version of Dr. Majure’s verified statement augments this view with maps of the specific competitive overlap routes revealed by his screening analysis. *See Majure V.S.* at 26-28 & Exhs. 5 & 6. These affected corridors comprise substantial rail revenues, with total revenues in the Waybill Sample for shipments on these corridors in 2019 of approximately \$730 million. And notably, these areas of potential concern are found all along the CN and KCS networks, affecting

⁶⁴ *Majure V.S.* (Exh. 4) at 22.

options for north-south shippers from the southern United States to locations as far away as the Upper Midwest and into Canada. Majure V.S. at 21-22.⁶⁵

Geographic Competition. The depiction in Figure 4 (and in the confidential figures set forth in Dr. Majure’s verified statement) of the routes and corridors where shippers would suffer reductions in competitive rail options does not fully capture the many additional locations where a CN/KCS transaction would reduce *geographic competition*. In numerous areas throughout KCS’s service territory, CN and KCS compete for the transportation of goods to/from shipper facilities that may not be directly served by both railroads, but where both participate in alternative means of transporting goods to alternative markets or from alternative sources. These forms of competition are well known in the rail industry,⁶⁶ and can involve myriad patterns, such as shippers or receivers tapping alternative rail options that they reach via truck transloading (like lumber from Mississippi origins transloaded at alternative locations served by CN or KCS); railroads transporting the same commodities from competing origins to the same (or alternative) end markets (like CN and KCS transporting corn grown in western Iowa to alternative feeders in the South Central states); and railroads transporting the same commodities from the same source

⁶⁵ Shipments originating or terminating in Bureau of Economic Analysis (“BEA”) areas that CN and KCS both serve comprise a 21 percent share of their collective total revenues system-wide. And even if the overlaps were defined more narrowly by 4-digit SPLC or 6-digit SPLC, their traffic would constitute 14 percent or 10 percent of total revenues, respectively. Majure V.S. at 16-17 & Majure Exh. 2. (In comparison, the one BEA as to which CP and KCS overlap (Kansas City) accounts for only 6 percent of total CP and KCS revenues, and traffic flowing in opposite directions. *Id.* at 36.)

⁶⁶ The Board’s 2001 rules state the Board’s belief that major railroad consolidation subject to the new rules is “likely to result in a number of anticompetitive effects, *such as loss of geographic competition*, that are increasingly difficult to remedy directly or proportionately.” 49 C.F.R. § 1180.1(c) (emphasis added). Even in minor and significant cases since 2001 the Board has considered “the effect of the proposed transaction on geographic competition, [and] . . . the effect of the transaction on source competition, when two carriers can transport the same product to the same destination but from different origins, or conversely when two carriers transport the same product from the same origin to two different destinations.” *Canadian National Ry. — Control — EJ&E West Co.*, Finance Docket No. 35087, Decision No. 16, at 14 (STB served Dec. 24, 2008).

to competing, alternative destinations (like CN and KCS delivering petroleum products originating in Canada to alternative facilities in the U.S. Gulf Coast). As Dr. Majure explains, these are not merely hypothetical examples. Majure V.S. at 17-18, 30-35.

The extent and importance of the geographic competitive overlap between CN and KCS is reflected in their very substantial share of shipments into and out of Mississippi and Louisiana with combined shares above 50 percent, or even 70 percent, in many BEAs) (*id.* at 20-21 & Majure Exh. 3), as well as in the concrete (but confidential) illustrations of actual geographic competitive overlap for specific commodities based on confidential waybill data. *Id.* at 30-35.

Third, the existing competition between CN and KCS does not tell the full story of the adverse competitive implications of a CN/KCS transaction. Such a transaction would also extinguish the possibility of the CP/KCS transaction, which would bring newly intensified single-line competition in numerous north-south corridors, including more intense competition from CPKC against the existing single-line routes CN established with its acquisition of Illinois Central in 1999. Creel V.S. at 10-15. The competitive impacts of a CN/KCS transaction thus would appropriately be judged not just relative to the status quo, but in comparison with the more competitive future that the concrete CP/KCS proposal represents.⁶⁷

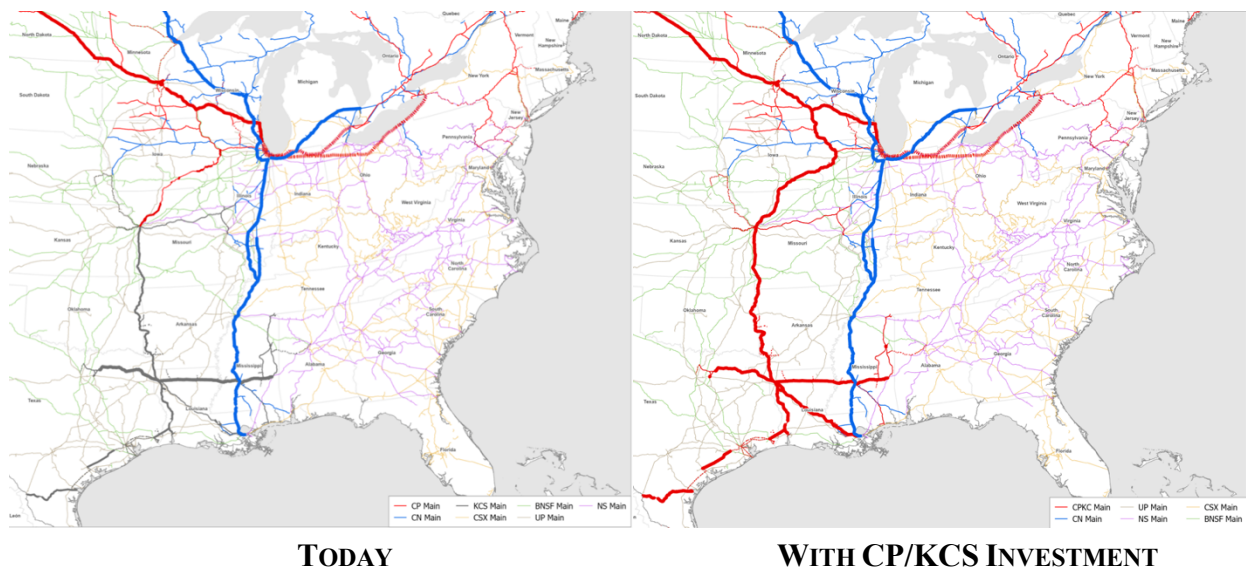
Mr. Creel explains how CP/KCS would bring new investment, capacity, and competition that CN/KCS would not. The alternative paths for the U.S. rail network with and without the CP/KCS transaction are stark. With a CP/KCS combination, the natural pairing of CP's and KCS's U.S. networks – meshing perfectly at their single point of connection at the shared

⁶⁷ As Mr. Creel explains, were CN allowed to use a voting trust to acquire KCS it would in fact mark the end of CP's efforts to acquire KCS and its related application seeking Board authorization to control KCS. CP could not reasonably expect that CN would ever allow KCS to be sold to CP (and certainly not for three-and-a-half years), and CN would potentially divide KCS into parts, severing KCS's U.S. rail carriers from its Mexican railroad. Creel V.S. at 11-12; *see also* pages 61-62 below.

CP/KCS Kansas City terminal – will create the catalyst for significant new investment in service and capacity on this independent north-south route that is underutilized today. CP plans to invest hundreds of millions of dollars to upgrade capacity and safety on this route – adding and lengthening sidings and adding CTC signaling to enable increased capacity, reliability, and track speeds. Creel V.S. at 6-7 & Creel Fig. 1. Figure 5 shows the status quo (in the left panel) as compared to the future with a CP/KCS transaction (in the right panel).

FIGURE 5

CP/KCS SPARKS INVESTMENT IN NEW NORTH-SOUTH RAIL CAPACITY



This transformation cannot occur absent the CP/KCS transaction – CP and KCS have worked hard at developing interline traffic over the years, with some success, but a combination will uniquely enable single-line services and aligned incentives that unlock the new traffic opportunities and associated density to support the transformation of this route into a true competitive rival to CN, UP and BNSF. Unlike CN’s proposal, CP’s proposed transaction will uniquely inject new competition into many U.S. rail corridors – particularly those connecting the Upper Midwest (Minnesota, the Dakotas, and Iowa) with the Gulf and Mexico.

Many shippers in the Upper Midwest and Canada have expressed strong support for the CP/KCS transaction precisely because of these competitive benefits.⁶⁸ Dr. Majure examines the available data regarding existing shipments – which of course does not reflect the added competition a CP/KCS combination would yield – and confirms that a CP/KCS combination would create the potential for new single-line services in 74 corridors, including 31 corridors that today are served by only a single Class I railroad’s single-line service. Majure V.S. 38-41. As he demonstrates, a CP/KCS combination would enable new, more competitive single-line transportation options in direct competition with the dominant Class I incumbents that offer single-line service today, including CN.

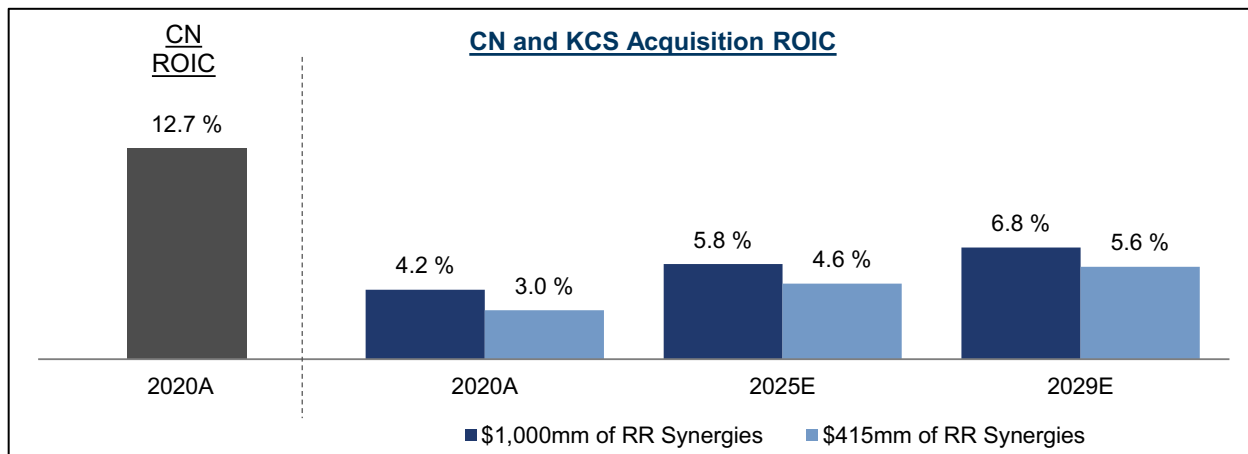
Fourth, lest there be any doubt about the competitive implications of the CN/KCS transaction, the extraordinary merger premium that CN is proposing to pay to acquire KCS

⁶⁸ See, e.g., Finance Docket No. 36500, Letter from Full Circle Ag (Britton, South Dakota) (filed with CP-7) (“We are very excited about the transaction because it will allow a combined CPKC to provide new, more efficient, and reliable rail service options. This will strengthen competition against the other, larger rail carriers and trucks that serve our markets.”); Finance Docket No. 36500, Letter from Farmers Co-Operative of Hanska (Minnesota) (filed with CP-6) (“From our perspective, the transaction promises to provide improved service options and invigorate transportation competition in the markets we serve. The combined CPKC network – with new single-line hauls and access to premier ports on the U.S. Gulf, Atlantic and Pacific coasts as well as to key overseas markets – would help us reach our existing markets and new markets more efficiently. . . . For example, CPKC’s new single-line haul offerings will expand market reach and offer new competitive transportation options for our shipments of corn from 2021 and beyond.”); Finance Docket No. 36500, Letter from The Arthur Companies (North Dakota) (filed with CP-4) (“The Arthur Companies supports approval of the CP/KCS combination, with a high expectation that North Dakota farmers get additional markets and better service. . . . [CP/KCS] creates a brand new single-line option for shipments from North Dakota to the Southern US, including the Gulf, and to Mexico, in competition with UP and BNSF.”); Finance Docket No. 36500, Letter from AgMotion Pet Food Ingredients (Minneapolis, Minnesota) (filed with CP-4) (“CPKC will be a good combination of Railroads as the CP has the origins and the KCS has relevant destinations. Now we can have through rates to new destinations.” For example, “CPKC’s new single-line haul offerings will expand market reach and offer new competitive transportation options for our shipments of different feeds and pet food ingredients from Canada, ND, and Minnesota to our customers in MO, AR, LA, TX and Mexico.”).

provides strong confirmatory evidence that CN's acquisition of KCS would increase CN's market power and thwart new competition from CP.⁶⁹

CN has publicly touted that it expects to earn a rate of return of 12 percent on the \$35 billion it is investing to acquire KCS – which is consistent with CN's usual return-on-invested-capital ("ROIC") targets.⁷⁰ As Mr. Velani explains, however, the \$1 billion in merger-related synergies CN anticipates do not come close to achieving this ROIC expectation, as shown in Figure 6 below. Velani V.S. at 16 & Velani Fig. 9. Instead, based on the publicly-stated synergies, even if everything goes to CN's plan, there will still be a net income gap of more than \$2.5 billion. Velani V.S. at 17-18 & Velani Fig. 11.

FIGURE 6



Were this ROIC shortfall real, it would have a staggering impact on CN given that the amount of invested capital CN is allocating to the KCS acquisition is equivalent to the total invested capital that CN has *in the entirety of its existing business*. Velani V.S. at 16-17. To support CN's conclusion that it would achieve a ROIC in the 12 percent range, CN would have

⁶⁹ See page 14 above; Majure V.S. at 13-14 n.19 ("the party offering the highest compensation to the target's shareholders might be doing so for anticompetitive reasons").

⁷⁰ This is both the explicit expectation represented by CN's CFO when the KCS transaction was announced and CN's consistent guidance to investors. Velani V.S. at 14-15.

to be assuming that the multi-billion earnings gap will somehow be filled, which can only plausibly be achieved were CN to expect to reap returns through the softening of existing competition with KCS and extinguishing the new competition that CN fears from CP's proposed combination with KCS. *Id.* at 15, 26-29.

The timing of CN's offer is likewise suggestive of CN's motivation to block the new competition that would be created by a CP acquisition of KCS. Even though KCS was clearly in play in the fall of 2020, CN made its move to acquire KCS only after CP and KCS announced their agreement to combine, and at approximately double the premium of CP's bid. CN did not indicate interest in buying KCS at the time of KCS's publicly rumored discussions with private equity, showing the real catalyst was ensuring that KCS stayed out of CP's hands.⁷¹ Indeed, when CN's CEO was asked by investors about impact of CP/KCS combination, he responded by explaining that CN decided to "jump on" the chance to buy KCS instead.⁷²

2. *Given the Horizontal Competition Between CN and KCS, CN's Ownership of KCS While in Trust Will Harm Competition Immediately*

CN contends that its proposed voting trust is intended to *preserve competition* between CN and KCS, but in fact the formation of the trust will immediately reduce the economic incentives for CN and KCS to compete with one another. As Dr. Majure explains, this follows from basic economics: the owner of business (as CN will be of KCS) is entitled to the profits from that business whether or not it can control it, and as a result has reduced incentive to compete against that business. CN's acquisition of ownership of KCS would mark a major change in CN's economic incentives, and those changed incentives will influence CN's behavior

⁷¹ Velani V.S. at 28-29; *see generally* CN F-4 Registration Statement (June 22, 2021) (Exh. 14) at 43-48.

⁷² CN Q1 2021 Earnings Call Transcript (April 26, 2021) (Exh 7) at 22; *see also* Velani V.S. at 29.

– CN will compete less hard in situations where KCS would benefit from softer competition.

For example, where CN and KCS compete head-to-head today to attract rail traffic by offering attractive transportation rates or terms, if KCS were owned by CN via a voting trust, CN would benefit whether it won the traffic or KCS won the traffic because CN would recapture the profits from any sale “lost” to KCS.⁷³ This softened competition would result in harm to shippers – in the form of higher rates and poorer service – and harm to the competitiveness of the U.S. rail transportation marketplace. *Majure V.S.* at 10-11.⁷⁴

CN’s own public comments foreshadow this alignment of incentives during the voting trust period. CN has emphasized that it plans to start “pre-marketing” combined CN/KCS system routes “from the day the voting [trust] would be approved” in order to get buyers and sellers ready to make investments immediately and be “ready to implement” in 2022.⁷⁵

CN’s proposed divestiture of KCS’s Baton Rouge-New Orleans would not diminish in any way the competitive harm that would occur during the voting trust period, for the simple reason that the divestiture would not occur (and could not occur) until after the Board’s review of the CN/KCS transaction was complete and CN was both allowed to acquire control and chose to do so despite whatever conditions the Board elected to impose. During the entire period between the formation of a voting trust and sometime in 2023 at the earliest, there would be no divestiture

⁷³ In contrast, the use of a voting trust in a vertical end-to-end merger like CP/KCS does not give rise to these concerns regarding incentives and resulting softening of competition - and instead invigorates competition for the marketplace. Any capture by CP of KCS profits while in trust would be limited to cooperation on interline traffic, which would benefit from single-line service post-merger. In this vertical scenario, a voting trust is an effective tool that both addresses potential competitive concerns by insulating control and promotes competition by allowing early progress towards the efficiencies of a single-line service. *Majure V.S.* at 11-12.

⁷⁴ See DOJ Comments at 2 & Exh. A at 3-4 (“threats to competition would be present immediately after the CN voting trust is consummated”).

⁷⁵ See CN Virtual Fireside Chat Hosted by Bernstein Transcript (May 7, 2021) at 8-9 (excerpts are Exhibit 9 hereto).

and thus no remedy for the suppression of “competition” between CN and KCS in the Baton Rouge-New Orleans corridor.⁷⁶

In addition, there are many reasons to doubt that the proposed divestiture of this 70-mile segment of KCS’s system could ever provide a viable remedy for the lost competition, even as to this narrow part of the competitive problem. *See* Majure V.S. at 24-30.

- Divesting this segment would not give shippers served by KCS access to the transportation options that KCS provides today, including routes that extend beyond Baton Rouge and connect with CP in Kansas City or reach other markets.
- A sale to an eastern Class I would not preserve the routing alternatives that KCS provides today. A divestiture to a western Class I would only cement the reduction in the number of north-south rail routes serving this part of the United States.
- A divestiture to a shortline operator or a non-railroad would create its own set of challenges, and would certainly not replicate KCS’s competitive role today.
- Indeed, CN has made clear that it intends to retain local and overhead trackage rights in the entirety of the line to be conveyed,⁷⁷ calling into question whether the supposed new “owner” of the line could ever be a viable competitor, much less afford the burdens of maintaining the line and its lengthy bridges across Louisiana bayous.

The Board has previously recognized the many reasons for skepticism about the ability to solve competitive concerns via divestiture in the rail industry. Although a divestiture may have “surface appeal” as a seemingly easy resolution, it can in reality entail “substantial regulatory

⁷⁶ *See* CN-18/KCS-1, Ruest V.S. at 2, 5, 13 (“Once an agreement for the divestiture is in place, approval will be sought from the STB as part of our Application” and “the full STB regulatory process . . . will extend through 2022.”).

⁷⁷ *See, e.g.*, CN-18/KCS-1, at 34 n.95 (“CN-KCS will retain local and overhead trackage rights over the line [in the Baton Rouge area] so that customers may choose single-line service from CN-KCS.”).

intervention in supervising the sale of rail lines” – which could significantly burden the Board and fail to achieve the desired aim.⁷⁸

C. A CN Voting Trust Would Immediately Create Pressure for Further Consolidation

CN’s acquisition of KCS would be a potential catalyst for further rail consolidation that, with the use of a trust to lock KCS out of play, would be beyond the Board’s ability to prevent. The potential for Class I mergers to provoke responsive transactions – leading to a calamitous “End Game” or “Final Round” – was well known when the Board revised its merger rules in 2001. The Board made changes to its merger rules for the precise purpose of allowing it to consider – in the context of any one transaction – the potentially harmful consequences that would flow from the further consolidation that transaction prompted.⁷⁹ Here, if a voting trust were allowed, the prospect of downstream consolidation would be heightened, yet the Board would lose the opportunity to review the downstream impacts of a CN/KCS transaction and arrest them before they occur because CN’s acquisition of KCS will have already set those forces in motion.⁸⁰

⁷⁸ See, e.g., *Union Pacific Corp. – Control – Southern Pacific Rail Corp.*, Finance Docket No. 32760, 1996 WL 467636 (STB Decision No. 44, served Aug. 12, 1996) at *91.

⁷⁹ *Major Rail Consolidation Procedures*, 5 S.T.B. at 582 (explaining that Board will need to be supplied the “information we need to rule on what could likely be the first step in an end-game situation in which only two or three competing transcontinental carriers would remain in North America”).

⁸⁰ Other stakeholders are very concerned about further consolidation. Among the many such stakeholders are the North Dakota Grain Dealers Association (filed Apr. 30, 2021: “Our concern is that a CN/KCS merger would create a network that decreases competition and would eventually result in a rail industry imbalance spurring more mergers and consolidation which is the reason the for [sic] 2001 rule overhaul.”) and the American Chemistry Council (filed May 27, 2021: “concerned about further consolidation in the freight railroad industry.”); see also, e.g., SSAB Americas (filed June 25, 2021); Rhomberg Sersa North America (filed with CP-9); Berthold Farmers Elevator, LLC Ltr. (filed with CP-9); South Dakota Grain & Feed Association Ltr. (filed with CP-9); U.S. Industrial Machinery Ltr. (filed with CP-9).

1. *Board Approval of a Trust for CN Would Set a Precedent Supporting Use of a Trust in Virtually Every Other Theoretical Class I Combination*

The inevitable consequence of a Board decision approving a voting trust in this case would be a precedent that would encourage the use of voting trusts to clear the way for almost any conceivable combination of Class I railroads. The twin principles espoused by CN and KCS in support of their voting trust would, if adopted by the Board, support the approval of voting trusts in every case. From CN's perspective, it is enough that the target's shareholders want to sell to the highest bidder and that the Board should not prejudge the merits of the underlying transaction in accepting the use of a trust. Yet those factors would *always* be present – and indeed would even be so for the obviously implausible case of BNSF proposing to acquire Union Pacific or CSX proposing to acquire Norfolk Southern. Nor would there be any real basis for distinguishing the CN/KCS proposal from any proposed transcontinental merger, since the competitive overlaps in such a transaction would not be substantially greater than in CN/KCS. Approving a voting trust here would re-establish the routine use of voting trusts, contrary to the 2001 rules, in the process stimulating interest in further rail consolidation.

2. *Allowing CN to Close into Trust Would Immediately Create Pressure for CP to Participate in Further Consolidation*

Whatever implications a CN acquisition of KCS might have for consolidation involving other railroads, it would at the very least create strategic pressure for CP to find ways to pursue growth opportunities on behalf of its customers.

First, CN's use of a voting trust would immediately remove any realistic prospect of CP being able to pursue its own acquisition of KCS, which CP had seen as a catalyst for growth. Mr. Creel explains that he anticipates that a Board decision allowing CN to put KCS into trust would extinguish CP's pursuit of its own acquisition of KCS, at least for the foreseeable future. CP could not expect that CN would ever, under any circumstances, allow KCS to be sold to CP.

Creel V.S. at 11. And even if CP might have some hope of one day pursuing such an acquisition, it could not expect that opportunity to arise for three-and-half years given CN's plan to divest KCS only at the end of 2024. *See* CN-18/KCS-1, Houle V.S. at 15. CN would control the divestiture process (albeit subject to Board oversight), and might well claim the power to break KCS into multiple parts, severing KCS's U.S. rail carriers from its Mexican railroad. It would be irrational to anticipate that a CP/KCS transaction could ever again be completed. Creel V.S. at 12-15.

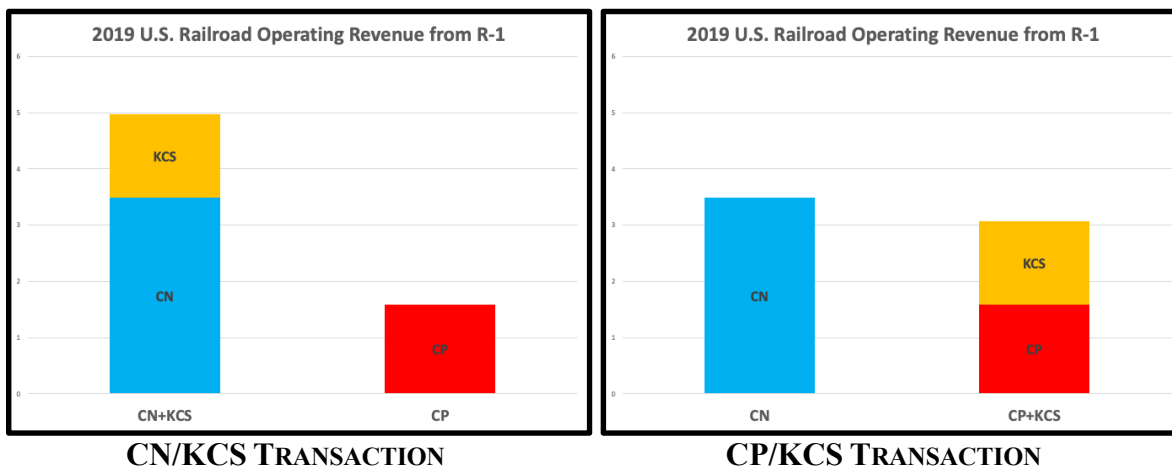
Second, without being able to pursue a KCS transaction, and facing the potential that CN would be allowed to combine with KCS, CP would face pressure to explore other inorganic growth opportunities. As Mr. Creel explains, were CN allowed to place KCS into trust, this event would immediately set in motion a strategic reevaluation by CP of its own growth opportunities. CP's future strategic path without CP/KCS or an independent KCS cannot be known, but there is every reason to think that CP would take steps over the next three and a half years that would render moot, or at least more difficult, a potential combination with KCS. *Id.* at 10-15.

Were CN not allowed to use a trust, but still pursued Board approval to combine with KCS, that pressure would abate. The outcome of a CN/KCS proceeding might end up creating such pressure, but the potential for an independent KCS – or perhaps a CP/KCS combination – would remain alive during the review process, and CP's need to explore strategic alternatives would not be nearly as certain as it would become were CN allowed to complete its purchase of KCS's shares using a trust. *Id.* at 15.

The strategic pressure that CP would face would flow from the fundamentals of the CN/KCS proposal. Whereas CP's proposed acquisition of KCS would cement the current

structure, CN's would destabilize it by enabling CN to significantly expand its size and scope relative to CP, while simultaneously stranding CP's U.S. network north of Kansas City. *Id.* at 13-15. Instead of being roughly CN's size in the United States following its own proposed KCS acquisition, CP would end up being only one-third the size of CN, as shown in Figure 7 below (reproduced from CP-4). *Id.* at 13 & Creel Fig. 4.

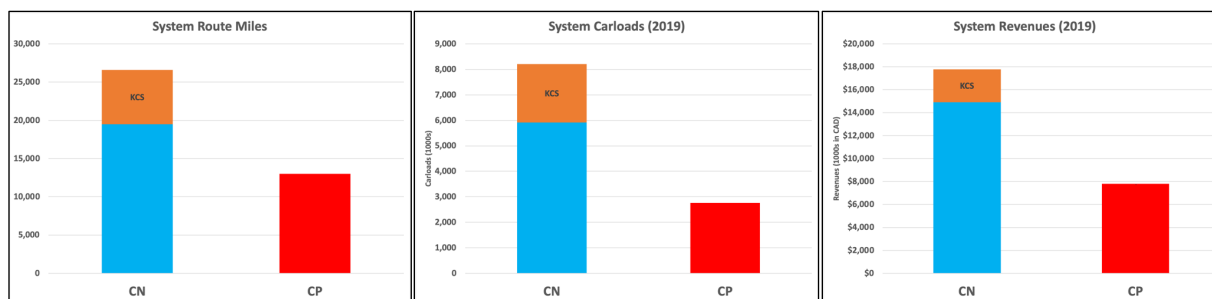
FIGURE 7



CN would also dwarf CP on a system-wide basis, as shown in Figure 8 below, depicting comparisons based on system-wide route miles, carloads, and revenues. *Id.* at 13-14 & Creel Fig. 5.

FIGURE 8

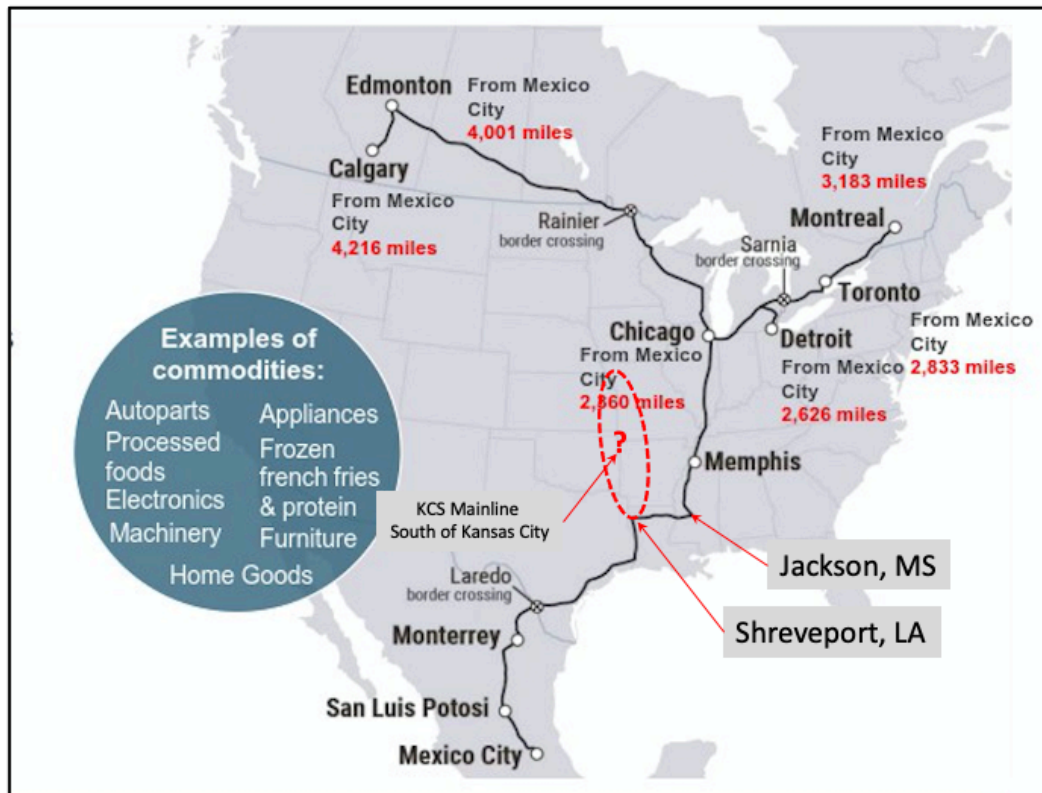
SYSTEM-WIDE CP IS DWARFED BY CN/KCS



Equally important, CN's acquisition of KCS would strand CP's U.S. investments north of Kansas City with no friendly outlet to the south, stifling growth and leaving CP's lines south and west of Chicago as underutilized appendages. *Creel V.S.* at 14-15. CN's assertions about keeping the Kansas City Gateway open for traffic moving between CP and CN's former-KCS lines provide no solace. CP is skeptical any such condition could ever be effective given CN's likely incentive to route through traffic away from Kansas City (and towards Jackson, Mississippi, where CN-KCS traffic flows today. No matter how "open" CN might be to interchanging with CP, by converting KCS's mainline south of Kansas City into a downgraded, low-density line with reduced service levels would ensure that – openness or no openness – CP would have a greatly diminished ability to compete for the traffic flows upon which much of its U.S system depends. *Id.* at 7-10.

CN's own public advocacy provides evidence that CN would downgrade KCS's Shreveport-Kansas City mainline, which is the one potentially "friendly" southern connection for CP's U.S. rail network. CN depicts the KCS-CN route via Jackson, Mississippi (bypassing Kansas City entirely) as the preferred route for all CN/KCS traffic between KCS's network and CN's network in the U.S. Midwest and eastern and western Canada. Figure 9 below is an excerpt from CN's presentation to investors on May 6, 2012, touting its proposed new routes, and KCS's mainline south of Kansas City is curiously absent.

FIGURE 9⁸¹



Confirming this impression, KCS’s President Pat Ottensmeyer made clear (in his presentation to investors relating to the CN/KCS transaction), that the route that would connect KCS’s system with the Midwest would be the “premium corridors” of CN-KCS route via Jackson, Mississippi, not KCS’s former mainline to Kansas City:

“our combination here connects two of the most well-known established premium corridors in North America *specifically the KCS section of the Meridian speedway route between Shreveport and Jackson and then the CN route from Jackson to Chicago to access the upper Midwest and Canada.*”⁸²

On June 3, KCS’s Pat Ottensmeyer reiterated that as part of a CN network, KCS’s Kansas City-Shreveport mainline would be “a less attractive route than the one that exists here with the

⁸¹ CN Investor Presentation (May 2021), Slide 7 (excerpts are Exhibit 21 hereto).

⁸² CN 14th Annual Wolfe Research Global Transportation & Industrials Conference Transcript (May 26, 2021) (Exh. 11) at 3 (emphasis added).

Kansas City Southern Meridian Speedway to Jackson, and then up to Chicago, Detroit, and beyond,”⁸³ and thus echoed CN’s CEO’s own comment that this route would essentially become a “redundancy line” in CN’s system.⁸⁴

When CN and KCS previously analyzed the routing of traffic between their two systems, as part of the CN/IC merger process incorporating the effect of the then-extant CN/IC-KCS Alliance, they similarly concluded that Jackson would “become the principal gateway for Alliance traffic moving between CN/IC served territories and southern KCS territory of Tex Mex (Mexican traffic).”⁸⁵

These changes may begin immediately upon formation of the voting trust as CN moves ahead to “*do the pre-marketing with all of these buyers and sellers* and have them focus on the benefit of exploiting this new supply chain logistics.”⁸⁶

Analysis of the basic geography of a CN/KCS network confirms the risks to service levels on KCS’s Shreveport-Kansas City line. As Mr. Creel explains, were KCS part of a CN

⁸³ CN Bernstein Strategic Decisions Conference Transcript (June 3, 2021) (Exh. 12) at 13.

⁸⁴ *Id.* at 11; *see also* UBS Global Industries and Transportation Virtual Conference Transcript (June 8, 2021) (Exh. 13) at 7.

⁸⁵ *CN/IC*, Railroad Control Application, Vol. 2 (CN/IC-7), Joint Verified Statement of George C. Woodward & Michael H. Rogers (July 1998) at 5 (excerpts are Exhibit 22 hereto). The impact of these diversions – even limited to so-called “Alliance traffic” rather than reflecting the full merger of CN and KCS, was to shift many categories of traffic off the KCS Shreveport-Kansas City mainline and onto the joint KCS-CN mine via Jackson as shown for example in the Woodward/Rogers Ex. 1, reflecting general merchandise diversions. The KCS Shreveport-Kansas City line is shown in red, denoting “losses,” while the KCS Shreveport-Jackson and CN Jackson-north lines are shown in green, denoting “gains.” *Id.* at 13.

⁸⁶ CN Virtual Fireside Chat Hosted by Bernstein Transcript (May 7, 2021) (Exh. 9) (May 7, 2021) at 9, 10 (J.J. Ruest: “from the day that the voting to us would be approved and the shareholders of KCS would vote in our favor, so we can buy a new company, but put it in trust. Now, we will not control whether KCS does, but we could start working directly with customers and terminal operators to try to prepare the vision that we will be able to roll out in late 2022;” “the pre-marketing we could do with many of these producers ahead of the controlling their combination just as pre-marketing and *getting them predisposed*,” “So, we will take the time *between [the voting trust] and the STB final approval to do the pre-marketing with all of these buyers and sellers* and have them focus on the benefit of exploiting this new supply chain logistics.”) (emphasis added); *see also* Creel V.S. at 14-15.

network, many of the traffic flows that currently move via KCS's Shreveport-Kansas City mainline would naturally be rerouted via Jackson, Mississippi. For example, traffic between Mexico and Chicago (and points beyond) would move via CN's shorter combined route via Jackson rather than via Kansas City. Likewise traffic between Kansas City and New Orleans (which today would move via Shreveport), would naturally flow over a shorter and CN/KCS route via St. Louis and Jackson. In addition, CN would undoubtedly seek to divert as much of the existing CP-KCS interline traffic (e.g., between Canada and the Gulf/Texas/Mexico) as possible to CN single line routes, which would bypass Kansas City and move via the CN single-line route via Jackson. The result of all this would be to strip KCS's Shreveport-Kansas City mainline of much of its current volumes. What would be left would be local traffic and occasional bulk shipments of coal and grain. Creel V.S. at 8-9 & Table 1, 14.

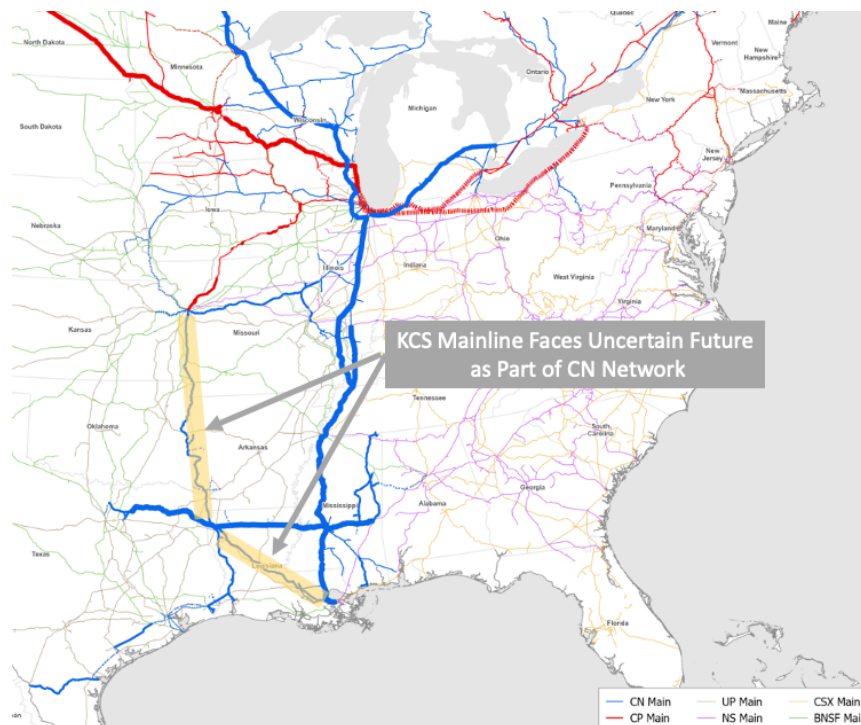
CN's incentives to maintain service levels and capacity on the line would shrink accordingly, inevitably degrading the level of service CP might imagine providing via interline routes over Kansas City via the CN-controlled vestiges of the KCS system. No matter what "gateway protections" CN might propose as part of its transaction, the inevitable downgrading of KCS's mainline south of Kansas City will spell the demise of today's viable CP- KCS interline routes.⁸⁷ Figure 10 depicts this world. Creel V.S. at 10 & Creel Fig. 2.⁸⁸

⁸⁷ Nor would it be a viable solution to divest these lines to CP or another owner, as the available traffic opportunities when severed from the remainder of the KCS system likely would be too limited to support investment in the kinds of services KCS provides today or that CP/KCS could provide were these two railroads able to combine.

⁸⁸ Rail labor organizations have expressed concern about potential disinvestment or divestitures ("sale or abandonment of competing rail lines") associated with CN's control of KCS, and the accompanying job losses. Teamsters Canada Rail Conference Maintenance of Way Employees Division (filed with CP-9) at 1. Indeed, "the recent announcement that CN will divest of the track between New Orleans and Baton Rouge is just the start of negatively affecting union positions in the railway industry." *Id.*; see also SMART-Transportation Division Ltr. (filed June 14, 2021) at 2.

FIGURE 10

IMPACT OF CN/KCS ON KCS SHREVEPORT-KANSAS CITY LINE



V. CN'S ACQUISITION OF KCS USING A VOTING TRUST WOULD CONSTRAIN THE BOARD'S ABILITY TO ENSURE THAT THE ULTIMATE OUTCOME OF ANY CONSOLIDATION INVOLVING KCS SERVES THE PUBLIC INTEREST

Apart from the near-term public harms that would arise during the trust period, allowing the use of a voting trust in this case – the first ever to apply the 2001 merger rules – would inappropriately and unnecessarily constrain the Board's ability to use its merger review and conditioning authority to ensure that the public interest is served.

A. The Public Interest Impacts of the CN/KCS Transaction Cast Doubt on Whether the Transaction Would Be Approved in the Board's First-Ever Application of the 2001 Merger Rules

The core but false premise of CN's proposed use of a voting trust is that there is no doubt that its proposed control transaction will be approved and consummated, such that one might imagine that there is no public interest risk associated with allowing the acquisition to occur first and the review to occur later. This premise ignores the facts of CN's proposed transaction as

well as the important context that the transaction will for the first time ever be reviewed under the 2001 merger rules, which reversed the pre-2001 presumption favoring consolidation and shifted the paradigm for the evaluation of major mergers. The Board's new public interest hurdle for voting trusts was established in no small part to "preserve [the Board's] ability to carry out [its] statutory responsibilities"⁸⁹ precisely because the Board would not be assuming that approval of further Class I consolidation was a foregone conclusion.

The prudent course here would be to leave open the possibility that the Board might ultimately conclude that the CN/KCS transaction must be disapproved or conditioned in a manner that will be unacceptable to the Applicants. The long list of public interest harms, especially when evaluated in comparison with a CP/KCS transaction that achieves all the same benefits with none of those harms, makes disapproval a realistic – and perhaps likely – outcome here. *See* pages 23-27 above.

The fact that the 2001 rules will apply reinforces this conclusion. Those rules are not just about augmenting the informational requirements for a merger application to be deemed complete. They changed the substantive standards of review, and vastly expanded the Board's discretion to impose conditions to remedy an array of harms caused by the transaction and go still farther to enable conditions designed to "enhance" competition relative to pre-transaction conditions and take into account future consolidation and other developments. *See* Section III above.

CN has argued vociferously that it would be inappropriate for the Board to prejudge the outcome of the Board's review of the competitive issues raised by its proposed transaction. *See* page 23 above. But that is precisely why use of a voting trust would be inappropriate here. The

⁸⁹ *Major Railroad Consolidation Procedures*, 5 S.T.B. at 567.

Board cannot yet know whether any conditions would suffice to make CN's proposal consistent with the public interest; the Board cannot yet know whether the conditions it might impose would be acceptable to CN, such that it would proceed with the transaction; and the Board cannot yet know what industry conditions will be like in late 2022 when CN might need to – or choose to – divest its interest in KCS.

B. Allowing a Voting Trust Would Undermine the Board's Ability to Assure that the Public Interest Is Served Were a Divestiture of KCS Required

By allowing KCS to be placed into trust, the Board may well end up constraining its own discretion to reach the best decision for the public interest because of the negative consequences associated with unwinding the voting trust and trying to convey KCS to another owner and in a manner acceptable to the Board. One certainty is that there is no certainty in the world outside the Board's doors. Neither the Board nor CN can control events that may transpire between now and the end of 2022, when CN expects a ruling from the Board on its control application, or at the end of 2024 when CN says it would divest KCS. Given the inherent risk that the outcome in this case will be to disallow CN control, the only way to ensure that events do not further erode the public interest is to keep KCS from being acquired until after the Board completes its review.

The Board's decision to modify its voting trust rules arose out of precisely the concern that allowing the use of trusts might have the effect of pre-determining the outcome of the new rules' much farther reaching evaluation of future major merger proposals. The Board rebuffed efforts by some railroads – including CN – to constrain the scope of its public interest review of the underlying transaction and limit its ability to demand new kinds of conditions that, for example would enhance competition and address downstream transactions.⁹⁰ The Board

⁹⁰ See *Major Rail Consolidation Procedures*, Ex Parte No. 582 (Sub-No. 1), CN Rebuttal Comments (Jan. 11, 2001) at 27 (urging Board to remove “regulatory uncertainties inherent in the

reiterated that its new merger rules, “[i]nstead of focusing narrowly on harm to competition and essential services, ... reflect[] a willingness to use our conditioning power to mitigate or offset all types of merger- related harms to the public interest.” *Major Rail Consolidation Procedures*, 5 S.T.B. at 569. But at the same time, the Board underscored that if “applicants in a future rail merger proceeding did not believe that they could prosper with the conditions that we ultimately impose, they would have the option of not proceeding with the approved transaction.” *Id.* at 32. The Board expressly noted that its new voting trust approval requirement was designed to “ensure that applicants preserve that option.” *Id.* at 32 n.30. This is why the Board was no longer willing to allow voting trusts to be “used routinely,” but was instead preserving flexibility to allow them “only for those rare occasions when their use would be beneficial.” *Id.* at 30 n.29. “[P]rospective applicants [we]re forewarned that use of a voting trust is a privilege, not a right.” *Id.* at 30.

Allowing the use of a voting trust in connection with CN’s proposal would run headlong into this policy concern. It would risk having the Board decide whether approval of CN/KCS is in the public interest in a context where developments between now and the end of 2022 have made any decision other than approval – or the imposition of a less onerous set of conditions – unacceptably risky because of the perils of a divestiture process. Those perils arise for at least two reasons, both reflecting circumstances that would no longer be within the Board’s power to control were it to allow the use of a voting trust.

Board’s proposals with respect to conditions to enhance competition [and] downstream review,” while urging liberal use of voting trusts) (excerpts are Exhibit 17 hereto).

1. *CN Likely Will Assert the Ability to Separate KCS's U.S. Rail Carriers from Its Mexican Rail Subsidiary*

First, were CN obligated to divest KCS in order to prevent an unauthorized control following an adverse decision by the Board, CN will undoubtedly assert the right to carve KCS's rail network up into pieces if doing so suits its financial interests. CN has already asserted the Board's lack of authority over voting trusts in general. *See* Ex Parte No. 582, CN Comment at 21 (arguing that proposed use of voting trusts is "outside the Board's public interest jurisdiction," which is limited to "the merits of control transactions at the conclusion of the merger proceeding"). Against this backdrop, CN seems likely to take the position that the Board would similarly have no say over how CN disposes of KCS's Mexican rail subsidiary, no matter how important that part of KCS's system may be to KCS's competitive role in the U.S. rail network.⁹¹ Because KCSM has no trackage in the United States, the Board has regarded it as outside the Board's jurisdiction.⁹² Once CN owns KCS's Mexican railroad affiliate (as it would if the KCS shares are transferred to CN and placed into trust), the Board might well find itself lacking authority to require that CN dispose of that interest even if CN is not able to control KCS's U.S. rail carrier subsidiaries.

Such an outcome would not be without precedent. In the *SFSP* case, Santa Fe conducted a similar dissection of Southern Pacific but did so up-front, prior to placing only Southern

⁹¹ In opposing the application of the KCS waiver to the CP/KCS transaction, CN emphasized that "KCS's acquisition of TFM, a deal valued at \$672 million, doubled KCS's total trackage and transformed KCS into a force in the crucial 'NAFTA corridor.'" Finance Docket No. 36500, CN-1 (Apr. 1, 2021) at 6.

⁹² *See Kansas City Southern – Control – Kansas City Southern Ry., Gateway Eastern Ry., The Texas Mexican Ry.*, Finance Docket No. 34342 ("*KCS/TM*") (Decision No. 12, STB served Nov. 29, 2004) at 8 ("*KCS*/TFM transaction is not subject to our jurisdiction"); *see also KCS/TM*, Decision No. 2, served June 9, 2003) at 7 n.15 "Board has no jurisdiction over the acquisition of control of a rail carrier – like TFM – that is located entirely outside the United States").

Pacific's rail carrier subsidiaries into trust. Santa Fe immediately merged with Southern Pacific at the holding company level, giving Santa Fe control of all parts of Southern Pacific that were outside the ICC's jurisdiction, including SP's extensive real estate and natural resources holdings.⁹³ This was quite controversial and may have contributed to Southern Pacific's weakened role in the U.S. rail network following its removal from voting trust.⁹⁴

The Board could be faced with a similar quandary if CN were allowed to place KCS into trust. At least in the *SFSP* case, the ICC was given an opportunity to consider in advance whether to allow SP's rail carriers to go into trust severed from the rest of Southern Pacific. Here, a decision allowing CN to place KCS into trust might well relinquish any ability to stop CN from divesting only the U.S. rail carriers it is not allowed to control, while keeping (or selling to others outside the Board's purview) KCS's Mexican railroad subsidiary, with unknown but undoubtedly large consequences for the public interest and the role of KCS in the U.S. rail network.

⁹³ See *Santa Fe Southern Pacific Corp. — Control — Southern Pacific Transportation Co., Finance Docket No. 30400* ("*SFSP*") (Decision served Dec. 23, 1983), 1983 ICC Lexis 70 at *12-13 ("decision of Santa Fe Industries and the Southern Pacific Company to merge their non-transport operations before hearing on an application for approval of the associated rail merger is not one that we would have encouraged. It has committed two corporations to a course of action well in advance of any possible governmental approval of a major part of their mutual corporate plan.").

⁹⁴ See *SFSP*, 2 I.C.C.2d 709, 715 (1986) (noting that ICC allowed Santa Fe to sever SP rail carriers from their non-rail affiliates and place SPT into voting trust "[d]espite our deep reservations about the wisdom of placing SPT in a voting trust"). When it allowed SP to be acquired by UP in 1996, the Board noted SP's historically weak state and eroding "competitive position." *Union Pacific Corp., Union Pacific R.R. Co. — Control & Merger — S. Pacific Rail Corp., S. Pacific Trans. Co., St. Louis S.W. Ry. Co., SPSCCL Corp. & Denver & Rio Grande W. R.R. Co.*, 1 S.T.B. 233, 318 (1996). For its part, CN (whose lawyer at the time had represented SP) attributed this to the fact that SP had "languished" in a voting trust "without strategic direction." See *Major Rail Consolidation Procedures*, Ex Parte No. 582 (Sub-No. 1), CN Comments (Nov. 17, 2000) (Exh. 16) at 9 n.5.

2. CN's Extreme Price Premium and Associated Debt Exacerbate the Risk of a Divestiture Calamity

A decision allowing CN to place KCS into trust will also relinquish the Board's ability to prevent CN from running huge financial risks that would be magnified were CN required to divest KCS. The risks to CN and the public are extraordinary given the real possibility that CN would not recoup any of its \$19 billion of acquisition debt if it is compelled to dispose of its ownership of KCS shares. Even if CN can sell KCS at a price sufficient to pay down its massive debt, it would face a huge loss on its investment, putting pressure on it to take actions that would not serve the public interest. Velani V.S. at 5, 17-24; *see generally* Section IV.A. above.

C. Allowing CN to Lock KCS into a Multi-Year Voting Trust Would Extinguish the Board's Ability to Consider the CP/KCS Transaction's Many Public Benefits as an Alternative to the CN/KCS Proposal

Finally, a decision allowing CN to use a voting trust likely would as a practical matter extinguish CP's pursuit of a combination with KCS, which could have a major impact on the Board's evaluation of the public interest implications of the CN/KCS proposal. A decision disallowing CN's proposed voting trust, by contrast, would keep alive the Board's ability to consider KCS's future course against the backdrop of the concrete alternative of a procompetitive CP/KCS transaction. Creel V.S. at 10-15.

As noted above, the 2001 merger rules make clear that the proffered benefits of consolidation must be reviewed against the backdrop of the concrete alternative transactions that might deliver the same benefits with fewer costs. 49 C.F.R. § 1180.1(c). In this regard, the Board should take note of the prescient comments of Supreme Court Justice William Brennan on the ICC's role in evaluating proposed railroad consolidations:

“[T]he agency has wide latitude in fashioning procedures, and a broad power to condition its approval of proposals. ... [T]he agency's duty is to weigh alternatives and make its choice according to its judgment how best to achieve and advance the goals of the National Transportation Policy.”

Baltimore & Ohio R.R. v. United States, 386 U.S. 372 (1967) (Brennan, J., concurring).

The 2001 rules speak precisely to Justice Brennan’s admonition, by elevating the role of alternatives to any given consolidation proposal and requiring more careful consideration of a transaction’s follow-on industry consequences. By sidelining the CP/KCS proposal, a CN/KCS voting trust will sharply constrain the Board’s ability to “weigh alternatives and make its choice according to its judgment how best to achieve and advance the goals of the National Transportation Policy.”

For now, the CP/KCS transaction remains very much alive notwithstanding CN’s agreement to acquire KCS. As the Board is aware, CP is continuing to pursue Board approval for its own acquisition of KCS because the Merger Agreement that KCS has entered into with CN is conditioned on CN’s authority to use a voting trust to acquire KCS’s shares. As set forth in CP’s May 21 Letter in Finance Docket No 36500, CP anticipates seeking to persuade KCS to re-engage with CP following a Board ruling declining to authorize CN’s proposed use of a voting trust. CP is continuing to progress its application seeking Board authority for control, as Board precedent expressly authorizes,⁹⁵ and it has made considerable progress in that regard, expending thousands of hours of effort and millions of dollars to develop a merger application

⁹⁵ It is well established in Board precedent that grants of Board authority are “permissive, not mandatory,” *see, e.g., The Kansas City Southern Ry. – Trackage Rights Exemption – Gateway Western Ry. & Gateway Eastern Ry.*, Finance Docket No. 33780 (STB served Sept. 16, 1999) at 2, and that multiple alternative applications for control of a railroad may proceed on parallel paths. *See, e.g., CSX Corp. & CSX Transportation, Inc. – Control & Merger – Conrail Inc. & Consolidated Rail Corp.*, Finance Docket No. 33220 (Decision No. 5 served Jan. 9, 1997); *Norfolk Southern Corp. & Norfolk Southern Ry. Co. – Control – Conrail Inc. & Consolidated Rail Corp.*, Finance Docket No. 33286 (Decision No. 4 served Jan. 30, 1997); *Norfolk & Western Ry. Co. & Baltimore & Ohio R.R. Co. – Control – Detroit, Toledo & Ironton R.R. Co.*, Finance Docket Nos. 28499 (Sub-No. 1) & 28676 (Sub-No. 1) (Decision served Nov. 30, 1979); *Rio Grande Indus., Inc., SPTC Holding, Inc., & The Denver & Rio Grande Western R.R. Co. – Control – Southern Pacific Transportation Co.*, Finance Docket No. 32000 (Decision served Aug. 25, 1988).

that it plans to submit to the Board in Finance Docket No. 36500 on or about August 20, 2021.⁹⁶

In addition, the environmental review process for the CP/KCS transaction is well underway. The STB's Office of Environmental Analysis ("OEA") has selected a third-party contractor to support the agency's environmental process and has issued information requests to CP about the anticipated changes in operations on the combined systems. CP has similarly engaged in discussions with FRA concerning the safety implementation plan ("SIP") that CP will be preparing and submitting to the agencies for review.

Accordingly, in evaluating the impact of approving CN's proposed voting trust, the Board should consider the likely loss of potential benefits that a CP/KCS transaction – if approved by the Board – would uniquely bring. CP is not asking the Board to judge these benefits prematurely, but merely to recognize the potential costs associated with a step – approval of a trust for CN – that would rule out efforts to unlock those benefits.

VI. THE HARMS TO THE PUBLIC INTEREST FROM CN'S PROPOSED USE OF A VOTING TRUST HERE ARE ECHOED IN THE COMMENTS OF HUNDREDS OF OPPONENTS OF CN'S PROPOSAL

More than 300 shippers, state and local governments, railroads, railroad suppliers, and other stakeholders located throughout North America have written the Board to warn about the harms that would flow from CN's use of a voting trust in this proceeding. These opponents are catalogued in the index set forth as Appendix A hereto.

Chief among the concerns of voting trust opponents are likely anticompetitive consequences. Pro Ag Farmers' Cooperative, a Minnesota grain shipper, warns that CN and KCS "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

⁹⁶ See Finance Docket No. 36500, CP-22 (June 21, 2021) (Exhibit 23 hereto).

Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.”⁹⁷ This fear is echoed by shippers throughout the United States, Canada, and Mexico. As one commenter explains, “[a]s 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.”⁹⁸

CN’s proposal to divest KCS’s Baton Rouge-New Orleans line has not overcome anticompetitive concerns held by stakeholders in Louisiana. Pinnacle Polymers LLC, which ships plastic polymers out of its facilities in Garyville, Louisiana, warns that it will be “detrimentally impacted by a loss of competition in the region.”⁹⁹ Another stakeholder in Baton Rouge explains that “[m]any of Louisiana’s most important industries – ports, oil and gas, agriculture and others – rely on freight rail to ship their products across the country,” and CN’s proposed merger with KCS “would combine two competitive lines to just one line in a critical part of Louisiana’s transportation infrastructure.”¹⁰⁰ Similarly, 84 Lumber Co., which operates a facility in Baton Rouge, confirms that the “risk of reduced competition is naturally unfavorable.”¹⁰¹

One thread recounts the broken promises that have accompanied CN’s previous merger bids: “CN’s acquisition of the Wisconsin Central Limited came with a promise that the local service would be preserved and investments would continue.” Following the merger, however, “CN rapidly demarketed huge swaths of small to medium-sized customers, parked log cars,

⁹⁷ Pro Ag Farmers’ Cooperative Ltr. (filed with CP-9) at 2.

⁹⁸ Ontario Southland Railway Inc. (filed with CP-9) at 3.

⁹⁹ Pinnacle Polymers LLC Ltr. (filed with CP-9).

¹⁰⁰ Burland & Associates Ltr. (filed with CP-9).

¹⁰¹ 84 Lumber Co. Ltr. (filed with CP-9).

stopped investing in boxcars, and picked winners and losers.” And following its acquisition of Illinois Central in 1999, CN “did not even begin to stay true to their promise to keep a significant headquarter presence in Chicago.”¹⁰²

Shippers throughout North America oppose CN’s voting trust on the additional ground that Board approval of CN’s voting trust “would eliminate the opportunity for KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.”¹⁰³ The benefits that will flow from a CP/KCS merger are particularly exciting to shippers in the Upper Midwest and Canada. The North Dakota Grain Growers Association emphasizes that CP’s acquisition of KCS “promises to create new, better single-line routes from America’s Heartland and Canada to the Gulf of Mexico.” NDGGA explains that CP currently possesses “an underutilized route line that only goes as far as Kansas City,” and CP’s “only friendly connection at Kansas City is with KCS,” so the CP/KCS acquisition would create “incentives [for CP] to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.”¹⁰⁴ Ag Processing Inc., which ships soybean products from Nebraska to international markets, highlights the potential for the CP/KCS transaction to “enhance U.S. access to Mexico.”¹⁰⁵

Finally, shippers across North America worry that “the huge price premium [CN] is paying and [CN’s resulting] massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers . . . through higher prices for CN’s current

¹⁰² Progressive Rail Inc. Ltr. (filed with CP-7).

¹⁰³ Tepper Holdings Inc. (Fastfrate Group of Companies) Ltr. (filed with CP-9) at 3.

¹⁰⁴ Finance Docket No. 36514, North Dakota Grain Growers Association Ltr. (filed with CP-9) at 3.

¹⁰⁵ Finance Docket No. 36514, Ag Processing Inc. Ltr. (filed with CP-9).

customers or less investment on CN's network."¹⁰⁶ Rail labor organizations share this concern, warning that the debt load CN would assume following Board approval of a CN voting trust "has the real possibility of harming employees of both KCS and CN."¹⁰⁷ Rail labor organizations have also warned that, "we fully expect job loss on either CN or KCS because it is likely the STB would require further sale or abandonment of competing rail lines over and above what CN recently announced."¹⁰⁸

CONCLUSION

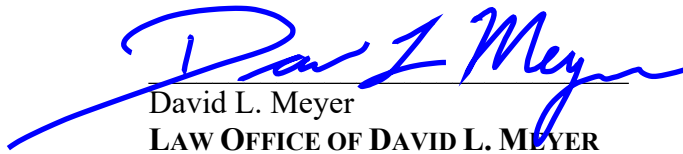
Disapproval of CN's proposed voting trust will preserve a world in which the Board can conduct a full and fair review of the public interest consequences of CN's proposed control of KCS, before CN's actions set in motion public interest impacts that would be beyond the control of the Board to assess and prevent. Accordingly, CP respectfully requests that the Board reject CN's proposed use of a voting trust in this proceeding.

¹⁰⁶ American Bean LLC Ltr. (filed with CP-7) at 4.

¹⁰⁷ SMART-Transportation Division General Committee of Adjustments 261 Ltr. (filed with CP-7) at 2.

¹⁰⁸ Teamsters Canada Rail Conference Maintenance of Way Employees Division Ltr. (filed with CP-9) at 1.

Respectfully submitted,



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June 28, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Canadian Pacific's Reply to Joint Motion for 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//
Sonia Gupta

June 28, 2021

APPENDIX A

INDEX OF STATEMENTS OPPOSING CN'S PROPOSED USE OF A VOTING TRUST

STATE AND LOCAL OFFICIALS AND CHAMBERS OF COMMERCE

<u>Stakeholder</u>	<u>When Filed</u>
City of Clinton, Il	Filed with CP-9 (June 21, 2021)
City of Markham, Il	Filed with CP-10 (June 28, 2021)
City of Quitman, MS	Filed with CP-10 (June 28, 2021)
Clarke County Chamber of Commerce	Filed with CP-10 (June 28, 2021)
Dewitt County, Il, Board Member	Filed with CP-10 (June 28, 2021)
Dewitt County, Il, Sheriff	Filed with CP-10 (June 28, 2021)
Ford County Board Member, District 3	Filed with CP-10 (June 28, 2021)
Former North Dakota State Legislator	Filed with CP-10 (June 28, 2021)
Former State Senator and Assistant Pro Temp	Filed with CP-10 (June 28, 2021)
Government of New Brunswick, Canada	Filed with CP-10 (June 28, 2021)
Maine State Chamber of Commerce	Filed with CP-10 (June 28, 2021)
Metropolitan Mayors Caucus	Filed May 11, 2021
Muscatine Chamber of Commerce	Filed with CP-9 (June 21, 2021)
New Brunswick Premier	Filed with CP-7 (June 1, 2021)
Northwest Municipal Conference	Filed May 14, 2021
State of Arkansas Representative	Filed with CP-10 (June 28, 2021)
State of Oklahoma Representatives	Filed with CP-9 (June 21, 2021)
State Representative, 4th Assembly District	Filed with CP-7 (June 1, 2021)
Village of Lake Barrington, Il	Filed May 7, 2021
Village of Cary, Il	Filed June 14, 2021
Village of Dolton, Il	Filed with CP-10 (June 28, 2021)
Villages of Grayslake, Richton Park, Thornton, Il	Filed May 21, 2021
Village of Matteson, Il	Filed with CP-10 (June 28, 2021)
Villages of Orland Park, Glenview, Deer Park, Il	Filed May 13, 2021
Village of Richton Park, Il	Filed with CP-10 (June 28, 2021)
Village of Robbins, Il	Filed with CP-10 (June 28, 2021)
Villages of Wayne, River Forest, Il	Filed June 2, 2021

OTHER RAILROADS

<u>Stakeholder</u>	<u>When Filed</u>
Alberta Prairie Steam Tours Ltd. d/b/a Alberta Prairie Railway	Filed with CP-7 (June 1, 2021)
Boundary Trail Railway Company	Filed with CP-7 (June 1, 2021)
Central Canadian Railway Inc.	Filed with CP-7 (June 1, 2021)
Central Midland Railway	Filed with CP-7 (June 1, 2021)
Chicago, St. Paul & Pacific Railroad and Chicago Jct. Railway	Filed with CP-7 (June 1, 2021)
Dakota, Missouri Valley and Western Railroad	Filed with CP-9 (June 21, 2021)
Great Sandhills Railway	Filed with CP-9 (June 21, 2021)
Great Western Railway Ltd.	Filed with CP-7 (June 1, 2021)
Lake Line Railroad Inc.	Filed with CP-7 (June 1, 2021)
Long Creek Railroad Company Inc.	Filed with CP-7 (June 1, 2021)
Northern Plains Railroad	Filed with CP-9 (June 21, 2021)

<u>Stakeholder</u>	<u>When Filed</u>
Ontario Southland Railway Inc.	Filed with CP-9 (June 21, 2021)
Progressive Rail Incorporated	Filed with CP-7 (June 1, 2021)
Stewart Southern Railway	Filed with CP-7 (June 1, 2021)

LABOR ORGANIZATIONS

<u>Stakeholder</u>	<u>When Filed</u>
BLE&T CPR-US/Metra North/ Indiana Southern/ DME General Committee of Adjustment	Filed with CP-10 (June 28, 2021)
International Association of Machinists and Aerospace Workers, District Lodge 19	Filed June 7, 2021
SMART Transportation Division – Kansas, Missouri, Louisiana, Texas, Mississippi and Illinois	Filed with CP-10 (June 28, 2021)
SMART Transportation Division GCA-261	Filed with CP-9 (June 21, 2021)
SMART Transportation Division GCA-457	Filed with CP-10 (June 28, 2021)
SMART Transportation Division GCA-987	Filed with CP-9 (June 21, 2021)
SMART Transportation Division, GCA GO-049	Filed with CP-10 (June 28, 2021)
Transportation Communications Union/IAM	Filed June 7, 2021
TCRC Division 954	Filed with CP-10 (June 28, 2021)
Teamsters Canada Rail Conference Maintenance of Way Employees Division	Filed with CP-9 (June 21, 2021)
Unifor Local 101-R	Filed with CP-10 (June 28, 2021)

SHIPPERS

<u>Stakeholder</u>	<u>When Filed</u>
5 Suns Transloading Ltd.	Filed with CP-7 (June 1, 2021)
84 Lumber Company	Filed with CP-9 (June 21, 2021)
AC Logistics, Inc.	Filed with CP-9 (June 21, 2021)
AEG Fuels LLC	Filed with CP-7 (June 1, 2021)
AG Processing Inc.	Filed with CP-9 (June 21, 2021)
Ag Transfer LLC/Stone Arch Commodities LLC	Filed with CP-7 (June 1, 2021)
Albatrans Canada Inc.	Filed with CP-7 (June 1, 2021)
Alliance Recycling Group	Filed with CP-7 (June 1, 2021)
American Bean LLC	Filed with CP-7 (June 1, 2021)
The Arthur Companies	Filed with CP-10 (June 28, 2021)
ASL Distribution Services Ltd.	Filed with CP-7 (June 1, 2021)
Automoves Limited	Filed with CP-7 (June 1, 2021)
Axis Warehouse LLC	Filed with CP-7 (June 1, 2021)
Bay & Bay Transportation	Filed with CP-7 (June 1, 2021)
Beamish Construction Inc.	Filed with CP-7 (June 1, 2021)
Beaver Freight Services, LLC	Filed with CP-9 (June 21, 2021)
Benga Mining Limited	Filed with CP-10 (June 28, 2021)
Berthold Farmers Elevator, LLC.	Filed with CP-9 (June 21, 2021)
Bestway Cartage Limited	Filed with CP-7 (June 1, 2021)
Bison Transport	Filed with CP-7 (June 1, 2021)
BMA Transport Inc.	Filed with CP-7 (June 1, 2021)

Stakeholder	When Filed
Border City Concrete	Filed with CP-7 (June 1, 2021)
Bulk Logistic Inc.	Filed with CP-9 (June 21, 2021)
BURNCO Rock Products Ltd.	Filed with CP-9 (June 21, 2021)
Caine Warehousing Ltd.	Filed with CP-9 (June 21, 2021)
Canoe Forest Products	Filed with CP-9 (June 21, 2021)
Cartersville Elevator Inc.	Filed with CP-10 (June 28, 2021)
Cecchetto & Sons Ltd.	Filed with CP-7 (June 1, 2021)
CENIBRA Inc.	Filed with CP-9 (June 21, 2021)
Central Farm Service	Filed with CP-7 (June 1, 2021)
Centurion Lumber	Filed with CP-7 (June 1, 2021)
Ceres Global Ag Corp	Filed with CP-10 (June 28, 2021)
CFR Chemicals	Filed with CP-7 (June 1, 2021)
Choquette Grains Inc.	Filed with CP-9 (June 21, 2021)
CHS Inc.	Filed with CP-9 (June 21, 2021)
Clean Harbors	Filed June 28, 2021
Consolidated Fastfrate Inc.	Filed with CP-7 (June 1, 2021)
Continental Cement Company LLC	Filed with CP-10 (June 28, 2021)
Continental Cosmetics Ltd.	Filed with CP-9 (June 21, 2021)
Continental Logistics Ltd.	Filed with CP-7 (June 1, 2021)
Crow Wing Recycling	Filed with CP-7 (June 1, 2021)
Custom Bulk Inc.	Filed with CP-7 (June 1, 2021)
Cypress Concrete Ltd.	Filed with CP-10 (June 28, 2021)
Dakota Gold Transfer-Plaza, LLC.	Filed with CP-7 (June 1, 2021)
Distribution Center of Minnesota	Filed with CP-10 (June 28, 2021)
Dragonfly Properties Limited	Filed with CP-10 (June 28, 2021)
Econo Group	Filed with CP-10 (June 28, 2021)
Edmonton Railway Contracting Ltd.	Filed with CP-9 (June 21, 2021)
E.J.R. Reload Inc.	Filed with CP-7 (June 1, 2021)
Ellwood Robinson Inc.	Filed with CP-7 (June 1, 2021)
ENX Inc.	Filed with CP-9 (June 21, 2021)
Ethier Sand and Gravel	Filed with CP-7 (June 1, 2021)
EuroChem North America Corp.	Filed with CP-9 (June 21, 2021)
Fargo Transportation Services Limited	Filed with CP-10 (June 28, 2021)
Farmers Co-Operative of Hanska	Filed with CP-7 (June 1, 2021)
Farmers Coop Elevator of Rosholt	Filed with CP-9 (June 21, 2021)
Farmward Cooperative	Filed with CP-10 (June 28, 2021)
Fastfrate Integrated Logistics	Filed with CP-7 (June 1, 2021)
Federal White Cement Ltd.	Filed with CP-7 (June 1, 2021)
Feldspar Inc.	Filed with CP-7 (June 1, 2021)
Fessenden Co-operative Association	Filed with CP-10 (June 28, 2021)
Fisher Wavy Inc.	Filed with CP-7 (June 1, 2021)
F.J. Robers Co., Inc.	Filed with CP-7 (June 1, 2021)
Forest River Bean Co., Inc.	Filed with CP-7 (June 1, 2021)
Forest Specialties LLC	Filed with CP-10 (June 28, 2021)
GAF Inc.	Filed with CP-9 (June 21, 2021)
Galaxy Freightline Inc.	Filed with CP-9 (June 21, 2021)
Galaxy Plastics & Bren Technologies	Filed with CP-7 (June 1, 2021)
Gasaway Farms	Filed with CP-9 (June 21, 2021)
Global Food and Ingredients Inc.	Filed with CP-10 (June 28, 2021)
Global Furniture Group	Filed with CP-9 (June 21, 2021)
Grain Densification International, LLC.	Filed with CP-9 (June 21, 2021)
Grand Prix Inc.	Filed with CP-7 (June 1, 2021)

Stakeholder	When Filed
Great Northern Trans-Port Inc.	Filed with CP-7 (June 1, 2021)
Greenlight Traffic and Distribution Inc.	Filed with CP-7 (June 1, 2021)
Greenway Animal Nutrition Inc.	Filed with CP-7 (June 1, 2021)
Groenewegen Truck Brokers Inc.	Filed with CP-9 (June 21, 2021)
Guanajuato Energy Terminal	Filed with CP-7 (June 1, 2021)
GX Transport	Filed with CP-10 (June 28, 2021)
Hamilton Steel Logistics Inc.	Filed with CP-10 (June 28, 2021)
Harbour Metals Recycling Ltd.	Filed with CP-7 (June 1, 2021)
HCL Logistics Inc.	Filed with CP-10 (June 28, 2021)
Henry Bath, LLC	Filed with CP-9 (June 21, 2021)
Homeward Bound Properties	Filed with CP-9 (June 21, 2021)
Hopewell Logistics Inc.	Filed with CP-7 (June 1, 2021)
Horizon Grains Ltd.	Filed with CP-7 (June 1, 2021)
Iron Horse Transloading	Filed with CP-7 (June 1, 2021)
J. Carpenter Environmental, LLC.	Filed with CP-7 (June 1, 2021)
JM Grain Inc.	Filed with CP-10 (June 28, 2021)
Kallio Capital	Filed with CP-7 (June 1, 2021)
Katoen Natie Gulf Coast Inc.	Filed with CP-10 (June 28, 2021)
Kaycan Ltd.	Filed with CP-7 (June 1, 2021)
Kaytec Ltd.	Filed with CP-7 (June 1, 2021)
Keltic Transportations	Filed with CP-7 (June 1, 2021)
Kensal Farmers Elevator Company	Filed with CP-10 (June 28, 2021)
Kirkeide's Northland Been & Seed Co.	Filed with CP-10 (June 28, 2021)
Kevin Hoyer	Filed with CP-10 (June 28, 2021)
KP Building Products Ltd.	Filed with CP-7 (June 1, 2021)
La Milanais Inc.	Filed with CP-7 (June 1, 2021)
Langley Oil Company LLC	Filed with CP-9 (June 21, 2021)
LC Logistics GPS	Filed June 23, 2021
Lee Container	Filed with CP-10 (June 28, 2021)
Logistics Helper Inc.	Filed with CP-7 (June 1, 2021)
Logistique Canamex Inc.	Filed with CP-7 (June 1, 2021)
Luthi Grains	Filed with CP-10 (June 28, 2021)
Maddox Logistics Ltd.	Filed with CP-9 (June 21, 2021)
Maple Ridge Aggregates	Filed with CP-7 (June 1, 2021)
Matrix Chemical, LLC	Filed with CP-7 (June 1, 2021)
Medline Canada	Filed with CP-10 (June 28, 2021)
Micro Oil Inc.	Filed with CP-7 (June 1, 2021)
Midwest Bulk Transload	Filed with CP-7 (June 1, 2021)
Miller Precast Ltd.	Filed with CP-7 (June 1, 2021)
Minnesota Grain and Feed Association	Filed with CP-10 (June 28, 2021)
More Than Just Feeds	Filed with CP-7 (June 1, 2021)
Mosher's	Filed with CP-10 (June 28, 2021)
Mutual Transportation Services Inc.	Filed with CP-10 (June 28, 2021)
National Railroad Passenger Corporation (Amtrak)	Filed June 28, 2021
National Salvage	Filed with CP-10 (June 28, 2021)
North Dakota Grain Dealers Association	Filed with CP-10 (June 28, 2021)
North Dakota Grain Growers Association	Filed with CP-9 (June 21, 2021)
Nestle Canada Inc.	Filed with CP-7 (June 1, 2021)
Nichol and Diamond Consulting Limited	Filed with CP-7 (June 1, 2021)
North West Terminal	Filed with CP-9 (June 21, 2021)
Northern Brick	Filed with CP-7 (June 1, 2021)
Northern Ski Company Limited	Filed with CP-7 (June 1, 2021)

Stakeholder	When Filed
Ostara Nutrient Recovery Technologies Inc.	Filed with CP-7 (June 1, 2021)
Palmer Construction Group Inc.	Filed with CP-7 (June 1, 2021)
Park Farm Grains Ltd.	Filed with CP-7 (June 1, 2021)
Paterson GlobalFoods Inc.	Filed with CP-7 (June 1, 2021)
Pattison Sand Company	Filed with CP-7 (June 1, 2021)
PFL Petroleum Services Limited	Filed with CP-7 (June 1, 2021)
Phoenix Park (Canada) Energy Marketing Ltd.	Filed with CP-7 (June 1, 2021)
Pinnacle Polymers, LLC.	Filed with CP-9 (June 21, 2021)
Pioneer Construction Inc.	Filed with CP-7 (June 1, 2021)
Pipeline Foods	Filed with CP-7 (June 1, 2021)
Pique Supply Corporations	Filed with CP-7 (June 1, 2021)
Pleasant River Lumber	Filed with CP-10 (June 28, 2021)
Port Arthur Terminal	Filed with CP-7 (June 1, 2021)
Pro Ag Farmers Co Op	Filed with CP-9 (June 21, 2021)
Produits Minera Inc.	Filed with CP-9 (June 21, 2021)
R.G. Phillips Group of Companies Inc.	Filed with CP-7 (June 1, 2021)
Rail & TransLoad Inc	Filed with CP-7 (June 1, 2021)
Red Leaf Pulp	Filed with CP-7 (June 1, 2021)
Red Maple Capital	Filed with CP-7 (June 1, 2021)
Red River Energy, LLC	Filed with CP-10 (June 28, 2021)
Redhead Equipment	Filed with CP-7 (June 1, 2021)
Re-Transportation, Inc.	Filed with CP-7 (June 1, 2021)
Renewable Products Marketing Group (RPMG)	Filed with CP-10 (June 28, 2021)
Rivers Edge Terminals	Filed with CP-9 (June 21, 2021)
Rocanda Enterprises and Rocanda USA	Filed with CP-10 (June 28, 2021)
Routes Transportation Group	Filed with CP-7 (June 1, 2021)
Saskatchewan Mining and Minerals Inc.	Filed with CP-9 (June 21, 2021)
SEI Specialized Exports Inc.	Filed with CP-10 (June 28, 2021)
Seven Rivers Intermodal Terminals, LLC	Filed with CP-7 (June 1, 2021)
Shah Trading Company Ltd.	Filed with CP-10 (June 28, 2021)
Sharp Base Shipping and Transport (Canada) Ltd.	Filed with CP-10 (June 28, 2021)
Silver Peak Capital	Filed with CP-7 (June 1, 2021)
Simard Transport Ltd.	Filed with CP-9 (June 21, 2021)
Simba Transload Ltd.	Filed with CP-7 (June 1, 2021)
Simpson Seeds Inc.	Filed with CP-7 (June 1, 2021)
South Dakota Grain & Feed Association	Filed with CP-9 (June 21, 2021)
Southland Pulse Inc.	Filed with CP-7 (June 1, 2021)
Southwest Terminal Ltd.	Filed with CP-7 (June 1, 2021)
SPAAR	Filed with CP-7 (June 1, 2021)
Stalite Lightweight Aggregate	Filed with CP-10 (June 28, 2021)
Standard Mechanical Systems Limited	Filed with CP-10 (June 28, 2021)
Superior Pulses	Filed with CP-7 (June 1, 2021)
Target Transportation Ltd.	Filed with CP-7 (June 1, 2021)
Tepper Holdings Inc.	Filed with CP-9 (June 21, 2021)
Terra Contracting Ltd.	Filed with CP-9 (June 21, 2021)
TexasDeepwater Partners LLC	Filed with CP-7 (June 1, 2021)
TExpress Logistics	Filed with CP-7 (June 1, 2021)
Timiron LLC	Filed with CP-7 (June 1, 2021)
Tony Doom Supply Company	Filed with CP-9 (June 21, 2021)
Torch River Rail Inc.	Filed with CP-7 (June 1, 2021)
Tradco Inc.	Filed with CP-10 (June 28, 2021)
Transport Procal Inc.	Filed with CP-10 (June 28, 2021)

Stakeholder	When Filed
Transcare Logistics Corporations	Filed with CP-7 (June 1, 2021)
Transload Logistics Corp.	Filed with CP-7 (June 1, 2021)
Transmark Ltd.	Filed with CP-7 (June 1, 2021)
Transport Services and Logistics Canada Ltd.	Filed with CP-7 (June 1, 2021)
Trendwood Ltd.	Filed with CP-9 (June 21, 2021)
Tubular Transport & Logistics	Filed with CP-10 (June 28, 2021)
TYT Group	Filed with CP-10 (June 28, 2021)
U.S. Industrial Machinery	Filed with CP-9 (June 21, 2021)
U.S. Salt	Filed with CP-7 (June 1, 2021)
Up On Me Imports Inc.	Filed with CP-7 (June 1, 2021)
USD Group	Filed with CP-7 (June 1, 2021)
V Modal Mexicana S.C.	Filed with CP-7 (June 1, 2021)
VanKam Freightways Ltd.	Filed with CP-7 (June 1, 2021)
Veikle Grain Ltd.	Filed with CP-7 (June 1, 2021)
Victoria Pulse Trading Corporation	Filed with CP-9 (June 21, 2021)
Western Asphalt Products	Filed with CP-7 (June 1, 2021)
West-Can Seal Coating	Filed with CP-10 (June 28, 2021)
WestX Logistics Ltd.	Filed with CP-10 (June 28, 2021)
Weyburn Industrial Transload Inc.	Filed with CP-7 (June 1, 2021)
Wheaton Dumont Co-Op Elevator	Filed with CP-7 (June 1, 2021)
Wilton Farmers Union Cooperative Elevator	Filed with CP-7 (June 1, 2021)
Woodland Pulp	Filed with CP-9 (June 21, 2021)
WTC Group Inc.	Filed with CP-7 (June 1, 2021)

OTHER STAKEHOLDERS

Stakeholder	When Filed
1725091 Alberta Ltd.	Filed with CP-7 (June 1, 2021)
A & A Paving Ltd. / A & A Civil Contracting Ltd.	Filed with CP-9 (June 21, 2021)
Access Entry Systems	Filed with CP-9 (June 21, 2021)
AdvantageVM Corp.	Filed with CP-9 (June 21, 2021)
ALC Companies Inc.	Filed with CP-10 (June 28, 2021)
ALCT	Filed with CP-10 (June 28, 2021)
All American Track, Inc.	Filed with CP-7 (June 1, 2021)
Allen Mauk (Former Consultant Oklahoma Department of Transportation)	Filed with CP-9 (June 21, 2021)
Avancer International Freight Systems	Filed with CP-10 (June 28, 2021)
Brentwood Enterprises	Filed with CP-7 (June 1, 2021)
CAD Railway Industries Ltd.	Filed with CP-9 (June 21, 2021)
Canada Drayage Inc.	Letters filed with CP-7 (June 1, 2021) and CP-9 (June 21, 2021)
Canadian Heartland Training Railway Services	Filed with CP-7 (June 1, 2021)
Caravan Supply Chain Inc.	Filed with CP-10 (June 28, 2021)
Cecelia S. Johnson (Author, Businesswoman and Entrepreneur)	Filed with CP-9 (June 21, 2021)
City View Fuel, LLC.	Filed with CP-9 (June 21, 2021)
Crawford Oil Co. Inc.	Filed with CP-9 (June 21, 2021)
Cridlands Cartage Ltd.	Filed with CP-10 (June 28, 2021)
Curbside Construction Ltd.	Filed with CP-9 (June 21, 2021)
Davenport Industrial Railroad	Filed with CP-7 (June 1, 2021)
Data Communications Management Corp.	Filed with CP-9 (June 21, 2021)
Dehn Oil Company	Filed with CP-9 (June 21, 2021)

<u>Stakeholder</u>	<u>When Filed</u>
ECO-AQUATECH	Filed with CP-10 (June 28, 2021)
Executive Tree Service Inc.	Filed with CP-9 (June 21, 2021)
Fordville Coop Marketing Association	Filed with CP-7 (June 1, 2021)
Forty Mile Rail	Filed with CP-7 (June 1, 2021)
G&B Fuels Inc.	Filed with CP-9 (June 21, 2021)
Gardewine Group Inc.	Filed with CP-10 (June 28, 2021)
GDI Integrated Facility Services	Filed with CP-9 (June 21, 2021)
GDI Services Inc.	Filed with CP-10 (June 28, 2021)
Goldstar Trucking Ltd.	Filed with CP-10 (June 28, 2021)
Heritage Electric Ltd.	Filed with CP-10 (June 28, 2021)
Hansen's Releasing Company	Filed with CP-9 (June 21, 2021)
Impact Construction Inc.	Filed with CP-9 (June 21, 2021)
Industra Construction Corp.	Filed with CP-9 (June 21, 2021)
IPD Global Inc.	Filed with CP-9 (June 21, 2021)
Jimmy Burland	Filed with CP-9 (June 21, 2021)
J.L. Priest Inc.	Filed with CP-10 (June 28, 2021)
LBCO Contracting Ltd.	Filed with CP-10 (June 28, 2021)
Karan Pujji (Politician)	Filed with CP-9 (June 21, 2021)
MacCosham Inc.	Filed with CP-9 (June 21, 2021)
Mikrut Properties, LLP	Filed with CP-7 (June 1, 2021)
MX Solutions	Filed with CP-9 (June 21, 2021)
New-Way Trucking Ltd.	Filed with CP-9 (June 21, 2021)
Nulogx Inc.	Filed with CP-9 (June 21, 2021)
ORR Safety	Filed with CP-9 (June 21, 2021)
Ottawa Real Estate & Insurance	Filed with CP-10 (June 28, 2021)
Panel Construction Ltd.	Filed with CP-9 (June 21, 2021)
RAM Environmental Response Ltd	Filed with CP-10 (June 28, 2021)
Rhomberg Sersa North America	Filed with CP-9 (June 21, 2021)
Silverado Industries Inc.	Filed with CP-10 (June 28, 2021)
Slimdor Contracting Ltd.	Filed with CP-10 (June 28, 2021)
Standard Mechanical Systems Limited	Filed with CP-10 (June 28, 2021)
Vicinity Trucking	Filed with CP-10 (June 28, 2021)

EXHIBIT 1

VERIFIED STATEMENT OF KEITH CREEL

VERIFIED STATEMENT OF KEITH CREEL

1. I am Keith Creel, President and Chief Executive Officer of Canadian Pacific Railway Limited (“CP”). I have been a railroader for 29 years. Prior to joining CP, I was Executive Vice-President and Chief Operating Officer at Canadian National Railway (“CN”). I am also a proud veteran, having served as a commissioned officer in the U.S. Army, including in the Persian Gulf War.

2. I am submitting this statement to explain the likely impact on CP, its strategic objectives, and the future of the U.S. rail network were CN allowed to acquire the shares of Kansas City Southern (“KCS”) and place them in a voting trust pending the Board’s review of CN’s proposal to control KCS. That event would both end CP’s pursuit of Board approval for its own proposed combination with KCS and also lead CP to reevaluate its strategic path forward. I begin by highlighting the stark contrast from the standpoint of the public interest of the transaction that CN is presenting for Board approval and the concrete alternative available to KCS and the public in the form of CP’s proposed combination with KCS.

The CP/KCS Alternative CP Is Offering Presents a Stark Public Interest Contrast with the CN/KCS Proposed Transaction

3. There is nothing speculative about the potential for a CP/KCS combination, or the public benefits that would be achieved by such a transaction. It is worth reiterating what we said when CP and KCS jointly announced our agreement to combine with KCS. Along with KCS, we explained:

“The transaction, if approved and consummated, will generate substantial public benefits by combining the Nation’s two smallest Class I railroads. It will join two railroads whose networks are a perfect and natural fit. The CP and KCS networks are entirely end-to-end, with no overlapping routes, corridors, or territories. The number of independent railroads currently serving particular shippers will not be reduced at any location. Instead, competition will be strongly enhanced, against both the larger Class I

railroads whose lines surround those of Applicants, as well as trucking competitors.

“The combination will create the first rail network connecting the U.S., Canada, and Mexico. Joining at Kansas City, in America’s Heartland, CP and KCS together will connect customers via single-network transportation offerings between points on CP’s system throughout Canada, the U.S. Midwest, and the U.S. Northeast and points on KCS’s system throughout the South Central United States and Mexico. The combined network’s new single-line offerings will deliver dramatically expanded market reach, provide new and better competitive options for shippers which today may be using trucks or other major railroads to move their goods, and support economic growth across the entire North American continent.

“CP’s track record of operational excellence as a Precision Scheduled Railroading pioneer, coupled with the hand-in-glove fit of the two networks, will ensure a smooth and efficient combination of the two railroads without service disruption. And CP will bring its safety-first culture – as North America’s safest large railroad for 15 consecutive years – and extend it to the entire combined network.”

Finance Docket No. 36500, Notice of Intent (CP-1/KCS-1) (Mar. 22, 2021) at 4-5.

4. CP’s proposed acquisition of KCS is also a perfect fit with CP’s strategic goal of pursuing growth opportunities on behalf of our shippers. Over the last three years, CP and KCS have led the railroad industry in sustainable, profitable, quality growth, demonstrating our shared vision and values. As just one small example, in the year since CP completed our acquisition of the CMQ to provide new single-line service to Maine and single-line-like service to the Port of Saint John, traffic to/from the CMQ has grown well beyond our most optimistic forecasts. Building on our strong foundation, the combination of CP and KCS’s wholly complementary rail networks would create the first U.S.-Mexico-Canada railroad, bringing together two railroads that are similarly focused on providing high-quality service to customers in order to unlock the full potential of their networks. This transformative transaction would inject new competition and improved service into the North American transportation market – particularly with regard to

CP's Canadian rival – with significant positive results for both companies' customers, communities, and other stakeholders.

5. The CP/KCS combination will be able to provide new single-line options for all the same traffic flows that CN has touted for its own acquisition, but with significant advantages as compared to CN/KCS.¹

a) ***For traffic to and from Western Canada***, CP's new CPKC single-line routes would provide even greater benefits than CN/KCS, and without the costs. The CPKC route would provide shorter access (by as much as 450 miles) between Shreveport (at the heart of the KCS system) and every market in Western Canada – places like Vancouver, Edmonton, Calgary, Winnipeg, and Saskatoon. And, unlike CN's route, CPKC would reach these markets without traversing the Chicago area and contributing to rail traffic and congestion there. For traffic moving between Western Canada and the Gulf, CPKC would have the further advantage of creating a new single-line route in direct competition with CN's existing single-line route – shippers get two single-line options instead of the one they have today.

b) ***For traffic to and from Eastern Canada***, CP's new CPKC single-line routes would similarly generate greater benefits than CN/KCS. The CPKC network would provide reliable and competitive single-line routes to markets in Ontario, Quebec, and Maritime Canada, creating new head-to-head competition against CN for traffic moving between the Gulf and Eastern Canada. Unlike CN, CP's network in Canada has room for growth. CN touts its

¹ There is not a single benefit that CN/KCS have touted of which I am aware that a CP/KCS transaction could not provide, including the potential for enabling additional passenger service on the CPKC network. For example, CP/KCS would enable CP to offer Amtrak the opportunity to increase train frequencies between Milwaukee and Chicago (Amtrak's Hiawatha Service), and between the Twin Cities and Chicago. And we have also committed to enabling passenger service on KCS's line between Baton Rouge and New Orleans. In both cases, CP would work with Amtrak and the appropriate funding agencies to secure the capacity improvements to enable these passenger service enhancements while also meeting the current and future needs of freight shippers.

new intermodal services from Mexico, Kansas City and other markets to Toronto, but CN lacks intermodal terminal capacity in Toronto today. CN's plan to build a new facility near Toronto, in the small town of Milton, Ontario, sparked community opposition and resulted in sharp limits being placed on the volumes CN can handle when that facility eventually opens.² CN's proposed intermodal highway to Toronto is really a railroad to nowhere, whereas CPKC has room to grow in these important traffic lanes.

6. ***New Competition CN/KCS Could Not Provide.*** Unlike CN's proposal, CP's proposed transaction also will uniquely inject new competition into many U.S. rail corridors – particularly those connecting the Upper Midwest (Minnesota, the Dakotas, and Iowa) with the Gulf and Mexico. Specifically, our KCS transaction will create new single-line rail options in many corridors where shippers today are dependent on our much larger rivals – like UP, BNSF, and CN. That includes grain from the Dakotas, from which the only single-line option today is BNSF; grain and forest products from Canada to the Gulf, where the only single-line option is CN; and chemicals from the Gulf to Canada, where CN is the only single-line option today. There are many other examples.

7. ***The new CPKC network would create new rail services where viable service doesn't exist for many potential rail customers.*** For example, we would offer the opportunity to invest in grain elevators in the grain-growing region of Southeastern Iowa, 200 miles north of Kansas City, where our line runs. A short haul on CP to Kansas City would not support that investment today, but the prospect of reaching KCS's grain receivers in the United States and

² See B. Sadewo, "Controversial CN Intermodal Hub in Milton Gets Green Light from Federal Government," MILTON CANADIAN CHAMPION (Jan. 21, 2021), available at <https://www.insidehalton.com/news-story/10314445-controversial-cn-intermodal-hub-in-milton-gets-green-light-from-federal-government/>.

Mexico via new single-line routes would unlock better and more economic rail service that would support extensive new investment and tap new, more competitive origin markets.

8. ***CP/KCS brings all these benefits with no reduction in competition.*** CP is truly an end-to-end transaction, whereas CN/KCS is not. The parallel route structure and the competitive relationship of KCS and CN is so obvious that I continue to be amazed that CN's executives can claim that their proposal is a "true end-to-end merger" as well.³ It is not. CN and KCS compete across much of the geography that KCS serves, and that competition spans many points and corridors beyond the segment between Baton Rouge and New Orleans that CN says it will divest if it is allowed to control KCS.

9. To give just one example of CN-KCS competition, CP participates in important traffic flows between Canada and the Gulf in which CP-KCS joint-line routes compete with CN single-line routes. For example, we move large volumes of petroleum products from Alberta to facilities in Louisiana (like ExxonMobil's Baton Rouge refinery) in CP-KCS interline service that competes head-to-head with CN. CP traffic is able to reach points in the Southern states because KCS's routes south of Kansas City provide an alternative to CN routes south of Chicago. If CN and KCS combine, the CP/KCS option will disappear along with KCS's independence. The divestiture of KCS's Baton Rouge-New Orleans line (even if successful) would not avoid this harm. Competition between KCS and CN arises from the parallel route structure of KCS and CN – the same parallel route structure that CN's CEO explained will give CN/KCS routing options and "redundancy" for traffic moving between Canada and the Gulf.⁴

³ E.g., CN UBS Global Industrials and Transportation Virtual Conference (June 8, 2021) at 4 (Exhibit {x13 to CP's Reply).

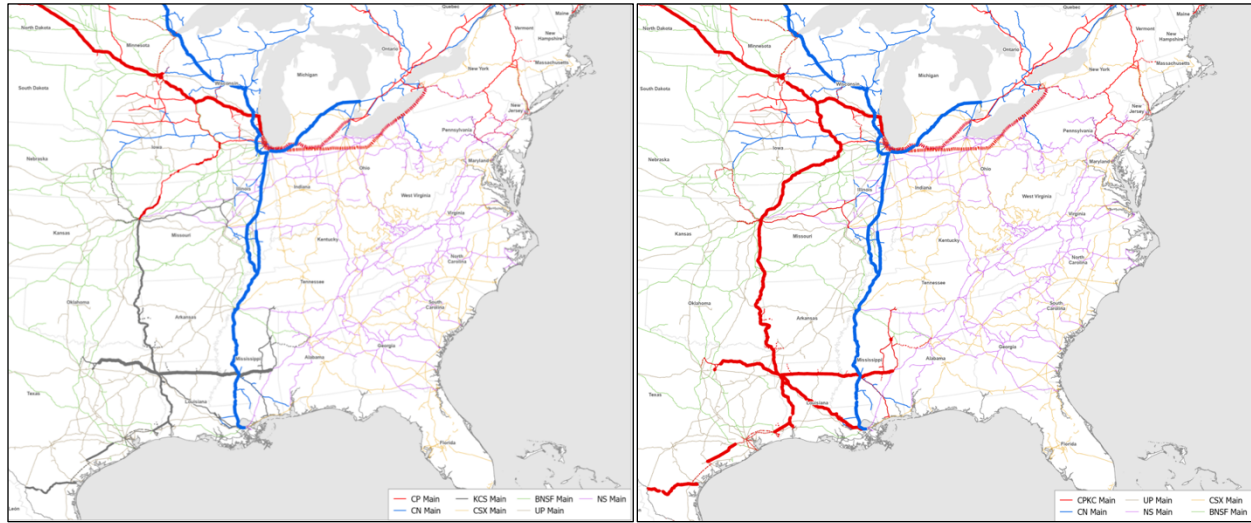
⁴ CN Bernstein Investor Meeting Transcript (June 3, 2021) (Exhibit {x12 to CP's Reply) at 11 (remarks of CN CEO J.J. Ruest: "redundancy line"); *id.* at 13 (KCS CEO Pat Ottensmeyer: "less attractive route").

You can't have redundancy and routing options if the rail lines in question are on opposite ends of the Continent, as Mr. Ruest implied when he compared KCS to I-5 along the West Coast and CN to I-95 along the U.S. East Coast.⁵

10. From the perspective of the U.S. rail network, CP/KCS is unambiguously positive, benefitting shippers and the public interest. CP/KCS would bring new investment, capacity, and competition that CN/KCS would not. CP will invest in capacity and capability of the North-South CPKC artery, building an alternative to the existing rail infrastructure. The natural pairing of CP's and KCS's U.S. networks – meeting at their single point of connection at the shared CP/KCS Kansas City terminal – will create the catalyst for significant new investment in service and capacity on this independent north-south route that is underutilized today. We plan to invest hundreds of millions of dollars to upgrade capacity and safety on this route – adding and lengthening sidings and adding CTC signaling to enable increased capacity, reliability, and track speeds. Figure 1 below shows the status quo (in the left panel) as compared to the future with a CP/KCS transaction (in the right panel).

⁵ CN UBS Global Industrials and Transportation Virtual Conference (June 8, 2021) (Exhibit {x13 to CP's Reply) at 4 (J.J. Ruest: "It is true these lines are parallel, but just in the same way that the Interstate 5 on the West Coast and the Interstate 95 up in East Coast are also parallel.").

FIGURE 1
CP/KCS SPARKS INVESTMENT IN NEW NORTH-SOUTH RAIL CAPACITY



TODAY

WITH CP/KCS INVESTMENT

11. This transformation cannot occur without the CP/KCS transaction. CP and KCS have worked hard at developing interline traffic over the years, with some success, but a combination will uniquely enable single-line services and aligned incentives that unlock the new traffic opportunities and associated density to support the transformation of this route.

12. With a CN/KCS transaction, the picture would change dramatically. Not only would the new investments enabled by a CP/KCS transaction not be possible, CN’s natural incentive would be to route as much traffic as possible via its high-density CN North-South “premium service” route. CN has been up-front about this. On June 3, KCS’s Pat Ottensmeyer explained that as part of a CN network KCS’s Kansas City-Shreveport mainline would be “a less attractive route than the one that exists here with the Kansas City Southern Meridian Speedway

to Jackson, and then up to Chicago, Detroit, and beyond,” essentially agreeing with CN’s CEO’s own comment that this route would become a “redundancy line” in CN’s system.⁶

13. Our own assessment lines up with these comments. There is no doubt that the CN/KCS combination would strip KCS’s Shreveport-Kansas City mainline of much of its current volumes. Within a CN system, routings via CN’s north-south mainline and Jackson are almost always superior to the alternative of using KCS’s existing Kansas City-Shreveport mainline, as I show in the table below.

⁶ CN Bernstein Investor Meeting Transcript (June 3, 2021) (Exhibit {x12 to CP’s Reply) at 11, 13; *see id.* at 4 (describing route via Jackson as the “premium service segments” of a CN/KCS network).

TABLE 1
CN/KCS ROUTE COMPARISONS⁷

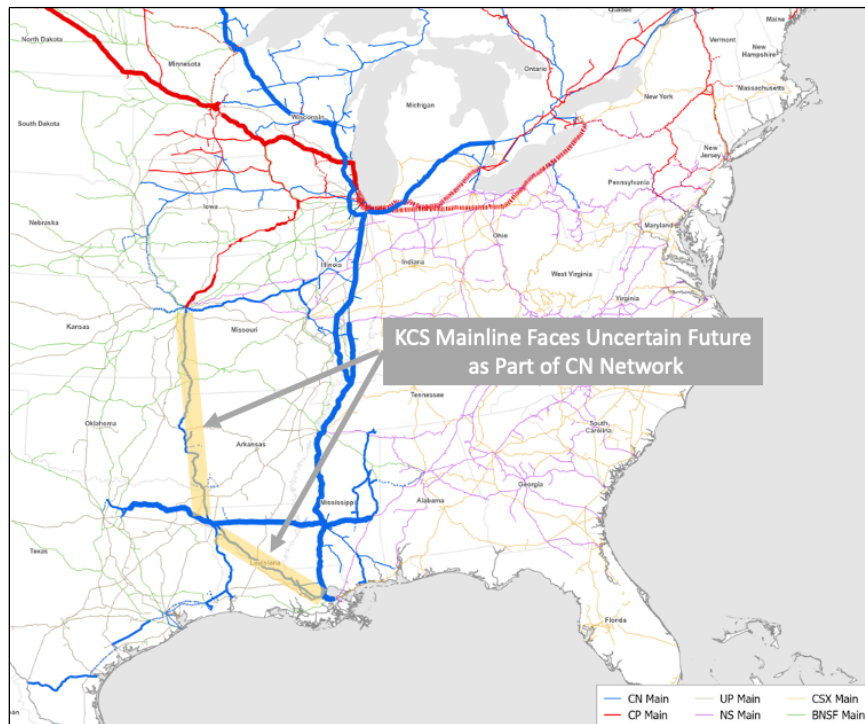
TRAFFIC USING KCS SHREVEPORT-KANSAS CITY LINE TODAY	WOULD CN ROUTE VIA KANSAS CITY-SHREVEPORT MAINLINE?	WOULD CN ROUTE VIA JACKSON, MS?
Canada/Upper Midwest/Chicago – U.S. Gulf States vis Shreveport	NO	YES 70 miles shorter and 14 hours faster
Canada/Upper Midwest/Chicago – New Orleans	NO	YES 430 miles shorter and 35 hours faster
Canada/Upper Midwest/Chicago – Mexico	NO	YES 70 miles shorter and 14 hours faster
Dallas – Chicago	NO	YES 70 miles shorter and 14 hours faster
Kansas City – Jackson MS	Uncertain	Uncertain 75 miles longer but 4.5 hours faster
Kansas City – New Orleans	Uncertain	Uncertain 165 miles longer but 7.5 hours faster
Kansas City – Shreveport/Port Arthur/Mexico	YES 521 miles shorter, 13.5 hours faster	NO

14. No matter what “gateway protections” CN might propose as part of its transaction, the inevitable downgrading of KCS’s mainline south of Kansas City will mean the demise of today’s viable CP-KCS interline routes.⁸ Figure 2 depicts this world.

⁷ Running times are based on timetable speeds.

⁸ It would not be a viable solution to divest these lines to CP or another owner, as the available traffic opportunities when severed from the remainder of the KCS system likely would be too limited to support investment in the kinds of services KCS provides today or the enhanced capacity and service CP/KCS could provide were CP and KCS able to combine.

FIGURE 2
IMPACT OF CN/KCS ON KCS SHREVEPORT-KANSAS CITY LINE



15. The CP/KCS alternative is nothing less than the choice between adding new competition and capacity to the U.S. rail network vs. allowing CN to remove existing competitive alternatives and block the new competition it would face from CPKC.

Were CN Allowed to Use a Trust to Complete Its Acquisition of KCS Stock, CP Would Almost Certainly End Its Pursuit of a CP/KCS Transaction

16. A Board decision rejecting CN's proposed use of a voting trust would preserve the Board's ability to consider KCS's future course against the backdrop of the achievable alternative of a procompetitive CP/KCS transaction. For now, the CP/KCS transaction remains very much alive notwithstanding CN's agreement to acquire KCS. CP is continuing to pursue Board approval for its own acquisition of KCS because the Merger Agreement that KCS has entered into with CN is conditioned on CN's authority to use a voting trust to acquire KCS's

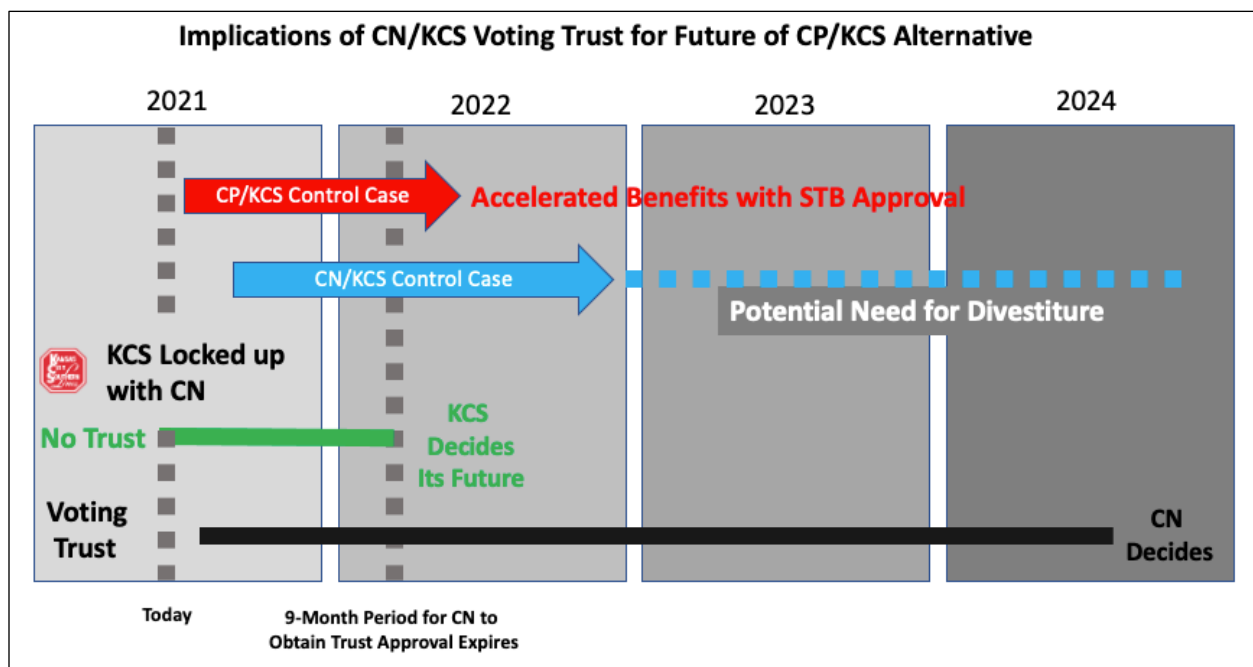
shares. CP anticipates seeking to persuade KCS to re-engage with CP following a Board ruling declining to authorize CN's proposed use of a voting trust.

17. By contrast, a Board decision allowing CN to put KCS into trust would likely end our pursuit of an acquisition of KCS, at least for the foreseeable future. CP could not expect that CN would ever, under any circumstances, allow KCS to be sold to CP. It is spending many billions to make sure KCS stays out of our hands and to avoid the competition CPKC would bring. And even if CP might have some hope of one day pursuing a KCS acquisition, we could not expect that opportunity to arise for at least three-and-half years given CN's plan to divest KCS only at the end of 2024. CN would control the divestiture process (subject to Board oversight), and might well claim the power to break KCS into multiple parts, severing KCS's U.S. rail carriers from its Mexican railroad. It would be irrational for CP to anticipate that a CP/KCS transaction could ever again be completed.

18. The timing of CN's bid for KCS (coming only after KCS and CP announced our agreement to combine) and the extraordinary premium CN is offering to acquire KCS is, in my view, only explained by a desire to kill CP's own bid for KCS. As my CFO Nadeem Velani explains, CN's proposed financial terms represented a 45 percent premium above KCS's all-time high share price – well outside of historic prices paid for rail companies in North America. CN is proposing to pay KCS shareholders more than \$11 billion in cash in excess of the CP offer. As a much larger railroad, with a much bigger balance sheet and perhaps different risk tolerance and goals, CN found the cash it needed to win a bid for KCS that CP, out of fiscal prudence, could not match. CN weaponized its balance sheet to kill the CP/KCS transaction, and I am sure it would prefer to take a financial hit than sell KCS to CP under any circumstances.

19. Figure 3 below compares the potential timeline for the Board’s consideration of the CP/KCS and CN/KCS proposals with the period during which KCS would be held in trust were CN permitted to use one. Without a trust, KCS will be in a position to decide the future path of its railroad in early 2022, as soon as the nine month period during which CN must obtain voting trust approval expires. With a trust, CN will own KCS, and CN will retain the right to decide to whom to divest KCS (or the U.S. portions of KCS) *at the end of 2024*.

FIGURE 3



20. As a result, if CN is allowed to use a voting trust, I anticipate instructing CP’s counsel to discontinue preparation of our application for approval of a CP/KCS combination.

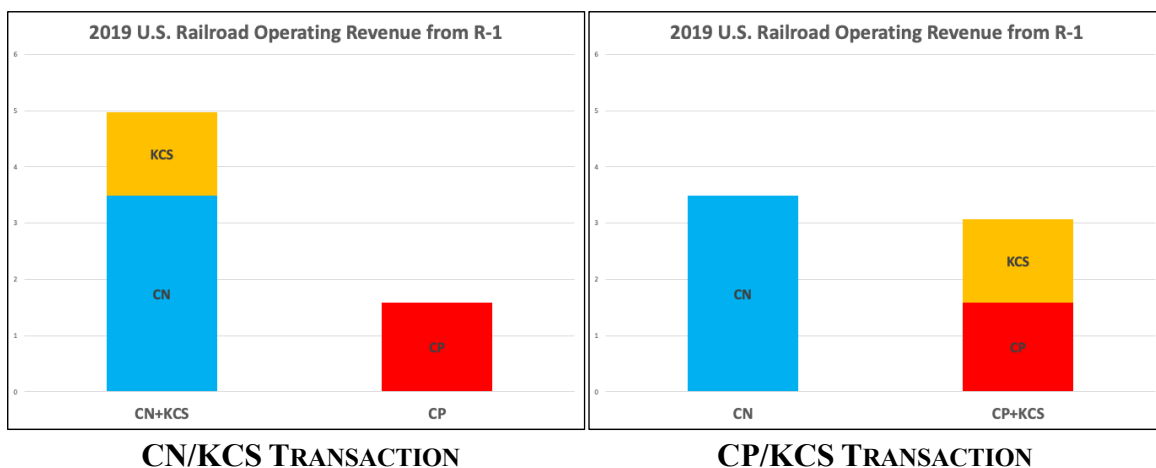
CN’s Acquisition of KCS Via Voting Trust Would Prompt CP to Evaluate Other Strategic Growth Alternatives

21. Were CN allowed to place KCS into trust, this event would immediately set in motion a strategic reevaluation by CP of its own growth opportunities, given the distinct possibility that CN’s ultimate control of KCS would eliminate any prospect of CP extending its network south to the Gulf of Mexico, Texas, or Mexico, and would also deprive CP of any

friendly connection south of Kansas City. CP's future strategic path without CP/KCS or an independent KCS cannot be known, but there is every reason to think that CP would take steps over the next three and a half years that would render moot, or at least more difficult, a potential combination with KCS. Without a realistic path to a combination with KCS, CP would have no choice but to look for other ways to serve our customers' needs and pursue efficient growth opportunities.

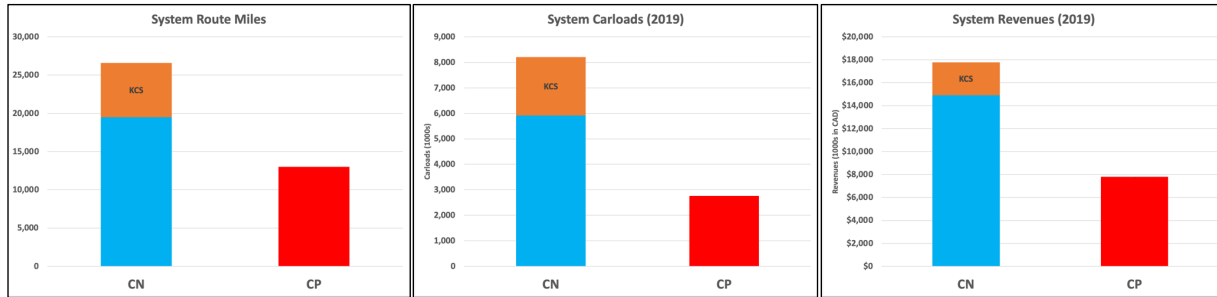
22. The strategic pressure that CP would face would flow from the fundamentals of the CN/KCS proposal. First, instead of being roughly CN's size in the United States following its own proposed KCS acquisition, CP would end up being only one-third the size of CN, as shown in Figure 4 below (reproduced from our previous submission CP-4).

FIGURE 4



23. CN would also dwarf CP on a system-wide basis, as shown in Figure 5 below, depicting comparisons based on system-wide route miles, carloads, and revenues.

FIGURE 5
SYSTEM-WIDE CP IS DWARFED BY CN/KCS



24. Second, with CP’s path south of Kansas City blocked by CN’s ownership of KCS, our lines north of Kansas City (the “Y” between Kansas City and Chicago/LaCrosse) would be of limited utility. It would certainly not make sense for us to make investments to improve them, and in all likelihood service on these lines would be greatly diminished over time.

25. This result would seem inevitable even were CN a “cooperative” interline connection at Kansas City, because CN’s incentive to maintain KCS’s line south of Kansas City – all the way to Shreveport, where CN’s route to/from Jackson diverges – would be reduced. Though CN has said that it would keep the Kansas City gateway open for traffic moving between CP and CN’s former-KCS lines, I am quite skeptical any such condition could ever be effective given CN’s incentive to route traffic away from Kansas City (and towards Jackson, MS, where CN-KCS interline traffic flows today). No matter how “open” CN might be to interchanging with CP, converting KCS’s mainline south of Kansas City into a downgraded, lower-density “redundancy line” on CN’s system, with reduced service levels, would ensure that – openness or no openness – CP would have less ability to compete for the traffic flows upon which much of its U.S system depends.

26. Indeed, CN has been clear about its plan to start pre-marketing its CN-KCS routes immediately, even during the voting trust period. CN’s CEO, speaking at another meeting of investment analysts, explained how CN plans to go to shippers immediately to “pre-market” the

vision of CN's post-merger system: *i.e.*, sending traffic over CN's new single-line route via Jackson instead of over the CP interline routes that would use the KCS mainline south of Kansas City.⁹

27. CP would therefore have no choice but to look elsewhere for opportunities to pursue efficient growth on behalf of our customers if CN is able to use a voting trust to acquire KCS. Indeed, consolidation opportunities involving CP in the eastern United States would entail significantly *less competitive overlap* than CN's proposed takeover of KCS. If a CN/KCS transaction were allowed to use a voting trust, CP would be encouraged that a merger with another Class I might well have a viable regulatory path as well.

28. On the other hand, were CN *not allowed to use a trust*, but nonetheless still pursued Board approval to combine with KCS, this pressure for CP to pursue other strategic options would not be present. In that event, CP could both pursue its own application for approval to combine with KCS as a better alternative to the CN/KCS transaction, and at the same time participate in the CN/KCS proceeding, perhaps seeking conditions aimed at mitigating the pressure for further consolidation and other public interest harms. The *outcome* of a CN/KCS proceeding might end up creating strategic pressure for CP to pursue other options, but the potential for an independent KCS – or better yet, a CP/KCS combination – would remain alive during the review process, and CP's need to explore strategic alternatives would not be nearly as certain as it would become when CN completed the purchase of KCS's shares if it is allowed to use a trust.

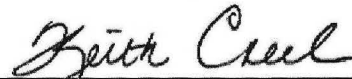
⁹ CN Virtual Fireside Chat Hosted by Bernstein Transcript (May 7, 2021) (Exhibit {x12 to CP's Reply) at 8-9.

29. I urge the Board to reject CN's request to use a voting trust to acquire KCS and thereby kill the CP/KCS transaction once and for all.

VERIFICATION

I, Keith Creel, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 28 day of June, 2021.

A handwritten signature in cursive script that reads "Keith Creel". The signature is written in dark ink and is positioned above a horizontal line.

Keith Creel
President and Chief Executive Officer
Canadian Pacific Railway Limited

EXHIBIT 2

VERIFIED STATEMENT OF NADEEM VELANI

VERIFIED STATEMENT OF NADEEM VELANI

1. I am Nadeem Velani, Chief Financial Officer of Canadian Pacific Railway Limited (“CP”). I joined Canadian Pacific in March 2013 and served as Vice-President Investor Relations before becoming Chief Financial Officer in September 2016. Prior to CP, I spent 15 years at Canadian National (“CN”) where I worked in a variety of positions in Strategic and Financial Planning, Investor Relations, Sales and Marketing and the Office of the President and CEO. Through the course of my 20-plus year career in the railroad industry I have developed deep familiarity with and expertise regarding the financial workings and incentives of Class I railroads. I hold a Bachelor of Economics degree from Western University and an MBA in Finance/International Business from McGill.

2. I am submitting this statement to address certain financial implications of CN’s proposal to use a voting trust for its proposed acquisition of Kansas City Southern (“KCS”).

3. The financial consideration CN has offered KCS’s Board and its shareholders in order to persuade them to sell KCS to CN – including the extent of the premium over KCS’s previous share price as well as the substantial amount of debt CN would take on in order to complete the acquisition – has serious implications.

4. I have reviewed the analysis of CN’s Chief Financial Officer Ghislain Houle, who testifies that CN would not face “financial peril” if required to divest KCS out of a voting trust. Houle V.S. at 15. As I explain in this statement, CN’s potential “financial peril” is not the only financial issue that warrants attention. The extreme premium CN is paying to acquire KCS, coupled with the \$19 billion of new debt CN would take on as soon as it closes into voting trust (if allowed to do so) would create significant pressures for CN to generate the returns necessary to justify its investment. Those pressures would be magnified severely in the event CN’s

forecasts of CN and KCS's financial performance – which Mr. Houle's analysis simply assumes to be accurate – are not achieved. And the risks could be magnified even more severely in the event CN were required to divest its interest in KCS – CN could be left with even lower returns, an acutely elevated debt burden, and the need to find ways on a standalone basis to reduce that debt through strategies that may not be compatible with the long-term interests of the public.

5. It is my view that CN's proposal to acquire KCS is fraught with risk to a wide range of stakeholders, which include:

- CN is paying an exorbitant premium which is unjustified in the context of precedent Class I railroad mergers and transactions of similar nature in other industries;
- CN is taking on \$19 billion of debt to pay KCS shareholders, leaving CN heavily burdened with little margin for error in its plan to reduce its debt load; and
- Given the 45 percent premium, in the event CN closes the KCS acquisition into a voting trust and final approval is not obtained, it may lose billions of dollars in value in unwinding the transaction, creating even more pressure to find ways to recoup its investment.

6. In Section V below, I also examine CN's public statements about the rate of return it expects from its investment in KCS, and demonstrate that in order to justify that investment CN must be assuming (or planning on) substantial increases in rates, the elimination of the competition that would have come from a CP/KCS combination, or reductions in infrastructure spending and operating expenses. This too should cause the Board concern.

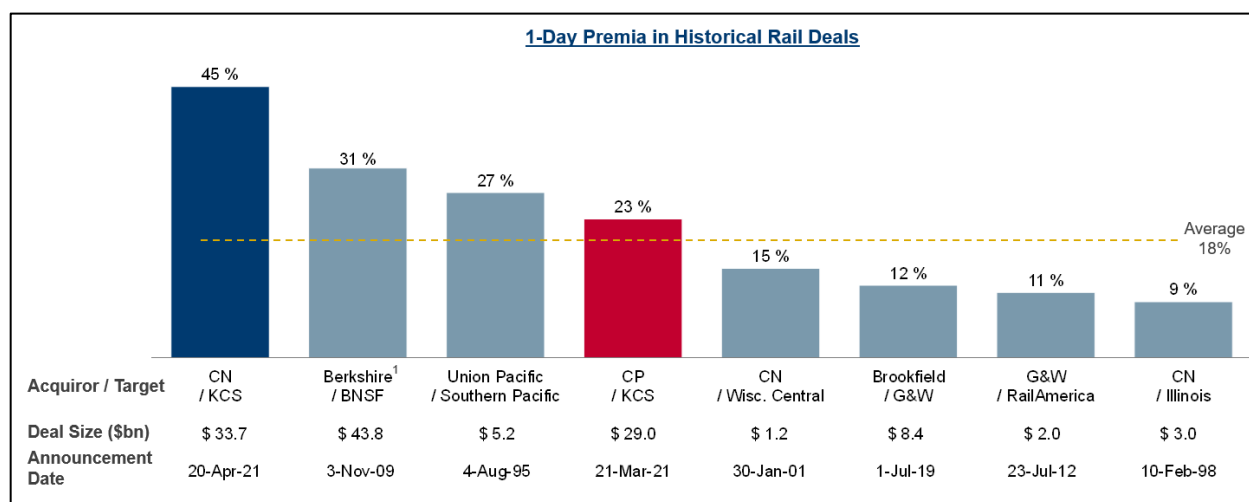
I. CN'S PROPOSED ACQUISITION PRICE FOR KCS REPRESENTS AN EXTRAORDINARILY LARGE CONTROL PREMIUM

7. By any measure, the price CN is paying to acquire KCS represents an extraordinary premium over the range of values that the marketplace had been assigning to KCS. CN is proposing to acquire KCS for total consideration of \$325 per share. In total, as Mr. Houle explains, CN would pay KCS's shareholders consideration of \$30 billion, and also incur an

additional \$1 billion in acquisition-related costs (including financing KCS's obligation to pay CP a \$700 million fee for terminating its agreement with CP in order to accept CN's offer). Houle V.S. at 11.

8. CN's proposed \$325 per share purchase price reflects a premium that is extreme when compared to historical premia offered in mergers and acquisitions in this and other industries. CN's proposed purchase price implies a premium of 45 percent relative to the KCS's share price the day prior to CP announcing its offer. As shown in Figure 1, CN's offer represents a premium more than double the average premium paid in previous Class 1 mergers (which was approximately 18 percent).

FIGURE 1¹



CN's offer for KCS represents a significant premium to the undisturbed share price

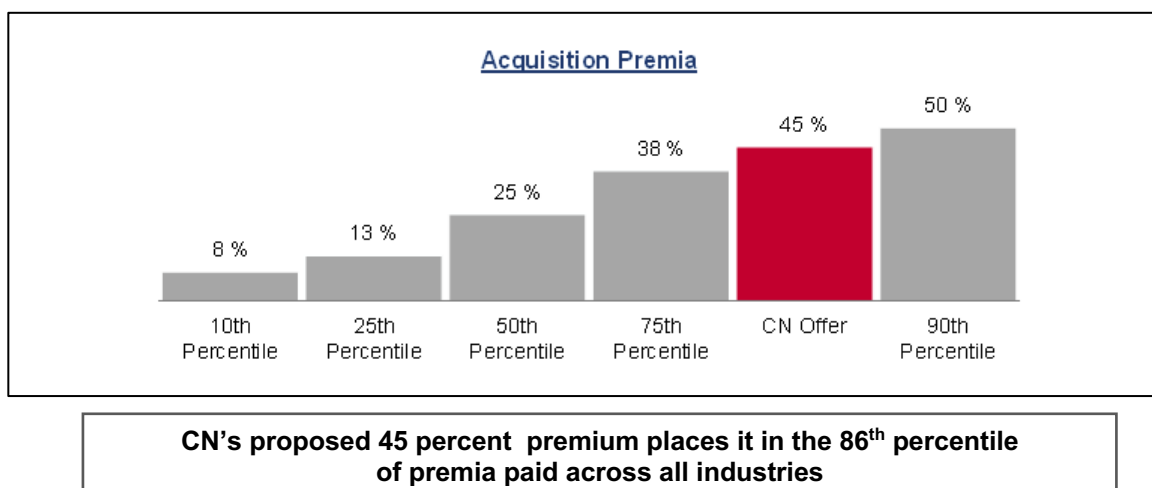
9. KCS's shares were already trading at their 52-week high price when CP announced its offer. Therefore, CN's proposed acquisition of KCS also represents a 45 percent premium relative to KCS's *record high share price*. For other rail transactions, when the offer

¹ Source: Factset, Public Filings, press releases. Average premium excludes CP / KCS. Note 1: Unaffected price as of 02-Nov-2009.

premium is compared to 52-week high trading prices (instead of previous day trading prices), the typical premium is much lower.

10. CN's price premium is extraordinarily high even when compared with transactions across a broader range of industries. Of the 69 transactions since 2016 with transaction values above \$500 million and the other characteristics of CN's offer for KCS – *i.e.*, a mix of a cash and stock consideration and where the shareholders of the target ended up owning less than a third of the shares of the combined company – the average takeover premium was 27 percent and the median premium was 25 percent. CN's proposed 45 percent control premium places it in the 86th percentile of historical premia paid, as shown in Figure 2 below.

FIGURE 2²



11. The high proportion of CN's purchase price that would be paid in cash rather than stock makes this elevated transaction multiple particularly significant. CN is proposing to finance a small portion of its proposed consideration with CN shares, but more than 60 percent

² Source: Thomson Reuters, Public Filings, Press Releases. Note: Historical premia paid based on the following criteria: (1) US corporate public targets in all industry sectors since 2016, (2) Transaction EV greater than US\$500 million, and (3) target shareholders own less than 33 percent of combined company pro forma.

of CN's consideration would be paid in cash.³ Whereas equity (stock price) valuations can fluctuate up and down without causing an immediate impact on a business's cash flows and liquidity, debt represents a fixed-value obligation that must ultimately be repaid. Mr. Houle's comment that CN is paying for the "premium" in stock rather than cash (Houle V.S. at 10) is thus misleading. Because CN is paying to acquire KCS at such an extreme valuation, it must borrow and ultimately repay \$19 billion in new debt regardless of whether it attributes this debt to the "premium" or something else. Furthermore, issuing \$11 billion of equity is not the antidote to an over-priced acquisition. All of that invested capital will come with CN's promise of a rate of return that does not appear to be achievable at this purchase price. That leads to the natural conclusion that either this acquisition is designed to achieve those returns in undisclosed anti-competitive ways, or material cost-cutting and capital spending reductions will be required to deliver an appropriate investment return.

II. UNLIKE THE TERMS OF CP'S PROPOSED ACQUISITION OF KCS, THE SIZE OF CN'S OFFER WAS NOT EXPLAINED BY A NEED TO BEAT A PRIVATE EQUITY BID

12. The extreme premium CN is offering to KCS shareholders is almost double the premium that CP offered KCS shareholders. CN's offer is much more heavily weighted towards cash consideration, which has important implications for the risks resulting from CN's offer. Whereas CP's offer entailed 67 percent CP stock and 33 percent cash (or \$9 billion in cash), CN's offer is less than 40 percent CN stock and over 60 percent cash (or over \$19 billion in cash).

13. CP's high bid was made in order to be able to succeed against a competing bid that KCS had received from non-rail private equity acquirers. CP took notice of public reports in

³ Calculated as CN's offer of \$200 in cash per KCS share out of \$325 total offer.

the fall of 2020 that private equity had approached KCS about an acquisition of the company and began discussions with KCS about a potential CP/KCS combination, and those discussions continued through the fall of 2020 and the early part of 2021, culminating in our merger agreement announced March 21, 2021. CP understood that for the KCS Board of Directors to approve such a combination, the financial terms of CP's bid would have to exceed those offered by the private equity buyers by a margin that overcame the perceived regulatory risks of even CP's pro-competitive rail-rail consolidation. This competitive dynamic led us to make our offer of \$275 per share,⁴ which KCS's Board accepted.⁵ CP's offer represented a 23 percent premium, which was in the middle of the range of control premia for other large acquisitions, as shown in Figure 2 above.

14. By the time CN proposed to acquire KCS, by contrast, CP had already won out over the private equity bid for KCS, and CP and KCS were parties to a binding merger agreement. As a result, CN's bid was designed to exceed CP's bid, not a private equity bid.

III. THE LARGE CASH COMPONENT OF CN'S OFFER REQUIRES IT TO INCUR \$19 BILLION OF DEBT, INCREASING ITS DEBT BURDEN BY MORE THAN 180 PERCENT AND SUBSTANTIALLY INCREASING ITS FINANCIAL RISK

A. CN Will Take on a Very High Level of Debt

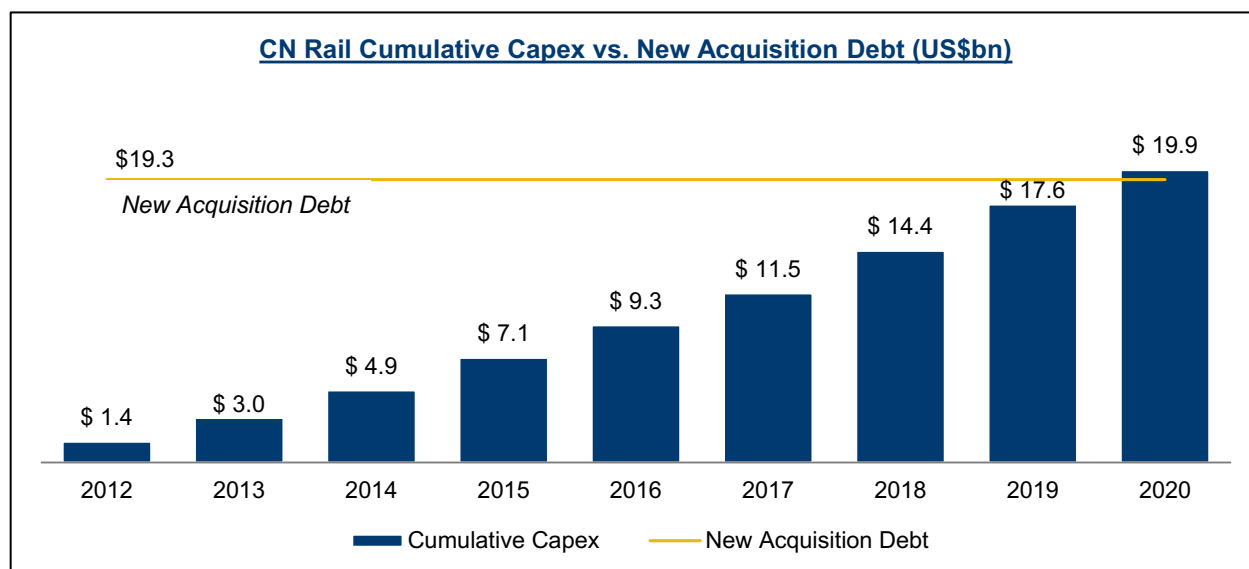
15. CN's total cash outlay upon the acquisition of KCS's shares (*i.e.*, as soon as the voting trust is formed) would be \$19 billion. CN is proposing to spend \$11 billion more in cash than CP is offering to acquire KCS. By including \$19 billion of cash consideration in its offer

⁴ Reflects offer of 0.489x CP shares and \$90 in cash for every KCS share as of March 19, 2021 (the last trading day prior to the announcement of the CP / KCS merger).

⁵ CN's F-4 Registration Statement, which was filed with the SEC on June 22, 2021, provides a blow-by-blow description of the competition CP was engaged in with "Party A" (which CP understood to be a non-railroad private equity bidder). In the final round of that competition, CP's bid was within 10 percent of the all-cash offer that Party A was offering (at \$250 per share), along with a promise of zero regulatory delay or risk. See Registration Statement at 43-48 (excerpts are Exhibit 14 to CP's Reply).

for KCS shareholders,⁶ CN is significantly increasing its debt burden to fund the proposed acquisition. To put this figure in context, consider that the incremental \$19 billion in CN acquisition debt is comparable to the total sum of all of CN’s capital expenditures spent on its own rail network over the past nine years. Figure 3 compares CN’s level of capital expenditures since 2012 to the new acquisition debt being contemplated.

FIGURE 3⁷



CN’s debt for the acquisition of KCS equivalent to all capex spent by CN from 2012 to 2020

16. CN’s new acquisition debt would also sharply increase CN’s leverage ratio. CN’s net debt balance as of the end of 2020 of \$9 billion represented approximately 1.7 times CN’s 2020 EBITDA of \$5.5 billion.⁸ For the same period, pro forma for the impact of the proposed

⁶ Includes \$700 million break-fee payable to CP for terminating the signed CP/KCS merger agreement.

⁷ US Dollars converted to Canadian dollars at a constant exchange rate of 1.22.

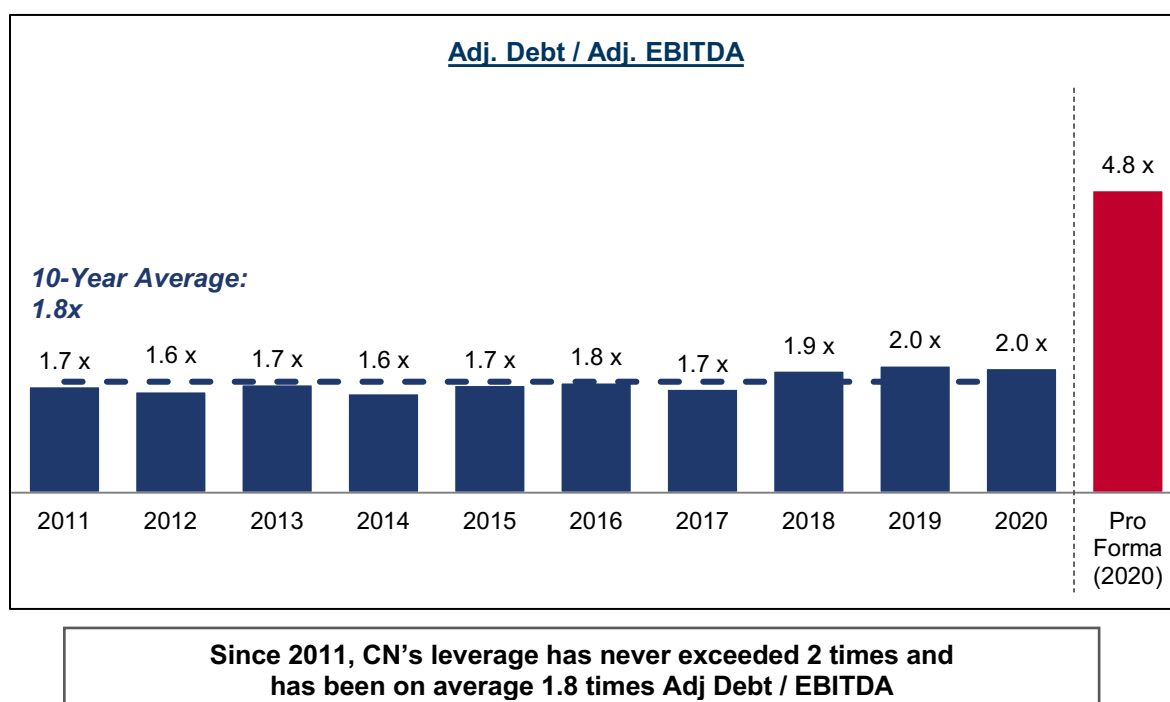
Source: Public Filings, CN Investor Presentation

⁸ Mr. Houle’s verified statement explains that its so-called leverage ratio – *i.e.*, “debt divided by EBITDA (or earnings before interest, tax, and depreciation) is an appropriate metric to examine, and I

transaction, CN's debt balance would increase to \$32 billion, reflecting the \$4 billion in assumed net debt from KCS plus the \$19 billion of new debt issued to fund the transaction (inclusive of the \$700 million break-fee KCS paid to CP and CN reimbursed). This represents a net leverage multiple of 4.6 times the combined CN and KCS 2020 EBITDA of \$6.9 billion.⁹

17. The proposed transaction will increase CN's leverage to levels that CN has not incurred in the recent past. Figure 4 shows CN's leverage over the past decade, where CN's leverage has never exceeded 2 times and has been on average 1.8 times Adj. Debt / EBITDA.

FIGURE 4¹⁰



18. Further, CN's leverage will be materially higher than that of any other Class 1 railroad over the last decade. As of 2020, the highest leverage amongst other Class I railroads is

agree. EBITDA is defined as earnings before income, tax, depreciation and amortization and is commonly used as a proxy for operating cash flow, before capital expenditures.

⁹ Reflecting CN EBITDA of \$5.5 billion and KCS EBITDA of \$1.4 billion for 2020A.

¹⁰ Source: Public Filings, Capital IQ.

3.0 times Adj. Debt / EBITDA, materially lower than the contemplated 4.8 times Adj. Debt / EBITDA for CN.

19. Both rating agencies have expressed concerns about CN's higher leverage. On May 24, 2021 Moody's put CN's credit rating on review for downgrade stating:

"The review for downgrade reflects an expected material increase in leverage to above 4.5x from 2x should CN complete their intended purchase of KCS... As presented today, CN's funding of the acquisition could raise the combined company's adjusted Debt/EBITDA in excess of 4.5x at closing and remain potentially in excess of 3.5x by the end of 2023. If that funding plan is executed and other aspects of the transaction occur as currently expected by Moody's, CN A2 senior unsecured ratings would likely be downgraded multiple notches, however remain investment grade."

Moody's Credit Report (emphasis added).

20. This move followed similar concerns from S&P, which on Apr 21, 2021 stated:

"If KCS accepts CN's proposal, we believe CN's prospective credit measures would materially weaken... This incremental debt (before the inclusion of KCS debt) is close to double CN's total adjusted debt at year-end 2020, which we view as substantial. While details regarding plans for future deleveraging are limited, we do not envision a path for the company to restore its credit measures to levels that could support the current rating within the next few years in this scenario (although the company is committed to maintaining an investment-grade rating)... In our view, the proposed acquisition of KCS would result in a marked departure from historically conservative credit ratios."

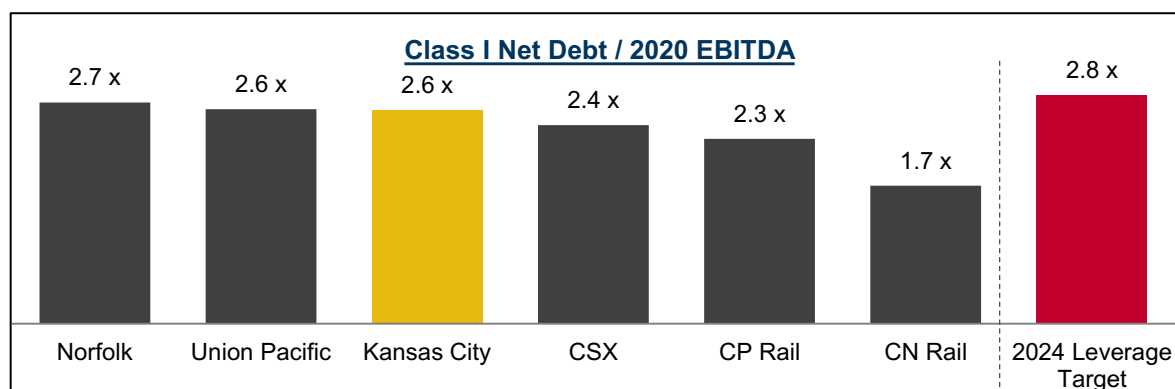
S&P Credit Report (emphasis added).

B. CN De-Leveraging Strategy Leaves No Margin for Error

21. Mr. Houle's analysis of CN's ability to pay down its extensive acquisition-related debt is predicated on his assumption that CN would continue to benefit from substantial cash flow generation from its current operations. Even if CN is successful in implementing its plan to reduce debt by 2024, CN's 2024 leverage target of 2.8x would still rank as the highest among Class I peers (*see* Figure 5 below). This would be a stark departure from the policy of financial

conservatism that Mr. Houle uses to reassure the Board that there is no financial concern associated with its bid to acquire KCS. *See Houle V.S.* at 4 (“[s]ince its Initial Public Offering in November 1995, CN has consistently demonstrated its conservative financial stewardship and a deep commitment to maintaining a strong credit profile ... our current Leverage Ratio reflects CN’s long-standing conservative approach”).

FIGURE 5¹¹

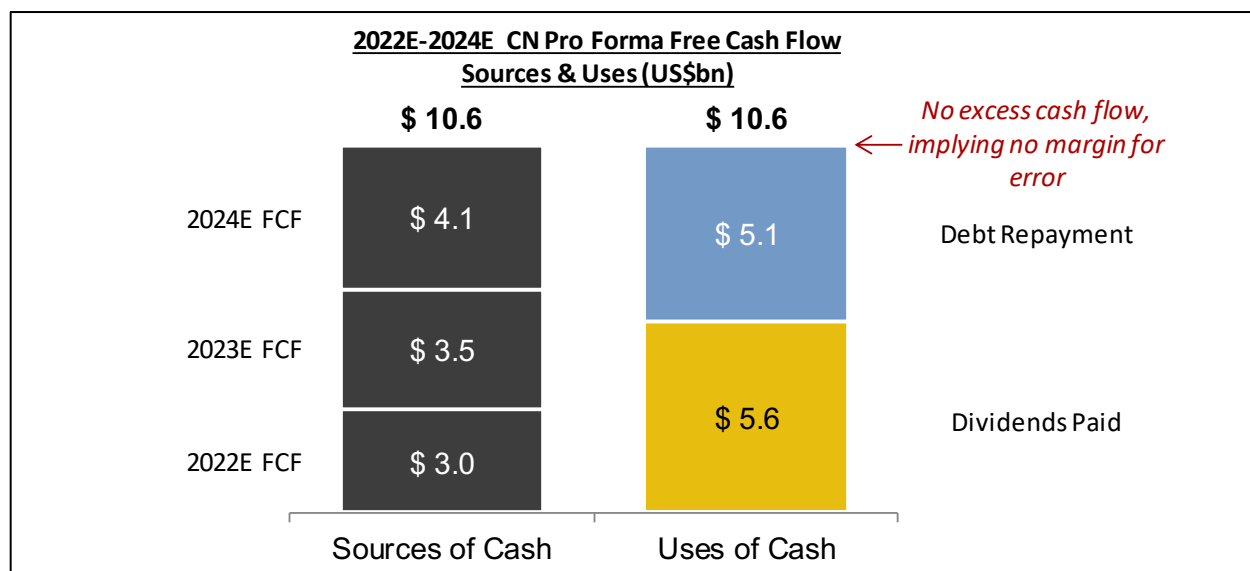


22. More fundamentally, Mr. Houle’s analysis of CN’s ability to use its excess cash flow to service its tax-affected interest payments between 2022 and 2024 (*Houle V.S.* at 12) leaves no margin for error. Even with CN’s optimistic cash flow projections, all of CN’s cash flow will be spoken for in order to pay down enough debt to reach CN’s stated leverage target by 2024. Figure 6 demonstrates the comparison between (a) projected total free cash flow (calculated as cash from operations, less capital expenditures and investing activities) generated by both CN and KCS between 2022 and 2024 (inclusive of some synergies realization in 2023

¹¹ Source: Capital IQ and Corporate Disclosure. Calculated in a local currency basis of CAD.

and 2024, on an after-tax basis)¹² and (b) cash flow required to pay CN's dividend¹³ and repay the amount of CN's debt required to achieve its target Leverage Ratio of 2.8x. CN is pursuing a strategy that leaves itself very little margin of error.

FIGURE 6



IV. THE RETURNS ON CN'S MASSIVE FINANCIAL INVESTMENT IN KCS APPEAR TO FALL FAR SHORT OF CN'S OWN TARGETS, CREATING ACUTE PRESSURE TO BOOST RETURNS IN OTHER WAYS

23. I have analyzed the price CN is proposing to pay against the backdrop of CN's forecasted rate of return for its investment in KCS. CN's targeted rate of return will not be achieved based on the synergies CN forecasts, which will place pressure on CN to boost returns in other ways, such as through cost-cutting, or – more plausibly – reaping the benefits of reduced competition between CN and KCS and the elimination of the competitive threat that would have been posed by a CP combination with KCS.

¹² Based on KCS street consensus figures and CN figures as set forth at page 13 of Mr. Houle's verified statement.

¹³ 2022E-2024E CN dividend per share growth is based on annualized 2021 dividends declared growing at approximately 6.9 percent annually based on CN's dividend increase in 2010 over 2009 (lowest year over year dividend increase in the last 15 years).

A. CN Has a Long-Standing Target for Return on Invested Capital (ROIC) in the Range of 12 to 15 Percent

24. I begin by examining CN's longstanding targets for acceptable returns on investments like the one it is making in KCS. CN's long-established calculation of ROIC is expressed as a sum of net income and tax-adjusted interest expense, divided by the amount of total invested capital, calculated as aggregate amount of debt and equity, less cash. Figure 7 depicts the detailed ROIC calculation set forth in CN's 2020 annual report:

Figure 7¹⁴

ROIC and adjusted ROIC				
Management believes ROIC and adjusted ROIC are useful measures of the efficiency in the use of capital funds. The Company calculates ROIC as return divided by average invested capital. Return is defined as net income plus interest expense after-tax, calculated using the Company's effective tax rate. Average invested capital is defined as the sum of total shareholders' equity, long-term debt and current portion of long-term debt less cash and cash equivalents, and restricted cash and cash equivalents, averaged between the beginning and ending balance over a twelve-month period. The Company calculates adjusted ROIC as adjusted return divided by average invested capital. Adjusted return is defined as adjusted net income plus interest expense after-tax, calculated using the Company's effective tax rate, excluding the tax effect of adjustments used to determine adjusted net income. ROIC and adjusted ROIC do not have any standardized meaning prescribed by GAAP and therefore, may not be comparable to similar measures presented by other companies.				
The following table provides a reconciliation of net income and adjusted net income to return and adjusted return, respectively, as well as the calculation of average invested capital, which have been used to calculate ROIC and adjusted ROIC:				
<i>In millions, except percentage</i>	<i>As at and for the year ended December 31,</i>	2020	2019	2018
Net income	\$	3,562	\$ 4,216	\$ 4,328
Interest expense		554	538	489
Tax on interest expense ⁽¹⁾		(120)	(120)	(116)
Return	\$	3,996	\$ 4,634	\$ 4,701
Average total shareholders' equity	\$	18,846	\$ 17,841	\$ 17,149
Average long-term debt		11,931	11,626	10,067
Average current portion of long-term debt		1,420	1,557	1,632
Less: Average cash, cash equivalents, restricted cash and restricted cash equivalents		(844)	(674)	(656)
Average invested capital	\$	31,353	\$ 30,350	\$ 28,192
ROIC		12.7%	15.3%	16.7%
Adjusted net income ⁽²⁾	\$	3,784	\$ 4,189	\$ 4,056
Interest expense		554	538	489
Adjusted tax on interest expense ⁽³⁾		(137)	(131)	(120)
Adjusted return	\$	4,201	\$ 4,596	\$ 4,425
Average invested capital	\$	31,353	\$ 30,350	\$ 28,192
Adjusted ROIC		13.4%	15.1%	15.7%

(1) The effective tax rate for 2020 used to calculate the tax on interest expense was 21.6% (2019 - 22.3%; 2018 - 23.8%).

(2) See the section of this MD&A entitled Adjusted performance measures for an explanation of this non-GAAP measure.

(3) The adjusted effective tax rate for 2020 used to calculate the adjusted tax on interest expense was 24.8% (2019 - 24.4%; 2018 - 24.5%).

¹⁴ CN 2020 Annual Report, Management Discussion & Analysis, at 14 (excerpts are Exhibit A hereto).

25. As shown in Figure 7, CN's ROIC has historically been in the range of 12 to 15 percent, and CN's statements to investors confirm that this is its target range for all new investments, including significant acquisitions made as recently as 2019. In a July 2020 conference call, Mr. Houle made the following statement in response to a question about two other acquisitions CN had undertaken:

“As you know, Brandon, big projects or investments we typically have internal auditor going in and auditing the business case and auditing the return and reporting directly to the board, so they are not all done yet but close and I'm happy to report that the return of the investments both in TransX and H&R *will deliver higher than our typical ROI threshold that we use at CN of 12%.*”¹⁵

26. More recently, on a November 2020 conference call with investors, Mr. Houle reiterated CN's ROIC guidance:

“Yeah. So again, our capital allocation has not changed throughout the years. I mean it's been the same. We like to be predictable and boring. So the first use of cash will always be towards the business. And we're *looking for projects that will generate return on invested capital in the range of 12% to 15%.*”¹⁶

27. Compensation of CN's senior executives, including its CEO, is directly tied to achieving ROIC target exceeding 12.5 percent. CN's publicly reported executive compensation program is reflected in Figure 8 below. If CN's average ROIC over a three-year period is less than 12.5 percent, the performance vesting factor (a figure which is multiplied by the awarded share units to arrive at a number of share units vested) is set to zero, implying zero payout of compensation tied to ROIC. Based on the compensation over the last five years (2016-2020), I

¹⁵ CN Q2 2020 Earnings Call Transcript (July 22, 2020) at 23 (emphasis added) (excerpts are Exhibit B hereto). The referenced acquisition of TransX was made by CN in 2019. See CN Press Release, “*CN is pleased to confirm the acquisition of TransX*” (Mar. 22, 2019), available at <https://www.cn.ca/en/news/2019/03/cn-is-pleased-to-confirm-the-acquisition-of-transx/>.

¹⁶ CN Baird Global Industrials Conference Transcript at (Nov 17, 2020) at 9 (excerpts are Exhibit C hereto).

estimate that the amount of aggregate compensation tied to ROIC targets that CN paid out to its top five executive officers exceeded \$20 million dollars, with the position of CN's CEO receiving more than \$10 million over that period.

Figure 8¹⁷

ROIC PSUs performance measure		
	OBJECTIVE	PERFORMANCE VESTING FACTOR ⁽¹⁾
PERFORMANCE OBJECTIVE:	Below 12.5%	0%
Average ROIC for the three-year period ending on December 31, 2022	12.5%	50%
	13.5%	100%
	15.0%	125%
	15.5%	150%
	16.0% and above	200%
PAYOUT CONDITION:	C\$118.56 on the TSX	
Minimum average closing share price for the last three months of 2022	or U.S.\$90.06 on the NYSE	

(1) Interpolation applies between objectives.

B. CN Expects to Earn a Return of 12 Percent on Its Acquisition of KCS

28. CN could not justify an investment of \$30-plus billion, or a control premium of \$9 billion above the previous market price of KCS, without having analyzed how it would earn a return on the assets it would be acquiring.

29. Although CN has not discussed its forecasted ROIC for the KCS transaction in any of its written materials or investor presentations – which is somewhat surprising given the pivotal role of ROIC in CN's investment decisions and management compensation – the topic did come up when Mr. Houle was asked a question on the investor call held to announce the KCS acquisition. Specifically, on April 20, 2021, Mr. Houle was asked about the high price CN

¹⁷ CN Management Information Circular (Apr. 27, 2021) at 56 (excerpts are Exhibit D hereto).

was proposing to pay for KCS: “But paying the right price matters down the road to get returns out of it. So, can you talk to pretty lofty valuation that you’re bidding at here?” Mr. Houle responded:

“Yeah, Brandon. Thanks for the question. Listen, when we run the financial model and again, we’re working with some of the publicly available information as we speak, we’re more or less – on a return standpoint, more or less in line with our internal threshold. *And as you know our internal ROI threshold at CN on new projects is in the range of about 12%. So we’re in that range.*”¹⁸

No financial analysis has been provided to explain the basis for CN’s conclusion that its ROIC for the KCS acquisition would be in the 12 percent range. As I show below, CN’s statements about its expected synergies do not support an ROIC that comes close to CN’s target. It is reasonable to infer that CN expects to reap returns of this magnitude in ways that it might prefer not to discuss: softening current competition and avoiding the new competition that a CP/KCS transaction would bring.

C. CN’s Stated Synergy Estimates Do Not Support CN’s Target ROIC for the KCS Investment

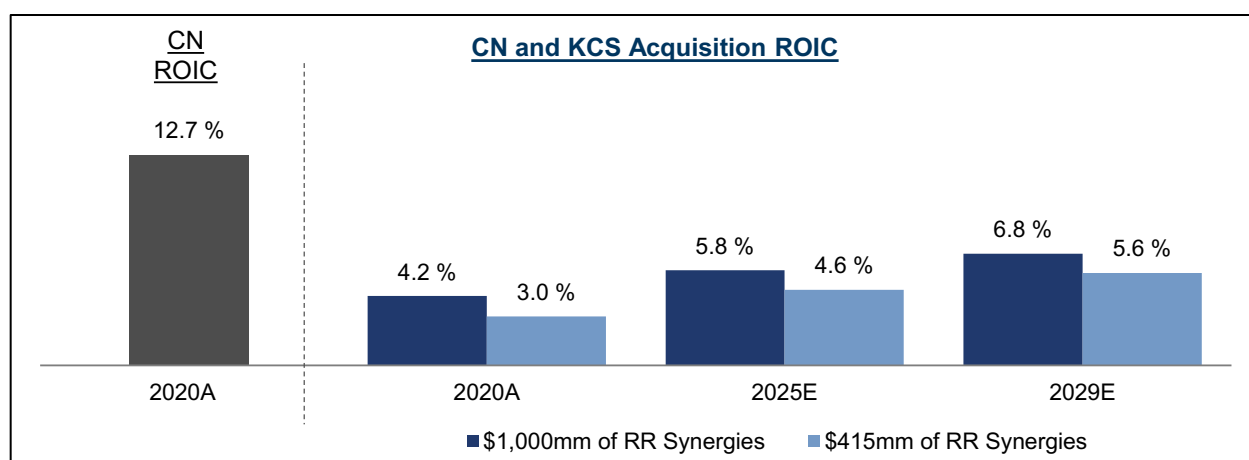
30. I have calculated CN’s returns on the KCS acquisition using the same methodology as CN lays out in its annual securities filings. Even after factoring in the \$1 billion in annual synergies that CN forecasts for the KCS combination, it appears that CN’s return on invested capital for this transaction will fall well short of that 12 percent target range.

31. In Figure 9 below, I show CN’s ROIC calculation as set forth in CN’s Annual Report (reproduced at Figure 7 above) and I also show two alternative calculations of the ROIC for the KCS acquisition: one assuming the full \$1 billion of synergies that CN estimates it will

¹⁸ CN and Kansas City Southern Merger Call Transcript (Apr. 20, 2021) at 16 (excerpts are Exhibit 6 to CP’s Reply).

achieve and another assuming the downside synergy estimate of \$415 million downside synergy estimate provided by KCS management in connection with its financial advisors' analysis of the fairness of the CN proposal, as set forth in CN's Registration Statement filed at the SEC in connection with the KCS transaction.¹⁹ Even in the most aggressive scenario where CN achieves its full \$1 billion of synergies and I calculate the ROIC well into the future (in 2029), CN's ROIC for the acquisition of KCS would still be no higher than 6.8 percent.²⁰ When looking at earlier periods or the downside synergy case as analyzed by KCS, the returns are materially worse.

FIGURE 9



ROIC for the KCS acquisition does not exceed 6.8 percent.

32. Were the ROIC for CN's investment in KCS appreciably lower than 12 percent, as my analysis using CN's \$1 billion synergy forecast shows it would be, it would have a major

¹⁹ CN Form F-4 Registration Statement (filed at U.S. Securities & Exchange Commission, June 22, 2021) at 68 ("a projected \$415 million in synergies as provided by KCS management") (excerpts are Exhibit 14 to CP's Reply).

²⁰ Analysis excludes amortization of incremental depreciation with respect to the asset write-up, which if included would further reduce the returns.

impact on CN's enterprise-wide ROIC. The amount of invested capital CN is allocating to acquire KCS is equivalent to the *total invested capital that CN has in the entirety of its existing business*, or, said differently, the proposed KCS acquisition will double the amount of invested capital at CN.

33. Because the acquisition of KCS would double the amount of CN's invested capital, and the return on the incremental capital invested in KCS based on 2020 financials is only 4.3 percent, pro forma for the acquisition CN's enterprise ROIC will fall below 8 percent, meaningfully below CN's target of 12 percent, as shown in Figure 10.

FIGURE 10²¹

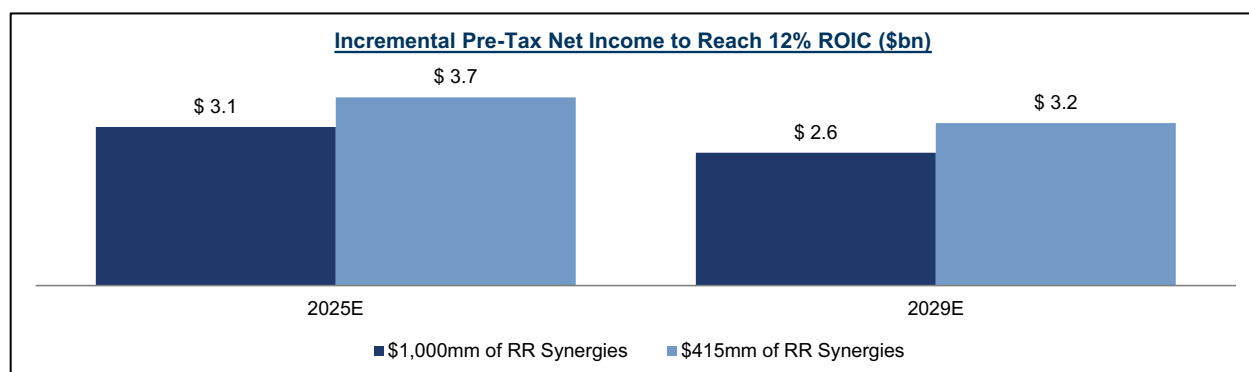
	<u>CN Standalone</u> Based on 2020 financial results	<u>KCS Standalone</u> Return: based on KCS 2020 financial results + full credit for \$1bn of synergies Invested Capital: based on CN's acquisition price of KCS	<u>CN + KCS Pro Forma</u>
Return	\$3.3 billion	\$1.5 billion	\$4.8 billion
Invested Capital	\$26 billion	\$35 billion	\$60 billion
ROIC	12.7%	4.2%	7.9%

34. Given the significant shortfall in returns both standalone and pro forma for the KCS transaction, CN would need to generate significant incremental earnings to achieve its stated returns for the transaction. In Figure 11, assuming CN is seeking to achieve a 12 percent ROIC on the \$35 billion of capital invested in the transaction, CN would need to generate an incremental \$3.1 billion of annual pre-tax earnings by 2025 and \$2.6 billion by 2029 even assuming the full \$1 billion CN synergy estimates are achieved. If one were instead to assume

²¹ Based on figures reported in Mr. Houle's verified statement.

the KCS downside synergy estimate of \$415 million, annual pre-tax earnings would need to increase by \$3.7 billion in 2025 and \$3.2 billion in 2029 to achieve the stated returns.

FIGURE 11



Substantial incremental net income is required to reach CN's 12 percent ROIC hurdle from the KCS acquisition

V. CN'S FINANCIAL ANALYSIS FAILS TO ADDRESS THE IMPACT OF A DOWNSIDE SCENARIO

35. The biggest flaw in Mr. Houle's analysis is that he performs no stress testing of financial performance. Were CN's cash flow to be reduced as a result of economic or regulatory developments, CN would be left with a massive debt burden and difficult choices about how to try to reduce that burden and achieve a more acceptable return on its massive investment in KCS. This would be true even if CN is allowed to keep KCS, but the situation could be made worse by the need to divest KCS out of a voting trust.

36. Mr. Houle's analysis assumes a positive economic environment and operating conditions during the trust period and beyond, and makes other optimistic forecasts in the event CN is forced to divest KCS. Although the current favorable conditions may persist, I believe it is important to consider what the impact of a downside scenario would be on CN given the significant increase in leverage resulting from the proposed transaction.

37. To illustrate the impact of CN's proposed acquisition under a downside scenario to CN, I examine three potential scenarios:

- a. Scenario 1: CN closes the acquisition of KCS into voting trust and fails to achieve its stated financial plan;
- b. Scenario 2: CN closes the acquisition of KCS into a voting trust, but the Board subsequently rejects the merger, forcing CN to divest KCS at a lower valuation than CN paid for KCS; and
- c. Scenario 3: As per Scenario 2, but CN is unable to find a cash buyer for KCS and instead spins KCS to CN's shareholders.

Scenario 1: CN closes the acquisition of KCS and misses its stated financial plan.

38. Based on Mr. Houle's calculations underlying his verified statement, it appears that CN has assumed that it will achieve a compounded annual growth rate ("CAGR") in EBITDA from 2020-2024 for CN and KCS combined of approximately 10 percent, inclusive of CN's anticipated realization of some transaction synergies during this period.

39. CN's 10 percent CAGR forecast is quite optimistic. It compares to CN's EBITDA CAGR over the past 15 years of approximately 5 percent, which occurred during a period having a strong macroeconomic backdrop. Over the same 15 year period, the three-year CAGR has ranged from approximately *negative* 4 percent (2006-2009), reflective of an economic downturn during the global financial crisis, to approximately 12 percent (2009-2012), reflecting the robust recovery period.

40. Should CN's optimistic projections for 2021-2024 be missed even slightly and match the approximate historical five-year EBITDA growth CAGR of 5 percent (rather than the assumed 10 percent), CN would generate \$3 billion less cash flow over the period and fall short of its stated leverage objectives. Further, if there were an economic downturn and there was no growth in EBITDA over the period (I have assumed a less severe downturn than the global

financial crisis where EBITDA declined at a 4 percent CAGR), CN would generate \$6 billion less cash flow over the period and put further pressure on its balance sheet.

41. The consequences of CN's \$19 billion in KCS acquisition debt in such a scenario would be material, as shown in Table 1 below.

TABLE 1
SCENARIO 1 – LESS OPTIMISTIC EBITDA GROWTH

	CN Base Case (10% CAGR)	Historical Growth Scenario (5% CAGR)	Economic Downturn Scenario (0% CAGR)	Impact
Economic Value	No impact	Loss	Loss	Lower than anticipated financial results would erode value
Reduced Cash Flow (2021-2024E)	N/A	\$3 billion less	\$6 billion less	Reduced cash flow, resulting in inability to pay down debt to achieve desired leverage metrics
2024E Leverage	2.8x	3.7x	4.9x	Higher than anticipated pro forma leverage would put pressure on CN to source cash to reduce leverage
2024 ROIC (assuming \$1B in synergies)²²	5.5%	4.8%	4.1%	ROIC for the KCS acquisition is significantly below CN's threshold of 12%, which would put pressure on CN to source higher returns elsewhere, including by raising rates and reducing capex

42. The impact on liquidity and leverage of CN only performing in line with recent history highlights how significantly CN is relying on its optimistic forecasts to be able to achieve its de-leveraging and ROIC targets. This highlights the risk that if CN does not perform according to its expectations, or, even worse, the United States and/or Canada experience an

²² KCS 2024E Return implied based on Mr. Houle's verified statement and KCS forecast disclosed in F-4 filing; standalone EBITDA estimates and synergies realized assumed to be proportionally decreased in the Historical Growth and Downturn scenarios.

economic downturn, CN will have to look at other ways to maximize its cash flow such as increasing rates and reducing capex.

Scenario 2: CN closes the acquisition of KCS into a voting trust, but the Board subsequently rejects the merger, forcing CN to divest of KCS, which it does through a sale for cash.

43. Current valuations among Class 1 railroads are at unprecedented highs relative to historical levels. The current median multiple of Enterprise Value to Next Twelve Months' Consensus EBITDA for public Class 1 peers (excluding KCS) is 14.0x, compared to a historical pre-pandemic 5-year average of 10.6x, which represents a premium of over 3x, or 32 percent over historical valuations.

44. A potential divestiture of KCS out of voting trust carries risk of a value-destructive financial outcome for CN, which would leave CN impaired and create long-term incentives to pursue behaviors that may harm the public interest. Assuming KCS is divested at 10x EBITDA, a multiple in line with historical KCS trading levels pre-pandemic and further assuming that CN's optimistic projections for 2021-2024 are met, CN would still destroy \$13 billion of value relative to the \$35 billion purchase price that it will have paid for KCS.

45. While the cash proceeds from a sale of KCS would help to bring CN's pro forma leverage down, the significant value lost in a sale of KCS at a lower price would result in a negative return on CN's invested capital and heighten the risk that CN seeks other ways to make up for the lost return by increasing returns elsewhere, including by raising rates and reducing capex. The financial outcome for CN is shown in Table 2 below:

TABLE 2
SCENARIO 2 – DIVESTITURE OF KCS TO A CASH BUYER

	CN Base Case (10% CAGR)	Historical Growth Scenario (5% CAGR)	Economic Downturn Scenario (0% CAGR)	Impact
Value Loss vs. Current CN Offer (\$35bn)	\$13 billion lost	\$17 billion lost	\$20 billion lost	Lower than anticipated financial results and lower sale price than purchase price would erode value
Reduced Cash Flow (2021-2024E)	N/A	\$3 billion less	\$6 billion less	Reduced cash flow, resulting in inability to pay down debt to achieve desired leverage metrics
2024E Leverage	1.0x	2.3x	4.0x	Higher than anticipated pro forma leverage in a downside scenario would put pressure on CN to source cash to reduce leverage
Value Loss / Purchase Price (\$35bn)	-38%	-49%	-58%	ROIC for the KCS acquisition will be negative due to the significant loss in value, which would put pressure on CN to source higher returns elsewhere, including by raising rates and reducing capex

Scenario 3: CN cannot find a cash buyer for KCS and is required to spin KCS to its shareholders.

46. Rather than the optimistic cash sale scenarios Houle assumes in his analysis, a more realistic scenario may be that CN cannot find any divestiture buyer willing to pay cash for KCS, and must instead spin-off KCS to CN's shareholders. I understand that the recent private equity interest in acquiring KCS relied heavily on the current very favorable economic conditions (strong operating environment, economic stimulus, low interest rates, low inflation, capital markets access), and CN would not be able to rely on private equity being a buyer for KCS in a future downturn.

47. Without the ability to sell KCS to private equity (and as Mr. Creel explains in his verified statement, without being able to count on CP as a potential buyer), it is unlikely that CN

would be able to divest KCS for sufficient cash proceeds that would allow it to pay off CN’s new transaction-related debt. Instead, CN would likely have to rely on separating KCS through a spin-off of the shares in KCS to its shareholders as the only viable means of successfully effecting a divestiture in a timely manner. In fact, Mr. Houle acknowledged the possibility of a “no proceeds” spin off scenario. Houle V.S. at 15.

48. In such a scenario, with suppressed cash flows and no cash sale proceeds being realized, the cash delivered to CN would be limited to the following: (i) the additional leverage raised at KCS through a spin-off, and (ii) the resulting cash distributed via a dividend from KCS to CN at the time of spin. The outcome in this scenario is shown in Table 3 below.

TABLE 3
SCENARIO 3 – SPIN-OFF OF KCS TO CN SHAREHOLDERS (NO CASH PROCEEDS)

	CN Base Case (10% CAGR)	Historical Growth Scenario (5% CAGR)	Economic Downturn Scenario (0% CAGR)	Impact
Value Loss vs. Current CN Offer (\$35bn)	\$13 billion lost	\$17 billion lost	\$20 billion lost	Lower than anticipated financial results and lower sale price than purchase price would erode value
Reduced Cash Flow (2021-2024E)	N/A	\$3 billion less	\$6 billion less	Reduced cash flow, resulting in inability to pay down debt to achieve desired leverage metrics
2024E Leverage	3.1x	4.4x	6.1x	Higher than anticipated pro forma leverage would put pressure on the Company to source cash to reduce leverage
Value Loss / Purchase Price (\$35bn)	-38%	-49%	-58%	ROIC for the KCS acquisition will be negative due to the significant loss in value, which would put pressure on CN to source higher returns elsewhere, including by raising rates and reducing capex

49. Under this scenario, the implications identified under Scenario 1 are exacerbated because of CN’s high cash outlay for KCS and its associated debt burden. CN would remain

highly leveraged in addition to suffering an even more negative return on the KCS investment, increasing pressure on CN to maximize cash flow to accelerate deleveraging and boost returns. This highlights the risk that in a scenario where things do not go according to plan, CN will have stretched its balance sheet to such an extent to facilitate this transaction that it would put in jeopardy its core business.

VI. THERE IS NO INDEPENDENT CHECK ON THE RISKS CN IS TAKING ON IN PAYING ITS HUGE PREMIUM AND INCURRING \$19 BILLION IN NEW DEBT

50. The financial and other risks CN's management is taking on with its huge acquisition premium and resulting new debt in the event of a downturn or divestiture scenario are not subject to review or check by any independent party. Unlike CP's proposed acquisition of KCS, which would be subject to review and approval by CP's own shareholders, CN structured its acquisition to avoid such review. In doing so, CN avoids having a shareholder vote or circulating a proxy statement disclosing the potential risks to CN shareholders resulting from this acquisition.

A. "Fairness Opinions" of the Kind CN Obtained Do Not Address the Risks Associated with CN's Acquisition

51. I understand that CN has obtained "fairness" opinions from its investment banks to the effect that the consideration being paid to acquire KCS stock is "fair, from a financial point of view, to Parent [*i.e.*, CN]." CN-20/KCS-3 at 2. Though I have not been allowed to see the specific fairness opinions CN obtained because of CN's confidentiality designations, I am familiar with fairness opinions typically supplied by financial advisors in this context.

52. The fact that CN obtained such opinions provides no reassurance regarding the financial risks CN is taking on. First, the overall conclusion of fairness is of little value absent an understanding of the analyses CN's advisors undertook and presented to CN's management and its board of directors. I understand that CN declined to supply those analyses. (Those

analyses might have explained, for example, the degree to which CN's purchase price was justified by the benefits to CN from extinguishing the competitive threat posed by a CP/KCS transaction.)

53. Second, fairness opinions only address the narrow terms of the transaction at issue and not the broader implications of an acquisition, like this one, that may involve CN being required to divest KCS if ultimately its acquisition is not approved. Fairness opinions typically assume that the transaction will be approved by regulators, and thus would not have addressed the potential risks associated with CN being required to divest KCS out of voting trust following board disapproval or conditioning of CN's control transaction. Such a provision is present, for example, in both of the fairness opinions that KCS obtained in connection with CN's offer in this matter.²³

54. Third, fairness opinions rely entirely on the financial projections and synergy forecasts of the parties to the transaction – here, CN and KCS management – and assume that those forecasts are accurate *and will be achieved*. Fairness opinions do not stress-test the acquisition under a different economic and operating environment, instead they generally assume whatever forecasts the company has made to justify its purchase price.²⁴

²³ E.g., CN F-4 Registration Statement (June 22, 2021) at B-2 (Morgan Stanley Fairness Opinion: “we have assumed that the Merger will be consummated in accordance with the terms set forth in the Merger Agreement without any waiver, amendment or delay of any terms or conditions, including, among other things, ... (ii) that the Surface Transportation Board will permit the Merger to close into a Voting Trust in accordance with the terms of the Voting Trust Agreement and” ... Morgan Stanley has assumed that in connection with the receipt of all the necessary governmental, regulatory or other approvals and consents required for the proposed Merger, no delays, limitations, conditions or restrictions will be imposed that would have a material adverse effect on the contemplated benefits expected to be derived in the proposed Merger”) (excerpts are Exhibit 14 to CP's Reply).

²⁴ Again, the fairness opinions KCS obtained in this matter are illustrative. See, e.g., CN F-4 Registration Statement (June 22, 2021) at B-2 (Morgan Stanley Fairness Opinion: “With respect to the financial projections of the Company, including information relating to certain strategic, financial and operational benefits anticipated from the Merger, we have assumed that they have been reasonably

B. The KCS Shareholders that CN's Risky Bid Benefits Are Heavily Weighted Toward Institutional Investors and Particularly Merger Arbitrageurs

55. I believe that the extreme purchase price premium CN is offering will benefit only KCS's shareholders. Prior to CN's offer approximately 89 percent of those shareholders were institutional investors. Since CN announced its offer (and since CP and KCS announced their agreement to combine on March 21), there has been tremendous trading volume in KCS's shares and a high amount of turnover in the owners of those shares. As a result of this activity, I estimate that as much as one third of all KCS shares outstanding are currently held by merger arbitrageurs, whose business model is to buy and sell stocks in order to earn short-term profits on acquisition-related changes in stock value rather than the long-term implications of combining these two businesses.

56. These shareholders will receive cash as soon as CN acquires KCS shares, and they will also be able to sell the portion of their consideration that comes in the form of CN shares immediately. As a result, these shareholders certainly have no concern about the implications of the transaction's financial terms for CN's future or the public interest.

VII. THE MAGNITUDE OF CN'S FINANCIAL INVESTMENT IN KCS CAN ONLY BE EXPLAINED IF THE TRANSACTION ENHANCES CN'S MARKET POWER AND/OR WILL BLOCK NEW COMPETITION FROM CP/KCS

57. My analysis in Section IV demonstrates that the implicit ROIC for CN's huge investment in KCS does not meet CN's own stated ROIC targets based on the \$1 billion in transaction synergies CN has estimated. This means that CN must have based its investment decision on some unstated set of strategic benefits CN expects to realize. The most plausible explanation is that CN's investment is justified by CN's anticipated increase in market power –

prepared on bases reflecting the best currently available estimates and judgments of the management of the Company of the future financial performance of the Company.”) (excerpts are Exhibit 14 to CP's Reply).

giving it greater pricing power, based both in the softening of existing competition with KCS and the elimination of the new, more intense competition CN would face from CP across Canada and the Upper Midwest were CP able to acquire KCS instead.

58. My analysis follows the framework that CN itself applied when KCS proposed to acquire some of the exact same assets (*i.e.*, TFM, what is now KCSM) in 2003. At that time CN argued to the Board that KCS's presumed payment of a control premium meant that:

“the acquiring railroad expects the increase in its earnings as a result of the acquisition to be greater than simply the pre-merger earnings of the acquired railroad. There are essentially three ways that this increase can occur. One way is to increase efficiency, which can result from lowered costs or from improved services without a corresponding price increase. The second way is to expand output (at profitable prices) over an existing infrastructure, though improved marketing, sales, or product development. Efficiencies and improved marketing and product development typically lead to traffic being diverted from other railroads or from trucks. *The third way is to exploit additional market power.*”²⁵

59. As I showed above, even accepting CN's estimated “efficiencies” and “growth” synergies (the first two “ways” in the passage above), which total \$1 billion, CN's targeted ROIC of 12 percent would not be achieved given the premium price it is paying for KCS. CN must be assuming some other source of value to fill this gap. The most plausible explanation is the “third way:” that CN anticipates achieving its forecast returns in one (or both) of two ways: (1) exploiting the additional market power it achieves by softening competition for rail traffic to/from the region served by both CN and KCS today, or (2) blocking the new competition that CN fears from CP's proposed combination with CN.

²⁵ *Kansas City Southern – Control – The Kansas City Southern Ry., Gateway Eastern Ry., & The Texas Mexican Ry.*, Finance Docket No. 34342, Comments of Canadian National Ry. (Aug. 4, 2003), Vellturo V.S. at 3 (Exhibit E hereto).

60. The timing of CN's offer provides further confirmation that CN's motivation is primarily anti-competitive. CN was compelled to propose this premium to KCS's Board and its shareholders only following CP's announced transaction with KCS, and at approximately double the premium of CP's bid. Tellingly, CN did not make such an offer at the time of KCS's publicly rumored discussions with private equity. CN's public statements imply that it did not act in the fall of 2020 because it was unaware that KCS was potentially for sale,²⁶ but this assertion is contradicted by two facts: (1) the abundance of public reports of private equity's interest in CN, which was sufficiently clear that CP began its own discussions with KCS, and (2) CN's F-4 Registration Statement filed with the SEC discloses that CN in fact contacted KCS in the fall of 2020 but – without knowledge of CP's interest in acquiring KCS – did not communicate any offer.²⁷ The only new information that became available to CN in March 2021 was the fact that CP was proposing to buy KCS and, as CP and KCS both stated publicly, inject new competition into North-South rail markets against other Class I railroads, CN.²⁸ In fact, when asked by an analyst about the impact on CN of a CP/KCS combination, CN's CEO

²⁶ CN Q1 2020 Earnings Call Transcript (Apr. 26, 2021) at 8 (excerpts are Exhibit 7 to CP's Reply).

²⁷ CN F-4 Registration Statement (June 22, 2021) at 43 (in August 2020, "Jean-Jacques Ruest, President and Chief Executive Officer of CN, contacted Mr. Ottensmeyer telephonically to note the financial media reports regarding a possible takeover proposal. Mr. Ruest said that, if KCS was interested in a sale, CN would be interested in discussing such a transaction. No further actions were taken by the KCS management team or board to engage with CN at the time.") (excerpts are Exhibit 14 to CP's Reply). The next reference to CN in the description of the transaction is to CN's unsolicited bid in April 2021, one month after CP and KCS announced their agreement to combine. *Id.* at 48).

²⁸ *See*, for example, Finance Docket No. 36500, Notice of Intent (CP-1/KCS-1) at 4 ("competition will be strongly enhanced, against ... the larger Class I railroads whose lines surround those of Applicants"); Canadian Pacific and Kansas City Southern Agree to Combine Joint Conference Call Transcript (Mar. 21, 2021) at 6 (remarks of KCS CEO Ottensmeyer: "operational and cultural alignment between our two companies makes us a natural fit for this transaction, in addition to the power of the geographic combination ... we are creating new single-line service options that will enhance competition").

responded by talking about how CN saw that as an opportunity to “jump on” its own purchase of KCS.²⁹

²⁹ CN Q1 2020 Earnings Call Transcript (Apr. 26, 2021) at 22 (excerpts are Exhibit 7 to CP’s Reply).

VERIFICATION

I, Nadeem Velani, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 27th day of June, 2021.



Nadeem Velani
Chief Financial Officer
Canadian Pacific Railway Limited

APPENDIX: SUPPORTING CALCULATIONS

APPENDIX FIGURE A1:

CN ROIC AND KCS ACQUISITION ROIC

CN ROIC		KCS ROIC			
			2025E (5% Net Income CAGR)	2025E (10% Net Income CAGR)	2025E (15% Net Income CAGR)
2020A	2020A				
Net Income	2,920	619	790	997	1,245
Interest Expense	454	151	151	151	151
Tax on Interest Expense	(98)	(37)	(37)	(37)	(37)
NOPAT (Pre-Synergies)	3,275	733	904	1,111	1,359
Run-Rate Synergies	-	1,000	1,000	1,000	1,000
Tax on Synergies	-	(248)	(248)	(248)	(248)
NOPAT (Post-Synergies)	3,275	1,485	1,656	1,863	2,111
Equity Offer / Share	-	125	125	125	125
KSU Shares	-	91	91	91	91
Equity	15,448	11,367	11,367	11,367	11,367
Net Debt	10,252	22,883	22,883	22,883	22,883
Average Invested Capital	25,699	34,249	34,249	34,249	34,249
ROIC	12.7 %	4.3 %	4.8 %	5.4 %	6.2 %

APPENDIX FIGURE A2:

CN ROIC CALCULATION PER 2020 ANNUAL REPORT (MD&A)

<i>In millions, except percentage</i>	<i>As at and for the year ended December 31,</i>	2020	2019	2018
Net income	\$	3,562	\$ 4,216	\$ 4,328
Interest expense		554	538	489
Tax on interest expense ⁽¹⁾		(120)	(120)	(116)
<i>Return</i>	\$	3,996	\$ 4,634	\$ 4,701
Average total shareholders' equity	\$	18,846	\$ 17,841	\$ 17,149
Average long-term debt		11,931	11,626	10,067
Average current portion of long-term debt		1,420	1,557	1,632
Less: Average cash, cash equivalents, restricted cash and restricted cash equivalents		(844)	(674)	(656)
<i>Average invested capital</i>	\$	31,353	\$ 30,350	\$ 28,192
ROIC		12.7%	15.3%	16.7%
Adjusted net income ⁽²⁾	\$	3,784	\$ 4,189	\$ 4,056
Interest expense		554	538	489
Adjusted tax on interest expense ⁽³⁾		(137)	(131)	(120)
<i>Adjusted return</i>	\$	4,201	\$ 4,596	\$ 4,425
Average invested capital	\$	31,353	\$ 30,350	\$ 28,192
Adjusted ROIC		13.4%	15.1%	15.7%

(1) The effective tax rate for 2020 used to calculate the tax on interest expense was 21.6% (2019 - 22.3%; 2018 - 23.8%).

(2) See the section of this MD&A entitled Adjusted performance measures for an explanation of this non-GAAP measure.

(3) The adjusted effective tax rate for 2020 used to calculate the adjusted tax on interest expense was 24.8% (2019 - 24.4%; 2018 - 24.5%).

APPENDIX FIGURE A3:

CN ROIC PRO FORMA FOR KCS ACQUISITION

	CN ROIC	KCS ROIC	PF ROIC
	2020A	2020A	2020A
Net Income	2,920	619	3,539
Interest Expense	454	151	605
Tax on Interest Expense	(98)	(37)	(136)
NOPAT (Pre-Synergies)	3,275	733	4,008
Run-Rate Synergies	-	1,000	1,000
Tax on Synergies	-	(248)	(248)
NOPAT (Post-Synergies)	3,275	1,485	4,760
Equity	15,448	11,367	26,814
Net Debt	10,252	22,883	33,134
Average Invested Capital	25,699	34,249	59,949
ROIC	12.7 %	4.3 %	7.9 %

APPENDIX FIGURE A4:

EARNINGS REQUIRED TO ACHIEVE STATED RETURN HURDLES

	2025E (5% Net Income CAGR)	2025E (10% Net Income CAGR)	2025E (15% Net Income CAGR)
Target ROIC	12%	12%	12%
(x) Average Invested Capital	34,249	34,249	34,249
Implied NOPAT (Post-Synergies)	4,110	4,110	4,110
(+) Tax on Synergies	248	248	248
(-) Run-Rate Synergies	(1,000)	(1,000)	(1,000)
Implied NOPAT (Pre-Synergies)	3,358	3,358	3,358
(+) Tax on Interest Expense	37	37	37
(-) Interest Expense	(151)	(151)	(151)
Implied Net Income	3,244	3,244	3,244
(-) Actual Net Income	(790)	(997)	(1,245)
Incremental Net Income to get to 12% ROIC	2,454	2,247	1,999
(/) 1 - Tax Rate	75 %	75 %	75 %
Incremental Pre-Tax Net Income to get to 12% ROIC	3,263	2,988	2,658

VELANI EXHIBIT A

CANADIAN NATIONAL 2020 ANNUAL REPORT EXCERPTS

Management's Discussion and Analysis

This Management's Discussion and Analysis (MD&A) dated February 1, 2021, relates to the consolidated financial position and results of operations of Canadian National Railway Company, together with its wholly-owned subsidiaries, collectively "CN" or the "Company," and should be read in conjunction with the Company's 2020 Annual Consolidated Financial Statements and Notes thereto. All financial information reflected herein is expressed in Canadian dollars and prepared in accordance with United States generally accepted accounting principles (GAAP), unless otherwise noted.

CN's common shares are listed on the Toronto and New York stock exchanges. Additional information about CN filed with Canadian securities regulatory authorities and the United States Securities and Exchange Commission (SEC), including the Company's 2020 Annual Information Form and Form 40-F, may be found online on SEDAR at www.sedar.com, on the SEC's website at www.sec.gov through EDGAR, and on the Company's website at www.cn.ca in the Investors section. Printed copies of such documents may be obtained by contacting CN's Corporate Secretary's Office.

Business profile

CN is engaged in the rail and related transportation business. CN's network of 19,500 route miles of track spans Canada and the United States of America (U.S.); the only railroad connecting Canada's Eastern and Western coasts with the U.S. South. CN's extensive network and efficient connections to all Class I railroads provide CN customers access to Canada, the U.S. and Mexico. Essential to the economy, to the customers, and to the communities it serves, CN safely transports more than 300 million tons of cargo, serving exporters, importers, retailers, farmers and manufacturers. CN and its affiliates have been contributing to community prosperity and sustainable trade since 1919. CN is committed to programs supporting social responsibility and environmental stewardship.

CN's freight revenues are derived from seven commodity groups representing a diversified and balanced portfolio of goods transported between a wide range of origins and destinations. This product and geographic diversity better positions the Company to face economic fluctuations and enhances its potential for growth opportunities. For the year ended December 31, 2020, CN's largest commodity group accounted for 27% of total revenues. From a geographic standpoint, 16% of revenues relate to U.S. domestic traffic, 31% transborder traffic, 17% Canadian domestic traffic and 36% overseas traffic. The Company is the originating carrier for over 85%, and the originating and terminating carrier for over 65%, of traffic moving along its network, which allows it both to capitalize on service advantages and build on opportunities to efficiently use assets.

Corporate organization

The Company manages its rail operations in Canada and the U.S. as one business segment. Financial information reported at this level, such as revenues, operating income and cash flow from operations, is used by the Company's corporate management in evaluating financial and operational performance and allocating resources across CN's network. The Company's strategic initiatives are developed and managed centrally by corporate management and are communicated to its regional activity centers (the Western Region and Eastern Region), whose role is to manage the day-to-day service requirements of their respective territories, control direct costs incurred locally, and execute the strategy and operating plan established by corporate management.

See Note 23 – *Segmented information* to the Company's 2020 Annual Consolidated Financial Statements for additional information on the Company's corporate organization, as well as selected financial information by geographic area.

Management's Discussion and Analysis

ROIC and adjusted ROIC

Management believes ROIC and adjusted ROIC are useful measures of the efficiency in the use of capital funds. The Company calculates ROIC as return divided by average invested capital. Return is defined as net income plus interest expense after-tax, calculated using the Company's effective tax rate. Average invested capital is defined as the sum of total shareholders' equity, long-term debt and current portion of long-term debt less cash and cash equivalents, and restricted cash and cash equivalents, averaged between the beginning and ending balance over a twelve-month period. The Company calculates adjusted ROIC as adjusted return divided by average invested capital. Adjusted return is defined as adjusted net income plus interest expense after-tax, calculated using the Company's effective tax rate, excluding the tax effect of adjustments used to determine adjusted net income. ROIC and adjusted ROIC do not have any standardized meaning prescribed by GAAP and therefore, may not be comparable to similar measures presented by other companies.

The following table provides a reconciliation of net income and adjusted net income to return and adjusted return, respectively, as well as the calculation of average invested capital, which have been used to calculate ROIC and adjusted ROIC:

<i>In millions, except percentage</i>	<i>As at and for the year ended December 31,</i>	2020	2019	2018
Net income	\$	3,562	\$ 4,216	\$ 4,328
Interest expense		554	538	489
Tax on interest expense ⁽¹⁾		(120)	(120)	(116)
<i>Return</i>	\$	3,996	\$ 4,634	\$ 4,701
Average total shareholders' equity	\$	18,846	\$ 17,841	\$ 17,149
Average long-term debt		11,931	11,626	10,067
Average current portion of long-term debt		1,420	1,557	1,632
Less: Average cash, cash equivalents, restricted cash and restricted cash equivalents		(844)	(674)	(656)
<i>Average invested capital</i>	\$	31,353	\$ 30,350	\$ 28,192
ROIC		12.7%	15.3%	16.7%
Adjusted net income ⁽²⁾	\$	3,784	\$ 4,189	\$ 4,056
Interest expense		554	538	489
Adjusted tax on interest expense ⁽³⁾		(137)	(131)	(120)
<i>Adjusted return</i>	\$	4,201	\$ 4,596	\$ 4,425
Average invested capital	\$	31,353	\$ 30,350	\$ 28,192
Adjusted ROIC		13.4%	15.1%	15.7%

(1) The effective tax rate for 2020 used to calculate the tax on interest expense was 21.6% (2019 - 22.3%; 2018 - 23.8%).

(2) See the section of this MD&A entitled *Adjusted performance measures* for an explanation of this non-GAAP measure.

(3) The adjusted effective tax rate for 2020 used to calculate the adjusted tax on interest expense was 24.8% (2019 - 24.4%; 2018 - 24.5%).

VELANI EXHIBIT B

**CN Q2 2020 EARNINGS CALL TRANSCRIPT EXCERPTS
(JULY 22, 2020)**

21-Jul-2020

Canadian National Railway Co. (CNI)

Q2 2020 Earnings Call

CORPORATE PARTICIPANTS

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

Rob Reilly

Executive Vice-President, Chief Operating Officer & Interim Chief Information and Technology Officer, Canadian National Railway Co.

James B. Cairns

Senior Vice President-Rail Centric Supply Chain, Canadian National Railway Co.

Keith Reardon

Senior Vice-President-Consumer Product Supply Chain, Canadian National Railway Co.

Ghislain Houle

Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

OTHER PARTICIPANTS

Fadi Chamoun

Analyst, BMO Capital Markets Corp. (Canada)

Ravi Shanker

Analyst, Morgan Stanley & Co. LLC

Cherilyn Radbourne

Analyst, TD Securities, Inc.

Ken Hoexter

Analyst, Bank of America Merrill Lynch

Chris Wetherbee

Analyst, Citigroup Global Markets, Inc.

Benoit Poirier

Analyst, Desjardins Securities, Inc.

Scott H. Group

Analyst, Wolfe Research LLC

Konark Gupta

Analyst, Scotia Capital, Inc.

Brian P. Ossenbeck

Analyst, JPMorgan Securities LLC

Walter Spracklin

Analyst, RBC Capital Markets

Brandon R. Oglenski

Analyst, Barclays Capital, Inc.

David Vernon

Analyst, Sanford C. Bernstein & Co. LLC

Seldon Clarke

Analyst, Deutsche Bank

Jonathan Chappell

Analyst, Evercore Group LLC

Jason Seidl

Analyst, Cowen Inc.

Allison M. Landry

Analyst, Credit Suisse Securities

Thomas Wadewitz

Analyst, UBS Securities LLC



Brandon R. Oglenski

Analyst, Barclays Capital, Inc.

Q

Hey, good afternoon, everyone. Yes, thank you for taking my questions. Keith, you sounded – I should phrase it, relatively bullish about intermodal prospects we came into, I guess "peak season." Can you talk about some of the opportunities you mentioned in your prepared remarks, I think about your carriers adding back locations and that you are winning some of that incremental business?

Keith Reardon

Senior Vice-President-Consumer Product Supply Chain, Canadian National Railway Co.

A

Sure.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Keith? As I've said earlier, we believe in the strength of the consumer in North America and the market where that shows the most number one is intermodal, you see that a bit in lumber and automotive but where this is something to really exploit whether the product is really tailor made to drive the economy – consumer economy of intermodal. Keith?

Keith Reardon

Senior Vice-President-Consumer Product Supply Chain, Canadian National Railway Co.

A

Sure. You know, it wasn't fun going through the beginning of the second quarter and hearing about blank sailings and also the challenges that our customers were having and the fact that they thought that was kind of going into the third quarter as well. So, it's great that we've seen a lot of the blanks that they had for Q3. They've reinstituted those calls and right now on the West Coast, we have much less noise around the blank sailings than we did during Q2. In fact they're adding 11 extra loaders in Q3 on the West Coast, nine on the West Coast and two on the East Coast. Those types of things and the discussions that we have with our customers and the fact that our boots on the ground folks in Asia are telling us the strength of what's going on with orders from North America, those give us the confidence that I can sit and talk to Rob and ask him and have that discussion about being prepared. As I said, Rupert's probably going to have a record in July. And we see the same thing for August as far as the volume's solid on the West Coast.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Ghislain, maybe you want to add something about TransX and a year after the acquisition.

Ghislain Houle

Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

Yeah, sure.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

We've been able to accomplish with TransX.

Ghislain Houle

Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

That's another – sure, JJ, that's another piece of business that we're quite bullish. And I'm happy to report that after a year and I think Keith and the team is doing and did an outstanding job integrating TransX with our overall CN family. As you know, Brandon, big projects or investments we typically have internal auditor going in and auditing the business case and auditing the return and reporting directly to the board, so they are not all done yet but close and I'm happy to report that the turn of the investments both in TransX and H&R will deliver higher than our typical ROI threshold that we use at CN of 12%. So this is a good accretive acquisition and we are quite pleased and as I said before, Keith and the team, is doing a hell of a job managing this and frankly, their OR as we speak is now the best-in-class for these types of companies, like if you at J.B. Hunt or some of the others that are best-in-class, TransX is right there with them.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Yeah. The mandate for TransX is to compete with the best of best like J.B. Hunt [ph] in the OR (00:52:01), they are not a trucking firm, they are [ph] intermodal (00:52:05) firm and they're increasing the amount of rail they do since last year.

Thank you, Brandon.

Brandon R. Oglenski

Analyst, Barclays Capital, Inc.

Q

Yeah, thank you, JJ.

Operator: Thank you. The next question is from David Vernon from Bernstein. Please go ahead.

David Vernon

Analyst, Sanford C. Bernstein & Co. LLC

Q

Hey, good afternoon, everybody. Rob, I wanted to focus in on the train length and train weight gains that you had in the second quarter, could you talk to whether some changes in mix or maybe just lower volume in the network allowed you kind of extend that. And then what the outlook should be kind of from here, should we be expecting in this 9,500 feet length range for the rest of the year even through the winter months or should we be expecting this kind of to come off as volume comes back?

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Rob?

Rob Reilly

Executive Vice-President, Chief Operating Officer & interim Chief Information and Technology Officer, Canadian National Railway Co.

A

Yeah, winter all bets are off. We will see what winter brings and then we can have that discussion at that point. As far as the changes we've made, we do view those as structural. And mix or no mix, what we've done is really take what has been delivered to us and make the best out of it. So, we are looking at a significant volume drop that we saw this quarter and we took action, part of that was increasing train size and reducing crew starts, and a lot of things come with that when you do that. The bigger trains lead to greater train fuel efficiency, leads to better utilization of your locomotives. We saw the train velocity improved all during this period as well, 5% year-over-year. So, we plan on keeping trains big and looking for more opportunities that are out there. Thanks for the question.

VELANI EXHIBIT C

**CN BAIRD GLOBAL INDUSTRIALS CONFERENCE
TRANSCRIPT EXCERPTS
(Nov 17, 2020)**

12-Nov-2020

Canadian National Railway Co. (CNI)

Baird Global Industrial Conference

CORPORATE PARTICIPANTS

Ghislain Houle

Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

Keith Reardon

Senior Vice President-Consumer Product Supply Chain, Canadian National Railway Co.

James B. Cairns

Senior Vice President-Rail Centric Supply Chain, Canadian National Railway Co.

OTHER PARTICIPANTS

Garrett Anthony Holland

Analyst, Robert W. Baird & Co., Inc.

MANAGEMENT DISCUSSION SECTION

Garrett Anthony Holland

Analyst, Robert W. Baird & Co., Inc.

Great. Well, we're live now, so we're going to go ahead and start Day 3 of the Transportation and Logistics Section of this 2020 Baird Industrials Conference. My name is Garrett Holland, Senior Analyst covering Transportation and Logistics at Baird. We are very pleased to have Canadian National Railway participating on our industrials conference this year.

From the company, we have Ghislain Houle, Executive Vice President and Chief Financial Officer; James Cairns, Senior Vice President, Rail Centric Supply Chain; Keith Reardon, Senior Vice President, Consumer Product Supply Chain; as well as Paul Butcher and Lauren Benoit from Investor Relations. Management is going to review some prepared remarks with slides and then I'll return for Q&A.

So now, we'll turn things over to the company for the opening presentation.

Ghislain Houle

Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

Yeah, thanks, Garrett, and thanks for having us and thanks for people listening to us on webcast. We're very pleased to be participating in your conference. I think it's the first year that we participate, certainly probably not the last. And as you said there, Garrett, what we'll do is we'll introduce CN a little bit with my two colleagues here, take a few minutes to do that and we've prepared a very short presentation to help people follow what we're saying and then after that obviously we'll open up for questions.

So if you turn to that small presentation on page 3, as you can see at CN, we do have a very unique three-coast network with a very well-diversified portfolio supported by solid base of customers and partners. We are well-diversified from a commodity standpoint with our biggest segment being intermodal at just over 25% of our book of business year-to-date at the end of Q3. Everything else is smaller.



Sure. So there are expansions in the East. We are working very closely with PSA to extracting as much capacity out of the existing port there at Halterm and working with Ceres to extract as much value as we can out of that port as well. A recent proof point there is with their new crane and with the two new berths or the – in fact, we have two berths there now. We recently had a 15,000 TEU vessel come into Port of Halifax. I know it was a big deal in New York. It was fanfare and everything. But that vessel actually called on Halifax before it got to New York.

We also are working with our port operators, DP World in Saint John. They have some capacity plans. We've been servicing Saint John forever. It is one of our ports. And you look at what's going on in Quebec City, the plans that we have with Hutchison to create a terminal, over 750,000 TEUs at that, a fully automated terminal, I might add as well. But we're going through a lot of the permitting process right now.

And I would also add that we get to the US or we get to the US Midwest via those Canadian ports. But we also get into Canada via New York, New Jersey and Philly. And when the strike in Port of Montreal occurred, we actually used that gateway as a way to get into Montreal and Toronto as well. So we have the East Coast covered extremely well.

Ghislain Houle

Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

And I would say, Garrett, on this one what's very exciting is that as much as our capacity is very precious in Western Canada, a new site on our geographic, we have Global West is 29%. Our Eastern Canadian franchise is actually underutilized. So all of the growth that Keith is talking about, we will actually be able to accommodate and support at very little, if not zero, CapEx. So that's quite exciting for us.

Garrett Anthony Holland

Analyst, Robert W. Baird & Co., Inc.

Q

Well, on that point I guess, what are your expectations and priorities for capital allocation and the implications for capital expenditures going forward?

Ghislain Houle

Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

Yeah. So again, our capital allocation has not changed throughout the years. I mean it's been the same. We like to be predictable and boring. So the first use of cash will always be towards the business. And we're looking for projects that will generate return on invested capital in the range of 12% to 15%.

Then the second use of cash is obviously we like to have a strong balance sheet. We saw the value of that going through the pandemic. I mean if you look – during the heart of the pandemic in Q2, we were able to continue to issue commercial paper at rates that are lower than LIBOR. We actually issued a \$600 million 30-year bond, believe it or not, at a rate of 2.45%. That was actually the second lowest of any corporate in the US when we issued it. So we like to have a strong balance sheet. And then if we have strategic opportunities with a strong balance sheet then we can lock them in quickly.

Finally, we look at shareholder distribution first and foremost on dividends. I think that when we look at dividend growth, it's not the amount of growth in a given year that matters as much as the consistency of the growth. And as you know, this year we've increased our dividend by 7%. Through the pandemic, our dividend was never questioned. And so we like the consistency and we've increased our dividend since we've privatized by 16%. We're quite proud of that.

And then, finally, we look at share buyback. We like share buyback because it's a flexible tool. You can raise it. You can speed it up. You can slow it down. As you know, we've slowed it down now with the pandemic. We've stopped buying back shares. And really the share buyback is a tool that we use to get to a targeted leverage level; targeted leverage level meaning when the rating agencies look at this, they look at adjusted debt to adjusted EBITDA.

When you look our target has been in the range of 1.7 to 1.9 times, call it 2 times, and we're already at – we will finish the Q3 at 2.17 times, hence why we continue to not buying back shares but stay tuned for next year we'll see what we do. But that's our capital allocation. We're very comfortable with this, and investors should think that this should continue. We question it on a regular basis internally and with our board. But as I've said, we'd like to be predictable and boring.

Garrett Anthony Holland

Analyst, Robert W. Baird & Co., Inc.

Q

That was helpful. I wanted to touch on domestic intermodal. As that franchise evolves, where do you see the strategic opportunities and how do you see electric driverless cars competing with rails over time? Obviously, investors want to know how can we move more volume from the road to rail.

Keith Reardon

Senior Vice President-Consumer Product Supply Chain, Canadian National Railway Co.

A

Sure. I'll start off on the domestic intermodal and maybe, Ghislain, you could weigh in a little bit too on the driverless truck as we kind of look at that.

Ghislain Houle

Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

Yeah.

Keith Reardon

Senior Vice President-Consumer Product Supply Chain, Canadian National Railway Co.

A

So on the domestic intermodal, we're focused on several pieces there. One, we want to drive more business to our US network, as Ghislain talked about the eastern network. We can grow in the states without having a whole lot of capital applied. We have a unique model versus most of the other railroads, especially the US roads. We have a retail product. We go door to door. We sell that service to the beneficial cargo owners. We also have a refrigerated product that we run ourselves door to door. So we're looking at those two markets to help us grow.

But we also work with the IMCs and the wholesalers in the states, especially when we're looking at e-commerce. It is a place where we know that there's opportunity to grow. We have multiple sales channels to sell into that. Our Canadian wholesale partners and our US wholesale partners are a key part of that strategy, multiple sales channels going into that e-commerce business. With regard to driverless trucks, I think we're keeping an eye on it, making sure we see what's going on.

Ghislain Houle

Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

Absolutely. And I think that when you look at our franchise, Garrett, we're blessed with a long length of haul either on the international, which is close to like 1,900 miles, close to 2,000 miles and on the domestic at 1,700 miles.

VELANI EXHIBIT D

**CN 2021 MANAGEMENT INFORMATION
CIRCULAR EXCERPTS
(APR. 27, 2021)**



ESSENTIAL.

**MANAGEMENT INFORMATION CIRCULAR
AND NOTICE OF ANNUAL MEETING OF SHAREHOLDERS**



APRIL 27, 2021



Notice of Annual Meeting of Shareholders

Our annual meeting of holders of common shares will be conducted solely via a live webcast meeting on **Tuesday, April 27, 2021 at 10:00 a.m.** (Eastern Daylight Time) at www.virtualshareholdermeeting.com/CNI2021. At this website, shareholders will be able to attend the meeting live, submit questions and vote their shares while the meeting is being held.

For the purposes of:

1. receiving the consolidated financial statements for the year ended December 31, 2020, and the auditors' reports thereon;
2. electing the directors;
3. appointing the auditors;
4. considering and approving, in an advisory, non-binding capacity, a resolution (the full text of which is set out on page 9 of the accompanying management information circular) accepting the Company's approach to executive compensation as disclosed in the "Statement of Executive Compensation" section of the accompanying management information circular;
5. considering and approving, in an advisory, non-binding capacity, a resolution (the full text of which is set out on page 9 of the accompanying management information circular) accepting the Company's Climate Action Plan as disclosed in the accompanying management information circular;
6. considering two shareholder proposals described in Schedule "D"; and
7. transacting such other business as may properly be brought before the meeting or any adjournment or postponement thereof.

The Board of Directors has fixed March 5, 2021 as the Record Date for the determination of the holders of common shares entitled to receive notice of the meeting and vote at the meeting.

By order of the Board of Directors

A handwritten signature in black ink, appearing to read 'Sean Finn', is written over a horizontal line.

Sean Finn
Executive Vice-President
Corporate Services and Chief Legal Officer and Corporate Secretary

March 9, 2021
Montreal, Quebec

Letter to Shareholders

March 9, 2021

Dear Shareholder:

On behalf of the Board of Directors ("Board" or "Board of Directors") and management of Canadian National Railway Company (the "Company" or "CN"), we cordially invite you to attend the annual meeting of shareholders, which will be held online on April 27, 2021 at 10:00 a.m. (Eastern Daylight Time). This management information circular ("Information Circular") describes the business to be conducted at the meeting and provides information on executive compensation and CN's environmental, social and governance ("ESG") practices. In addition to these items, we will discuss highlights of our 2020 performance and our plans for the future.

CN's front line workers and their colleagues admirably stood up to 2020, despite its unique challenges, by focusing on their mission. We are extremely proud of the essential transportation service they have provided and thank them for what they have accomplished throughout this most difficult year, marked by blockades on our tracks and the pandemic. Our transformational journey started a quarter of a century ago and continued to the point of CN becoming the successful transportation and supply chain leader and trade enabler we are today.

CN's transportation services are essential to keep the economy moving, for its customers to reach their markets, for retailers to get the goods the public rely on every day and for healthcare workers battling the pandemic to get critical supplies. Our key role in the North American supply chain was clearly demonstrated in the difficult circumstances of 2020.

CN has recently undertaken major new environmental, social and governance initiatives that will reinforce its status as a leader in ESG among North American Class I railroads and across the transportation sector. Our longer-term goal is to be at the leading edge of ESG best practices across North America and globally.

These new measures include the creation of the CN Indigenous Advisory Council, an independent body comprised of Indigenous peoples from across the country, with a mandate to advise CN's Board and senior management, and a commitment to a Board of Directors that has at least 50 percent of independent directors coming from diverse groups, including gender parity. They also encompass an annual advisory vote on CN's Climate Action Plan, and a reset of governance policies reducing the age limit and tenure of directors, setting a lower maximum of public boards on which directors can serve, and reducing the size of the Board. CN continues to strive to implement governance policies that reflect best-in-class ESG practices.

We would like to welcome our new Board nominees, Denise Gray and Justin M. Howell, as well as Margaret A. McKenzie who joined the Board in late 2020. These new directors come to us with extensive business, innovation, and strategic planning experience. The Board looks forward to their contribution as CN continues to play an essential role in the North American economy.

We also want to take this opportunity, on behalf of the entire CN family, to thank our distinguished directors who are not standing for re-election at this annual meeting: Don Carty, Maureen Kempston Darkes, Gordon Giffin, Edith Holiday and Denis Losier for their outstanding contribution, lending their wisdom, expertise and careful oversight to CN's success as it has grown and prospered. The Company is deeply indebted to them.

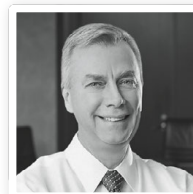
Your participation in the affairs of the Company is important to us. To that effect, we are pleased to embrace the latest technology to provide easy access, improved communication, and cost savings for our shareholders and the Company, all through a webcast Meeting again in 2021. This set up is imperative these days as it eliminates any health risks associated with large gatherings while enabling greater participation by our shareholders from any location around the world and aligning with our sustainability vision and belief. Similar to last year, through our webcast, you will have the opportunity to interact with members of the Board and senior executive officers of the Company.

We encourage you to vote on the internet or complete the enclosed proxy or voting instruction forms and return them in the envelope provided for this purpose, so that your views can be represented. Even if you plan to attend the meeting, you may find it convenient to vote your shares in advance of the meeting over the internet or by completing and returning the enclosed proxy or voting instruction forms, as applicable. Please consult the information on page 5 of the Information Circular to find out how to attend the meeting online and vote your shares.

We are looking forward to your virtual attendance at the Meeting. Please stay safe and healthy.



Robert Pace, D.COMM., C.M.
Chair of the Board



Jean-Jacques Ruest
President and
Chief Executive Officer

CN

Letter to Shareholders

What's Inside

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This Information Circular is provided in connection with the solicitation of proxies by management of Canadian National Railway Company for use at the annual meeting of its shareholders or at any adjournment or postponement thereof (the "Meeting"). In this document "you" and "your" refer to the shareholders of CN and "CN", the "Company", "we", "us", or "our" refer to Canadian National Railway Company. The Meeting will be held on Tuesday, April 27, 2021, at 10:00 a.m. (Eastern Daylight Time) for the purposes set forth in the foregoing Notice of Meeting. The information contained herein is given as at February 26, 2021, except as indicated otherwise.

Shareholder Voting Matters and Recommendation

VOTING MATTER Election of 11 Directors BOARD VOTE RECOMMENDATION FOR each nominee FOR MORE INFORMATION SEE PAGE 10	VOTING MATTER Appointment of KPMG LLP as Auditors BOARD VOTE RECOMMENDATION FOR FOR MORE INFORMATION SEE PAGE 8	VOTING MATTER Advisory Resolution on Executive Compensation BOARD VOTE RECOMMENDATION FOR FOR MORE INFORMATION SEE PAGE 44
VOTING MATTER Advisory Resolution on Climate Action Plan BOARD VOTE RECOMMENDATION FOR FOR MORE INFORMATION SEE PAGE 40	VOTING MATTER Shareholder Proposals BOARD VOTE RECOMMENDATION AGAINST FOR MORE INFORMATION SEE PAGE 87	

The following formula illustrates how an eligible executive employee's annual base salary (as at December 31, 2020), target payout (expressed as a percentage of base salary), corporate financial, corporate safety and individual performance factors interact in the determination of the actual annual bonus payout:

Annual Bonus Payout Formula



The average bonus payout for the NEOs, (consisting of the corporate financial performance factor, the corporate safety performance factor, and the individual performance factor) was 22% of target bonus in 2020. The actual payouts are reported in the Summary Compensation Table on page 65, under the column "Non-equity incentive plan compensation—Annual incentive plans".

Considering the commitment and relentless efforts of our management employees during this unprecedented year, the Board authorized an exception to the AIBP terms to not prorate the Corporate Safety and Individual payout level for management employees in 2020, excluding the NEOs who were not covered by the exception. As such, the Corporate Safety and Individual components, which have a combined weight of 30% at target in the AIBP, were paid independently of the Company's Corporate Financial component to all management employees with the exception of the NEOs.

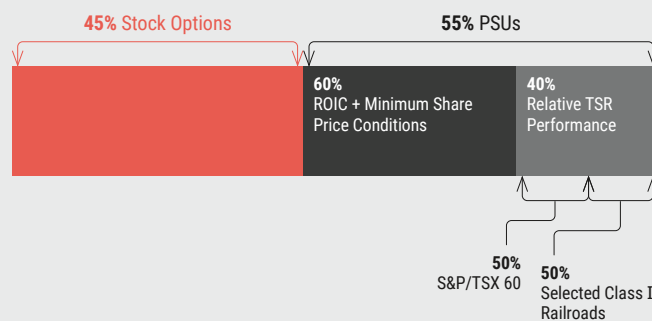
The Board authorized this exception to support greater engagement and retention, and to recognize the outstanding contribution of all management employees in the extraordinary circumstances of the pandemic. Moreover, this decision is aligned with the changes approved by the Board to the AIBP for 2021 and beyond to remove proration on the Corporate Safety and Individual payout levels at the same rate as the Corporate Financial payout level when payout is below 100%, all with a view to support employee engagement on safety and strategic initiatives.

Long-Term Incentives

The Board considers a number of factors to assess the Company's long-term incentive strategy, including the balance between long-term value creation and shareholder wealth protection, executive stock ownership position versus stock option holdings, executive retention risk, as well as the dilution impact of different long-term incentive vehicles. Since 2005, the Board has elected to grant a combination of stock options and PSUs to NEOs, as well as to executives and senior management employees.

LTI values disclosed in the Summary Compensation Table on page 65 are calculated using the Willis Towers Watson expected life binomial methodology. The same valuation methodology is also used for benchmark and grant purposes, ensuring consistency. This valuation methodology provides for precise and comparable compensation information. The Company uses a rolling three-year valuation factor to limit year-over-year fluctuations of the valuation factor for both stock options and PSUs.

PSUs and stock options are weighted 55% and 45% of the long-term incentive award value, respectively, except for the President and CEO position. The long-term award for the President and CEO has a smaller relative weight in stock option value, due to the 20% limitation on the number of stock options that can be awarded to any one individual in a particular year, pursuant to the terms of the Management Long-Term Incentive Plan ("MLTIP") and the stock exchanges rule (please refer to page 71 for a description of the plan).



As part of the review conducted in 2019, the Committee reviewed the compensation programs and the Board approved the following changes to the LTI Plan, effective January 1, 2020, thus impacting LTI awards made in 2020 and after:

- Increase the weighting of the Relative TSR component of the PSUs (increased from 30% to 40%), providing a balanced approach and reinforcing the link to shareholder return;
- Increase the vesting period for stock options from four years to five years to enhance retention; and
- Increase the time period during which stock options may be exercised upon retirement from three to four years following the retirement date to align with the extended vesting period of the stock options through retirement.

The annual grant of PSUs and stock options to NEOs and other eligible employees is reviewed and approved at the meetings of the Committee and the Board, which occur each year in January. In order to determine each NEO's LTI award, the Committee takes into consideration individual performance, retention risk and succession plans, as well as the Company's compensation policy and the value of LTIs granted by the applicable comparator group (please refer to section "Benchmarking Using Comparator Groups" on page 51). The Committee does not consider previous executive grants when setting the individual awards, as the LTI plans are inherently performance-based. The Board may also, at its discretion, approve additional grants of PSUs and stock options to NEOs during the year.

The exercise price of the stock options granted is equal to the closing price of the Company's common shares on the TSX or the NYSE on the grant date.

A minimum active service condition exists for stock options and PSUs to support the retention of key talent approaching retirement. An employee must remain in active service until December 31 of the year of the grant for stock options and until March 31 of the year following the year of grant for PSUs. Should an executive, including NEOs, or other management employees retire prior to the end of the minimum service condition in the award agreement, PSUs and stock options awarded pursuant to that agreement would be forfeited.

Performance Share Units: 2020 Award

The objective of the PSUs is to enhance the Company's ability to attract and retain talented employees and to provide alignment of interests between such employees and the shareholders of the Company.

PSUs vest after three years and the grant date fair value of the PSUs awarded to each NEO in 2020 is included in the Summary Compensation Table on page 65, under the Share-Based Awards column. The vesting of PSUs is subject to the achievement of performance measures defined at the beginning of the cycle and the payout can range from 0% to 200%. At the end of the performance cycle, the number of PSUs will be adjusted based on the achievement of the performance conditions detailed below. PSUs will be settled in CN common shares purchased on the open market.

PSUs awarded in 2020 are subject to the following two performance measures:

1. ROIC PSUs

Sixty percent (60%) of the PSU award value is subject to the achievement of a target related to the Company's average three-year ROIC over the plan period and the payment will be conditional upon meeting a minimum average closing share price during the last three months of 2022. The ROIC for each of the applicable plan years is generally calculated as net income before interest expense, divided by the total of the Company's average net indebtedness and the average shareholders' equity, and may, in certain instances, be adjusted for certain items as determined by the Committee. ROIC measures the Company's efficiency in the use of its capital funds and is viewed as a key measure of long-term value generation to its shareholders. ROIC performance objectives are based on CN's business plan. The 2020 ROIC objective considers the increased capital investments recently deployed increasing capacity and enabling growth, such as track infrastructure expansion and investment in technology to improve safety performance, operational efficiency and customer service. The above combined with the cumulative impact of prior years earnings and the average investment base resulted in a reduction of the expected average ROIC for the three-year period ending on December 31, 2022.

ROIC PSUs granted in 2020 to NEOs and other designated employees are subject to the attainment of the performance measures presented in the table below:

ROIC PSUs performance measure

	OBJECTIVE	PERFORMANCE VESTING FACTOR ⁽¹⁾
PERFORMANCE OBJECTIVE:	Below 12.5%	0%
Average ROIC for the three-year period ending on December 31, 2022	12.5%	50%
	13.5%	100%
	15.0%	125%
	15.5%	150%
	16.0% and above	200%
PAYOUT CONDITION:	CS\$118.56 on the TSX	
Minimum average closing share price for the last three months of 2022	or U.S.\$90.06 on the NYSE	

(1) Interpolation applies between objectives.

2. Relative TSR PSUs

Forty percent (40%) of the PSU award value is subject to CN's Relative TSR measured against two equally-weighted comparator groups: i) selected Class I Railroads, and ii) S&P/TSX 60 companies. Relative TSR performance measures CN's share price appreciation, inclusive of dividends, over the three-year plan period against the companies within each comparator group.

Relative TSR PSUs awarded in 2020 to NEOs and other designated employees are subject to the attainment of the performance measures presented in the table below:

TSR relative to S&P/TSX 60		TSR relative to Selected Class I railways	
CNR	PAYOUT ⁽¹⁾	CNR	PAYOUT
75 th Percentile and above	200%	1 st	200%
50 th Percentile	100%	2 nd	150%
25 th Percentile	50%	3 rd	100%
Less than the 25 th Percentile	0%	4 th	50%
		5 th	0%

(1) Interpolation between points.

The grant date fair value of the PSUs awarded to each NEO in 2020 is included in the Summary Compensation Table on page 65, under the "Share-Based Awards" column.

Performance Share Units: 2018 Award Payout

The Committee reviewed the vesting of the 2018 PSU award against the performance targets for each measure: ROIC PSUs and Relative TSR PSUs. With respect to the payment of the 2018 awards (that vested at the end of 2020), the Board applied the same principle, as described in the AIBP section above, upon calculating the financial results pertaining to the ROIC performance measure, with an associated impact of less than 1% on the ROIC result.

ROIC PSUs: The Company achieved a three-year average ROIC to December 31, 2020, of 15.15%. In accordance with the plan rules and considering the achievement of the minimum average closing share price condition, a performance vesting factor of 110.8% (compared to 109.6% had the discretionary adjustments not been made) was applied for the ROIC PSUs awarded in 2018.

Relative TSR PSUs: The Company delivered a TSR of 43.68%⁽¹⁾ over the period from January 1, 2018 to December 31, 2020, resulting in an overall performance vesting factor of 99%, reflecting the weighted average performance vesting factor of both measures (0% for Class I Railways and 198% for S&P/TSX 60).

PSUs were settled on February 25, 2021 in CN common shares purchased on the open market to encourage share ownership among participants, subject to compliance with the other conditions of the award agreements.

(1) TSR performance is calculated using CNR 20-day share price average immediately prior to January 1, 2018 (including dividend reinvestment) and CNR 20-day share price average ending on December 31, 2020 (including dividend reinvestment). The same calculation is used for all companies part of both comparator groups.

Performance Objectives and Results – Performance Share Units – 2018 Award

ROIC PSUs – 70% of the grant value:

	OBJECTIVE	PERFORMANCE VESTING FACTOR ⁽¹⁾	RESULTS
PERFORMANCE OBJECTIVE:	Below 13.5%	0%	15.15% ⁽²⁾
Average ROIC for the three-year period ended on December 31, 2020	13.5%	50%	translating into a payout factor of 110.8%
	14.5%	100%	
	16.0%	125%	
	16.5%	150%	
	17.0% and above	200%	
PAYOUT CONDITION:			
Minimum average closing share price for the last three months of 2020	C\$102.88 on the TSX or U.S.\$80.71 on the NYSE		C\$140.62 or U.S.\$108.04

(1) Interpolation applies between objectives.

(2) The calculation of the Average ROIC, as per plan, removes deferred income taxes resulting from various tax enactments and the loss on assets for sale. Similar to the AIBP, all government support related to the pandemic received by CN and items outside management's control were removed from the calculation, the material ones being the benefits related to the U.S. CARES Act, the U.S. and Canadian payroll tax payment postponements, the financial impact from the illegal rail blockades and the direct expenses related to the Company's pandemic response. Consequently, the resulting ROIC was 15.15% (compared to 15.08% had the discretionary adjustments not been made, as per plan).

Relative TSR PSUs – 30% of the grant value:

TSR relative to S&P/TSX 60 (15% of the grant value)

CNR	PAYOUT ⁽¹⁾	RESULTS
75 th Percentile and above	200%	
50 th Percentile	100%	43.68% ⁽²⁾ TSR resulting in the 74.5 th percentile and translating into a payout factor of 198%
25 th Percentile	50%	
Less than the 25 th Percentile	0%	

(1) Interpolation applies between objectives.

(2) TSR performance is calculated using CNR 20-day share price average immediately prior to January 1, 2018 (including dividend reinvestment) and CNR 20-day share price average ending on December 31, 2020 (including dividend reinvestment). The same calculation is used for all companies part of both comparator groups.

Executive Perquisites

NEOs are eligible to receive perquisites and personal benefits in accordance with the Company's policy and in line with general market practice. These typically include the use of a Company-leased vehicle, parking, financial counselling and tax services, club membership, certain healthcare benefits and life insurance, and an annual executive physical exam. Other executives and senior management employees

TSR relative to selected Class I Railways (15% of the grant value)

CNR	PAYOUT	RESULTS
1 st	200%	
2 nd	150%	
3 rd	100%	43.68% ⁽¹⁾ TSR resulting in the 5 th place ranking and translating into a payout factor of 0%
4 th	50%	
5 th	0%	

(1) TSR performance is calculated using CNR 20-day share price average immediately prior to January 1, 2018 (including dividend reinvestment) and CNR 20-day share price average ending on December 31, 2020 (including dividend reinvestment). The same calculation is used for all companies part of both comparator groups.

The value vested during the year for each NEO is included in the table "Incentive Plan Awards – Value Vested or Earned During the Year", and under the "Share-Based Awards – Value Vested During the Year" column on page 70.

Stock Options

Stock options were granted in 2020 to NEOs and other designated employees pursuant to the MLTIP. Please refer to page 71 for details of the MLTIP. The stock options granted in 2020 vest over five years at a rate of 20% at each anniversary date and have a ten-year term. Grants were made in the currency of the recipient's salary.

Stock options are granted with the objective of rewarding NEOs and other designated employees for creating sustainable, long-term shareholder value. If the share price increases between the grant date and the vesting date, stock options will have a realizable value. Gains are realized once the stock options are exercised. The gain will be equivalent to the difference between the share price on the date of exercise and the grant date share price, multiplied by the number of stock options exercised.

The grant date fair value of the stock options awarded to NEOs in 2020 is included in the Summary Compensation Table on page 65, under the "Option-Based Awards" column.

Employee Share Investment Plan

The Employee Share Investment Plan ("ESIP"), available to all Company employees, provides the opportunity to participate in CN's ownership through the purchase of CN common shares on the open market via payroll deductions. Employees may contribute between 1% and 10% of their gross base salary to the ESIP every pay period. The Company provides a 35% match on the first 6% of employee contributions. Since January 1, 2019, Company contributions to the ESIP are subject to a one-year vesting period and are forfeited should certain participant contributions be sold or disposed of prior to vesting. Over 80% of CN's

employees are shareholders of the Company through participation in the ESIP, and in 2020, all NEOs participated in the ESIP.

On May 25, 2020, the Company suspended the 35% match in an effort to curb expenses during the pandemic. The 35% match was reinstated on October 1st, 2020.

The value of the Company match received by NEOs in 2020 under the ESIP is indicated in the "Details of the All Other Compensation Amounts" table on page 68.

CN

Compensation Discussion and Analysis

VELANI EXHIBIT E

**CANADIAN NATIONAL COMMENTS IN *KCS/TM/TFM*,
FINANCE DOCKET 34342 EXCERPTS
(AUG. 14, 2003)**

ENTERED
Office of Proceedings

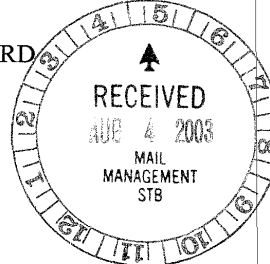
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Public Record

CN-6

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34342



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

COMMENTS OF CANADIAN NATIONAL RAILWAY COMPANY

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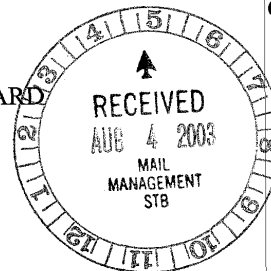
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Counsel for Canadian National Railway Company

August 4, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34342



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

COMMENTS OF CANADIAN NATIONAL RAILWAY COMPANY

Canadian National Railway Company (“CN”) hereby presents its comments on the Application in this proceeding (KCS-3/TM-3), as supplemented (KCS-10/TM-10) and on the proposed acquisition by KCS of Tex Mex.¹

Actions taken by KCS and its affiliates, including TFM, are not beyond the Board’s jurisdiction to the extent that they involve or affect “transportation in this country.” *Canadian Nat’l Ry – Acquisition – Interests of Consolidated Rail Corp. in Canada S. Ry.*, Finance Docket No. 30387, slip op. at 8 (ICC served Sept. 4, 1984). Unfortunately, despite the Board’s instructions to Applicants in Decision No. 2, Applicants have not provided the Board with enough information to determine the combined effects on transportation in this country of the combined Tex Mex and TFM transactions.² For that reason, CN respectfully wishes again to

¹Unless otherwise indicated, abbreviations and acronyms used herein are defined in the “List of Acronyms Used in Application,” found in KCS-3/TM-3, at 8, except that, consistent with the Board’s usage, Grupo TMM, S.A., is referred to as “Grupo TMM” rather than as “TMM,” and KCS, KCSR, GWER, Tex Mex, and Mexrail are referred to collectively as “Applicants.” See Decision No. 2, at 1 n.1, 6 n.9.

²The Board has held that the Tex Mex and TFM transactions, while “nominally . . . separate and independent of each other,” are “in reality . . . two components of a single, larger

direct the Board's attention to CN's Petition to Reopen Decision No. 2 (CN-3).

Whether the Board grants or denies that Petition, the Board should examine the record carefully to determine whether KCS has provided sufficient information to permit the Board to resolve the principal substantive issue on the record to date – whether, once it has control of TFM, KCS can be expected to seek to recover a cost-of-capital return on its investment in TFM and Tex Mex through enhancements of the efficiency of TFM, or through an exercise of TFM's market power that may reduce efficiencies.

As explained in the attached verified statement of Dr. Christopher A. Velturo, this is a legitimate economic question that is relevant to the Board's examination of these transactions. It is especially pertinent because KCS has now reiterated that it plans to make no changes in the operations of TFM or to integrate TFM's operations with those of Tex Mex and KCSR. Thus, despite KCS's claims that it expects to, in effect, "grow the business" on TFM (*see* Closing Remarks of Gerald K. Davies, STB Public Hearing, July 31, 2003), KCS offers no suggestion as to how it plans to achieve that growth. By contrast, KCS has been quite clear what sort of investments (very large) and operating changes (many) were required to "grow the business" on TFM in the past after KCS made its initial investment in that property. *Id.* If KCS has no plans to make changes in operations, how does it plan to increase KCS earnings sufficiently to recover its investment?

If the Board should decide to approve the Tex Mex transaction, without more information relating to the consequences of the combined Tex Mex/TFM transactions in this country, then it is especially important that the Board impose particular conditions on the Tex

transaction with broader potential implications in the U.S." Decision No. 2, at 11.

Mex transaction that would allow for continuing Board oversight of KCS' plans with respect to TFM.

In particular, the Board should:

- Require Applicants to meet their commitments on the record (*e.g.*, KCS-10/TM-10 at 4, 24-27; *id.*, Verified Statement of Gerald K. Davies at 14-16) – such as their pledge that TFM shall deal with all carriers at Laredo on reasonable commercial terms – in an efficient and pro-competitive manner and retain jurisdiction to investigate any step taken or not taken to meet those commitments.³
- Ensure KCS's future actions with respect to TFM are transparent by requiring any KCS agreements in this regard be made available, subject to the customary confidentiality protections, to concerned parties.
- Condition any approval of the Tex Mex transaction on a stipulation by KCS that it will not object on jurisdictional grounds to the Board's reopening of this proceeding to consider allegations that KCS, as a result of its control of Tex Mex or TFM, is acting to reduce competition or efficiency in U.S. markets. This is necessary to ensure that affected parties would have the opportunity to come to the Board for relief if KCS does not meet its commitments in an efficient and pro-competitive manner.

³ KCS has asserted that it has made arrangements with the National Industrial Transportation League that may or may not address some of these issues, but no such arrangements had yet been made public as of noon, August 4, 2003.

- Underscore that any antitrust or other legal immunity flowing from the Board's approval of the Tex Mex transaction would extend only as necessary to carry out that transaction and not to carrying out any aspect of the TFM transaction. CN does not understand Applicants to have suggested otherwise.

Respectfully submitted,

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Counsel for Canadian National Railway Company

August 4, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have, this 4th day of August, 2003, caused the foregoing
Comments of Canadian National Railway Company (CN-6) to be served by causing copies to be
delivered by hand to:

William A. Mullins
David C. Reeves
Baker & Miller PLLC
915 Fifteenth Street, N.W.
Washington, DC 20005-2318

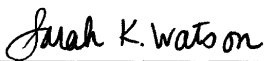
Richard H. Streeter
Barnes & Thornburg
750 17th Street, N.W.
Washington, DC 20004-2134

and by Federal Express to:

W. James Wochner
Thomas J. Healey
Kansas City Southern
427 West 12th Street
Kansas City, MO 64105

Allan Van Fleet, Esq.
Vinson & Elkins
2300 First City Tower
1001 Fannin
Houston, TX 77002

and by first-class mail, postage prepaid, or by a more expeditious manner or delivery, to all other
parties of record in STB Finance Docket No. 34342.



Sarah K. Watson

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 34342

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

**VERIFIED STATEMENT
OF
CHRISTOPHER A. VELLTURO, PH.D.**

I am the founder and president of Quantitative Economic Solutions, LLC, a microeconomic consulting firm located in Cambridge Massachusetts. I have studied structural, regulatory, and competitive issues relating to the rail industry for 20 years. My curriculum vitae, detailing my experience and qualifications, is attached to this statement.

I have been asked by CN to address whether Applicants have sufficiently addressed the implications for rail traffic in the U.S. of KCS's acquisition of TFM in conjunction with its acquisition of Tex Mex, or whether, to the contrary, there are plausible and serious unanswered questions relating to whether the effects in the U.S. will be benign. For purposes of this examination, I am assuming that TFM has substantial market power with respect to rail traffic moving over the Laredo gateway to or from the U.S. Applicants' witness Curtis Grimm notes that Laredo is the "principal rail gateway between the U.S. and Mexico." Verified Statement of Curtis M. Grimm, KSC-3/TM-3 at 84. TFM is the only Mexican rail carrier that goes to Laredo.

Thus, KCS, by acquiring TFM, is buying a well-assured earnings stream. Because TFM is not publicly traded, there is no ready means of determining whether the purchase price that KCS has agreed to pay for TFM includes a premium beyond the present value of that earnings stream. It would be most unusual, however, if it did not. In the overwhelming majority of acquisitions of publicly traded companies, the purchaser pays a premium over the prevailing market price for the target firm, often in excess of 25%. There is no evident reason, and KCS has not suggested any reason, why TMM, the seller in this case, would not have successfully demanded a premium for control of the major Mexican railroad, which has a bottleneck position in what are probably the fastest

growing rail traffic flows in North America. And there would be little reason for the seller's debt holders to consent to a sale without a premium. Because a control premium is a plausible and un rebutted possibility, a prudent economic analysis must take seriously the questions that a control premium would raise.

A control premium means that the acquiring railroad expects the increase in its earnings as a result of the acquisition to be greater than simply the pre-merger earnings of the acquired railroad. There are essentially three ways that this additional increase can occur. Each is a way of increasing contribution - the excess of revenues over variable costs. One way is to increase efficiency, which can result from lowered costs or from improved service without a corresponding price increase. The second way is to expand output (at profitable prices) over an existing infrastructure, through improved marketing, sales, or product development. Efficiencies and improved marketing and product development typically lead to traffic being diverted from other railroads or from truck. The third way is to exploit additional market power. The questions that KCS has failed to answer in this case relate to which of these alternatives is the intended and likely result. It should be evident that the choice between these possibilities can directly affect competition and efficiency in rail transportation within the U.S.

KCS's statements in this proceeding draw into serious question whether it has any intention of increasing the efficiency of TFM. KCS did not find it necessary to conduct a traffic diversion study with respect to the TFM acquisition. Instead, KCS relied on a "static model with respect to cross-border traffic; that is, it was assumed that there would be no change in the existing growth rates or business plans for KCS and

TFM.” KCS-10, TM-10, Verified Statement of Gerald K. Davies at 3. KCS has stated that TFM will continue to be operated as it is today, and that KCS/TM will “coordinate, not consolidate, operations with TFM.” KCS-10, at 7. KCS has provided no plans for marketing, operations, service improvements, or investments relating to TFM, which “will continue to operate as a separate company” and will be “controlled from” Mexico. Id., at 31. KCS has stated to analysts (but not to the Board) that NAFTA Rail will “lengthen hauls through an ‘across-the-border’ view” (UP-1, Exhibit A at 4) but KCS did not do a diversion study to estimate the amount of increased contribution from any longer hauls. KCS’s disavowal of efficiency-enhancements even makes it unreasonable to expect the ordinary benefits of single-line service, because KCS has said that it does not intend to integrate TFM’s operations. I am also unaware of any evidence proffered by KCS that identifies incremental traffic opportunities that will arise as a result of the acquisition.

In these circumstances, based on the record that I understand that is before the STB to date, I find that the evidence or assertions put forward by KCS are an inadequate basis on which to conclude that the effects of KCS’s acquisition of TFM on U.S. rail movements, in conjunction with its acquisition of Tex Mex, will be neutral or procompetitive.

VERIFICATION

I, Christopher A. Velturo, verify under penalty of perjury under the laws of the United States that the foregoing Verified Statement is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on August 7th, 2003

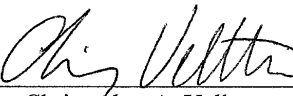

Christopher A. Velturo

EXHIBIT 3

**VERIFIED STATEMENT OF ADOLPH GAMEIRO
AND JON HARMAN**

VERIFIED STATEMENT OF ADOLPH GAMEIRO AND JON HARMAN

1. My name is Adolph Gameiro. I am the Managing Director Interline and Network Strategy at Canadian Pacific. I have held that role since April 2021. Prior to this role, I served as Director Interline Agreements since 2011. My business address is 7550 Ogden Dale Road South East, Building 1, Calgary, AB T2C 4X9.

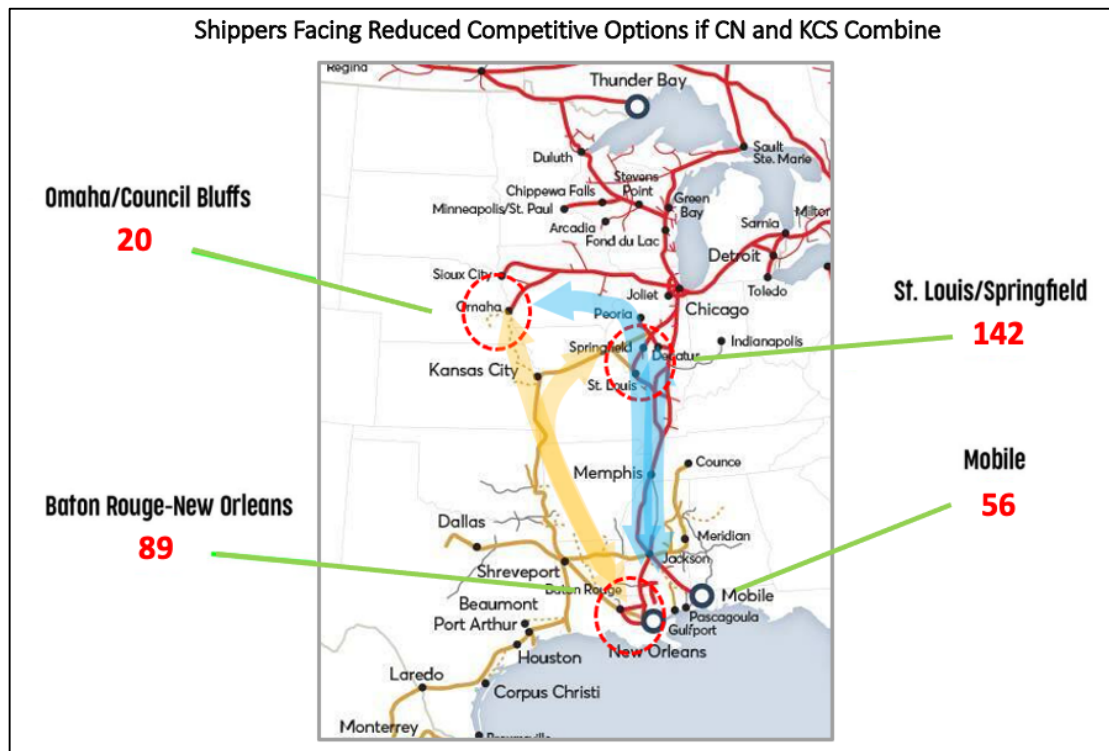
2. My name is Jon Harman. I am the Managing Director of Marketing for Bulk at Canadian Pacific. I have held that role since April 2019. My business address is 120 South 6th Street, Suite 800, Minneapolis, MN 55402.

3. Together we undertook an assessment of the shipper facilities that are served by both CN and KCS (directly or via reciprocal switch or switching railroad access) as well as the shortline railroads that connect with both CN and KCS. This statement reports the results of our assessment.

4. ***Shippers served by both CN and KCS.*** We utilized the Serving Carrier Reciprocal Switch (SCRS) database to determine the location and number of shipper facilities that today are served by both CN and KCS, either directly or via reciprocal switch or switching railroad access. The SCRS is the database relied upon in the railroad industry to provide a standardized verification process for determining whether a railroad has the ability to a particular shipper facility, and under what conditions a railroad may serve that facility. CP began with the locations where CN and KCS both provided rail service in the same vicinity and then filtered the customers to identify those for which both CN and KCS had access. We subsequently scrutinized this customer roster by removing duplicates, storage/lease tracks, and locations that no longer have active rail service but nonetheless remain in the SCRS database.

5. In sum, 307 shipper facilities have service from both CN and KCS.¹ This head-to-head overlap is shown in Figure 1 below. In particular, CN and KCS's networks intersect through overlapping access to shipper facilities at numerous geographic locations, including in St. Louis/East St. Louis; Springfield, Illinois; Omaha/Council Bluffs; Mobile, Alabama; and the corridor between Baton Rouge and New Orleans.

FIGURE 1



6. The results shown on Figure 1 are likely under-inclusive because they do not capture access to both railroads provided via connecting shortlines. This measure of overlap

¹ A previous count of overlapping shipper access submitted to the Board in April was based on a more preliminary analysis of the data that had not been fully scrutinized for inactive customers, etc. The figures reported here also account for KCS's removal of its access record relating to Hexion's facility in Geismar, Louisiana.

between CN and KCS's networks also does not account for shippers benefiting from build-in/build-out competition or geographic competition.

7. We also used the SCRS database to identify shipper facilities that are served by CN and KCS, and no other Class I railroad. A combination of CN and KCS would result in a 2-to-1 reduction in access and rail choice for shippers for 11 of these locations, listed in Table 1 below.

TABLE 1

Shipper Facilities that Would Suffer 2-to-1 Reductions in Service/Access Through a CN/KCS Combination			
Customer Name	City	State	CP's Line of Business
ADM	RESERVE	LA	BULK
CARGILL	RESERVE	LA	BULK
HUNTSMAN	GEISMAR	LA	INDUSTRIAL PRODUCTS
IMPERIAL SUGAR	GRAMERCY	LA	BULK
KATOEN NATIE	BATON ROUGE	LA	REGIONAL
MARATHON	GARYVILLE	LA	INDUSTRIAL PRODUCTS
NORANDA ALUMINA	GRAMERCY	LA	REGIONAL
OCCIDENTAL	GEISMAR	LA	INDUSTRIAL PRODUCTS
PINNACLE POLYMERS	GARYVILLE	LA	INDUSTRIAL PRODUCTS
RUBICON	GEISMAR	LA	INDUSTRIAL PRODUCTS
SHELL CHEMICAL	GEISMAR	LA	INDUSTRIAL PRODUCTS

8. Additionally, 27 shipper facilities would suffer 3-to-2 reductions, 7 would suffer 4-to-3 reductions, and another 27 would suffer 5-to-4 reductions as a result of a CN-KCS merger. Even at these locations not served *solely* by CN and KCS today, CN and KCS play important industry roles, particularly due to their broadly parallel routes throughout the Central United States.

9. ***Shortline railroads connecting with both CN and KCS.*** We also identified shortlines for which CN and KCS today provide independent alternative routes for traffic moving between online shippers and origins/destinations elsewhere in the country. This

assessment was based on information publicized by these railroads concerning their ability to connect with Class I railroads directly or via haulage. We identified at least 12 shortlines that connect with both CN and KCS, as shown in Table 2. For shippers served by these shortlines, a combination of CN/KCS would likely result in reduced competitive options. This figure may be under-inclusive because it is based only on publically available information and may not include confidential agreements which provide optionality to shippers and which may be limited by a CN/KCS merger.

TABLE 2

Railroad	Interchange with KCS	Interchange with CN
Alabama & Gulf Coast Ry. (G&W affiliate)	Columbus, MS	Mobile, AL
Alton & Southern	East St. Louis, IL	East St. Louis, IL
Central Midland Ry.	St. Louis, MO (via TRRA)	St. Louis, MO (via TRRA)
Illinois & Midland R.R. (IMRR) (G&W affiliate)	Springfield, IL	Springfield, IL; Peoria IL
Mississippi Export Railroad	Jackson, MS	Evanston, MS
New Orleans Public Belt Railroad	New Orleans, LA	New Orleans, LA
Port Harbor R.R	East St. Louis, IL (via TRRA)	East St. Louis, IL (via TRRA)
Tazewell & Peoria R.R. (TZPR) (G&W affiliate)	Creve Coeur, IL (via IMRR)	Peoria, IL
Terminal Railroad Association (TRRA)	East St. Louis, IL	East St. Louis, IL
Terminal Ry. of the Alabama State Docks	Mobile, AL	Mobile, AL
Toledo, Peoria & Western Ry. (G&W affiliate)	Springfield, IL (via IMRR-TZPR)	Gilman, IL
West Tennessee Railroad	Corinth, MS	South Fulton, KY

VERIFICATION

I, Adolph Gameiro, declare certify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 26 day of June, 2021.

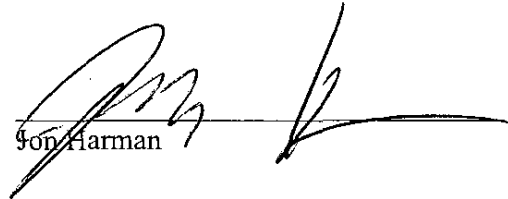
A handwritten signature in blue ink that reads "Adolph Gameiro". The signature is written in a cursive style with a large initial "A".

Adolph Gameiro

VERIFICATION

I, Jon Harman, declare certify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 26 day of June, 2021.


Jon Harman

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 36514
CANADIAN NATIONAL RAILWAY COMPANY, ET AL. – CONTROL – KANSAS
CITY SOUTHERN, ET AL.

EXPERT STATEMENT OF W. ROBERT MAJURE, PH.D.

June 28, 2021

REDACTED

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1. My name is W. Robert Majure. I am a Vice President at Cornerstone Research. On April 30, 2021, at the request of counsel for Canadian Pacific (“CP”), I submitted an expert statement (“Initial Statement”) to describe my preliminary findings on the competition issues related to the proposed acquisition of Kansas City Southern (“KCS”) by Canadian Pacific (“CP”), and to compare them to competitive issues that would be raised in an acquisition of KCS by Canadian National (“CN”).¹

2. As part of my Initial Statement, I listed my qualifications and provided my curriculum vitae (attached here as Appendix A).

3. I have now been asked by counsel for CP to supplement my Initial Statement (attached here as Appendix B) with additional analysis and comparison of the potential competition issues that would be raised by the two proposed mergers, with a focus on analysis of competition issues that may arise as a result of the voting trust arrangement that has been proposed by CN as part of their KCS deal.

4. Cornerstone Research is being compensated at my standard billing rate of \$875 hour. I have been assisted by staff of Cornerstone Research, who worked under my direction. Cornerstone Research’s compensation in this matter is not in any way contingent or based on the content of my opinion or the outcome of this or any other matter, nor is my compensation. My work is ongoing and I expect to supplement this analysis as these proceedings continue.

5. In this statement, I present analysis that supports the following conclusions:

- In mergers involving horizontal competitors, customers can be harmed by reductions in the intensity of competition that result from changes in the merging firms’ incentives even if there is no ability to exercise control.
- A voting trust arrangement would give CN an immediate incentive to implement its part of the anticompetitive horizontal consequences of a CN-KCS combination and KCS’s management would have incentives to maximize KCS profits with their own softening of competition in

¹ Expert Statement of W. Robert Majure, Ph.D., *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500 and *Canadian National Railway Company, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36514, April 30, 2021 (“Initial Statement”).

response. Even if there is no ability for CN to exercise control over KCS, the changes in ownership incentives enabled by a voting trust would leave shippers at risk of these harms throughout the term of a trust.

- The proposed merger of CN and KCS should be treated as a horizontal merger. The CN and KCS networks are overlapping and parallel in areas that generate significant business for both railroads.
- Preliminary screens identify areas at risk for reduced competition following the proposed merger of CN and KCS. The merger would give the combined firm control of large shares of shipments going into and out of certain geographies, and would reduce rail choice over a large portion of the combined CN and KCS networks in both the U.S. and Canada.
- CN's proposed divestiture would not resolve the horizontal issues raised by a CN-KCS combination. The divestiture's narrow geographic focus leaves many of the horizontal issues completely unaddressed, and even in areas where KCS rail lines would be divested, the complexities and limitations of the divestiture proposal make it unlikely that the lost horizontal competition would be restored. Moreover, to the extent the divestiture would have any benefit, it would not be realized until at least 2023.
- The alternative to a CN-KCS combination is not the current state of competition, but is instead a combination of CP and KCS. A CP-KCS transaction would be a merger of end-to-end railroads combining complementary networks. Preliminary screens do not identify serious risk of reduced horizontal competition. There would be no concern of competitive effects manifesting under a voting trust or in a full integration. Moreover, a combination of CP and KCS would have benefits of enabling single-line service, which are an appropriate consideration in evaluating CN's proposed acquisition of KCS. Absent the proposed CN acquisition, shippers would gain benefits of single-line service that are not currently enjoyed.

1. IN A HORIZONTAL RAILROAD MERGER, A VOTING TRUST ALLOWS IMMEDIATE HARM TO SHIPPERS

6. In order to acquire immediately the benefits of ownership from KCS, CN has proposed a voting trust to ensure that CN will not control KCS's management.

In mergers involving horizontal competitors, however, consumers can be harmed by reductions in the intensity of competition that result from changes in the merging firms' incentives even if there is no ability to exercise control.

7. A combination of KCS with CN would be largely horizontal, and would remain so even accounting for CN's proposed divestiture of KCS tracks between Baton Rouge and New Orleans.² Contrary to CN's claim, this stretch of tracks does not constitute the "sole area of overlap" between the two networks.³ CN's view of "overlap" is too narrow. The railroads operate networks that are overlapping and parallel throughout the entire region where KCS and Illinois Central ("IC"), which was acquired by CN in 1999,⁴ historically competed for north-south traffic. These areas generate significant business for KCS and CN.⁵

8. In pleadings, CN has focused on whether a voting trust would protect shippers from the possibility of CN making a change to KCS that would diminish KCS as a competitive option.⁶ While exerting control over KCS to make changes (e.g., something like dismantling portions of the KCS lines) could certainly affect competition, it is not the only way for shippers to be harmed by a loss of horizontal competition. Economic learning has shown that horizontal competitive effects will result when competing firms have reduced incentives to compete aggressively, which will cause prices to rise or investments in quality (service levels, etc.) to decline even where the firms (here, railroads) continue to offer all of the same basic products or services as before.

² Joint Motion for Approval of Voting Trust Agreement, *Canadian National Railway Company, et al. – Control – Kansas City Southern, et al.*, Finance Docket 36514, May 26, 2021 at p. 33.

³ CN Presentation, JJ Ruest and Patrick J. Ottensmeyer, Wolfe Research Global Transportation & Industrials Conference, May 26, 2021 at p. 5.

⁴ *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated – Control – Illinois Central Corporation, Illinois Central Railroad Company*, Finance Docket No. 33556, Decision No. 37 (STB served May 25, 1999).

⁵ See Section 2.1. In contrast, a combination of KCS with CP would constitute an end-to-end merger of complementary networks. This vertical merger would have the potential for procompetitive effects and limited risk, if any, of horizontal issues. Consequently, a voting trust does not pose the same issues in a CP-KCS combination as it does for CN-KCS. See Section 5.

⁶ Joint Motion for Approval of Voting Trust Agreement, *Canadian National Railway Company, et al. – Control – Kansas City Southern, et al.*, Finance Docket 36514, May 26, 2021, § I ("The Voting Trust Will Prevent Unlawful Control of KCS").

9. Because CN would immediately acquire ownership of KCS, its incentives to win business against KCS would be reduced before the Board would have the opportunity to analyze the competitive impact of the proposed control transaction. Moreover, if the Board does determine that a divestiture of KCS is necessary, the voting trust could continue for up to two more years during which CN would continue to have incentives affected by its ownership of KCS.⁷ In such a scenario, CN would also expect to gain from business KCS might win via long-term contracts, for example, that extend beyond the end of the trust period since the incremental profitability would be expected to increase what a divestiture buyer may be willing to pay for KCS.⁸

10. Thus, under CN's proposal for its acquisition of KCS, shippers likely would lose horizontal competition immediately and for years beyond a determination by the Board that this loss is a serious concern. CN's proposed divestiture cannot prevent this. In addition to its insufficiencies as a means for restoring lost competition, which I discuss in Section 3, the divestiture would not occur until 2023 at the earliest.⁹

11. In contrast, an end-to-end combination such as CP's proposal to acquire KCS does not raise concerns. It only raises the possibility of vertical competitive effects. If vertical effects are plausible, it is only when a merger combines the incentives of one railroad with the ability to manage or control the other – something that an effective voting trust would prevent.

⁷ Verified Statement of Jean-Jacques Ruest, *Canadian National Railway Company, et al. – Control – Kansas City Southern, et al.*, Finance Docket 36514, May 26, 2021 (“Ruest Statement”) at p. 13 (“the full STB regulatory process...will extend through 2022”); Verified Statement of Ghislain Houle, *Canadian National Railway Company, et al. – Control – Kansas City Southern, et al.*, Finance Docket 36514, May 26, 2021 at p. 15 (“we have taken into account the scenario where a KCS-CN combination is not approved and KCS has to be sold out of trust...at the end of 2024 (the approximate date by which CN would be required to divest KCS)”).

⁸ To the extent that CN may face a large gap between the premium it has offered for KCS and the price a future buyer would offer, I am not suggesting that CN could eliminate that gap by losing business to KCS. But, however large the gap may be at that time, it would still value an incrementally higher offer price.

⁹ Ruest Statement at pp. 4 (“in connection with any approval for the combination, CN will divest the KCS line between Baton Rouge and New Orleans”), 5 (“Once an agreement for the divestiture is in place, approval will be sought from the STB as part of our Application”), and 13 (“the full STB regulatory process...will extend through 2022”).

1.1. Horizontal competitive concerns stem from acquisition of ownership interests as well as control

12. In most horizontal mergers or acquisitions, there is a change of both ownership and of control at the same time. However, many mergers involve a partial acquisition, which can separate the two. Economists studying partial acquisitions in many industries have examined the effect of a change in ownership without control.¹⁰ KCS itself, in defending its alliance with CN, has recognized that the profit incentives of ownership raise distinct questions from those raised by control.¹¹ The effects are sufficiently well understood that the Horizontal Merger Guidelines discuss the adverse impact of ownership without control:

Partial acquisitions that do not result in effective control may nevertheless present significant competitive concerns and may require a somewhat distinct analysis from that applied to full mergers or to acquisitions involving effective control....Acquiring a minority position in a rival might significantly blunt the incentive of the acquiring firm to compete aggressively because it shares in the losses thereby inflicted on that rival. This reduction in the incentive of the acquiring firm to compete arises **even if [it] cannot influence the conduct of the target firm.**¹²

13. The Horizontal Merger Guidelines go on to note that this effect may be mitigated by the fact that under usual circumstances the size of a minority

¹⁰ See O'Brien, Daniel P., and Steven C. Salop, "Competitive Effects of Partial Ownership: Financial Interest and Corporate Control," *Antitrust Law Journal*, Vol. 67, No. 3, 2000, pp. 559–614.

¹¹ KCS set out distinct questions for analyzing how competitively its joint venture would price as: "A joint venture partner will choose not to compete against its partners in business activities outside the joint venture only (1) if its failure to compete provides it an economic benefit that exceeds its possible rewards from competing or (2) if its joint venture partner or partners have the power to compel it to not compete." In that matter, KCS went on to argue it would not have had an incentive to soften competition with the alliance because profits would not be transferred between them, which is contrary to the situation CN will be in if a voting trust is approved in this matter. See Response of the Kansas City Southern Railway Company and the Gateway Western Railway Company to Comments, Protests, and Requests for Conditions, *Canadian National Railway Company et al. – Control – Illinois Central Corporation et al.*, Finance Docket No. 33556, December 16, 1998, at pp. 24–25.

¹² U.S. Department of Justice and Federal Trade Commission, "Horizontal Merger Guidelines," August 19, 2010 ("Horizontal Merger Guidelines"), § 13 ("Partial Acquisitions") (emphasis added), available at <https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf>.

interest can only be so large without gaining control. That mitigation does not apply to CN's proposed voting trust, however, as CN would have complete ownership of KCS. Thus, CN would be entitled to the benefit from 100 percent of KCS's profits and would receive all proceeds from any future sale (or divestiture) of KCS.

14. The economic implications from the fact that CN's ownership of KCS would be 100 percent show where CN's expert errs in his assessment of the economic implications of the CN voting trust. Prof. Wright explores whether the proposed voting trust fits a particular economic theory where "common ownership can weaken incentives to compete in certain circumstances."¹³ The studies he cites, however, all focus on common ownership interests that have *small* percentage ownership stakes in the common assets. This fact is critical to the common-ownership literature's conclusions, since, in these situations, the incentives of the minority owner do not align with the interests of the owners holding larger (and collectively controlling) stakes of either company. Without a mechanism to control the activities of either of the companies in which they have a minority position, the common owners cannot implement their incentives to soften competition. Thus, within this literature, Prof. Wright is correct to ask whether the voting trust ownership is "passive" or "active."¹⁴

15. The common-minority-ownership scenario, however, is simply not applicable to the CN voting trust. CN's ownership of KCS would be complete, leaving no other owners of KCS and fully aligning the interests of CN with the rewards of softer competition with KCS. The incentive changes arising from CN's acquisition of 100 percent of KCS's shares are not the same as the alignment in incentives between multiple minority owners of the same company. Consequently, Prof. Wright is incorrect to apply the teachings of that literature to voting trusts. Even assuming KCS operates under the voting trust solely to maximize KCS's own profits, the introduction of incentives for CN to soften its competition with KCS will diminish competition.

16. As noted above, the Horizontal Merger Guidelines state that a "somewhat distinct analysis" may be required for mergers that do not result in control. This analysis is intuitive if one considers how the typical analysis of a full merger

¹³ Verified Statement of Joshua D. Wright, *Canadian National Railway Company, et al. – Control – Kansas City Southern, et al.*, STB Finance Docket No. 36514, May 26, 2021 ("Wright Statement"), at p. 7.

¹⁴ Wright Statement at p. 7.

involves two types of changes in behavior: (i) changes that follow from acquisition of an ownership interest and (ii) changes that follow from an acquisition of control.

17. Suppose that two railroads, A and B, are horizontal competitors. Their competition derives from the fact that some shippers would respond to a price increase at one railroad by switching to the other. However, some other shippers would stay, while still others might decide to switch to trucking or otherwise just not purchase rail transport. Prior to a merger, each railroad would pursue its own profits by increasing price until the shippers it would lose from any further increase are worth more to it than the increased profit to be made from shippers who would stay and pay the higher price.

18. In a horizontal merger (like CN-KCS) in which Railroad A and Railroad B compete head-to-head, when A acquires ownership of B, its balance of incentives changes. Now, instead of losing profit when a shipper switches from A to B the profit from that shipper just moves from one part of A's balance sheet to another. Its ownership interest in B allows A to recapture sales that were previously a loss – a loss that made any further price increase unprofitable. With this recapture, A can now profitably increase its own price. This softens competition for B, allowing B to be firmer in its negotiation with shippers since shippers are less likely to respond by leaving for A. This could include B raising its own price, resisting requests for discounts more firmly, being firmer in insisting on ancillary terms that benefit the railroad and cost the shipper money, and declining service improvements.

19. Railroad A would also like for Railroad B to set a higher price for B's shippers. If A acquires control of B, it can direct B to raise the price to B's shippers and soften competition from that side. That would let A gain some shippers from B and make higher profits even without raising its own price. Moreover, a higher price for B's shippers would mean that A also has more room to be firmer in its negotiations with shippers, including raising its own price more since shippers are less likely to respond by leaving for B.

20. In an analysis of a full merger, the changes to incentives and control both contribute to a new equilibrium with higher prices. In an acquisition of an ownership interest without control, the first effect – the acquiring railroad gaining an incentive to raise its own price – is still an impetus for prices to increase. Indeed, this impetus eventually affects both sides even if the acquiring

railroad does not have control of the other: the acquiring railroad's increased price creates an incremental incentive and ability for the acquired firm to raise its own price to maximize its own profits. Thus, the acquired railroad raises price in response to its own profit maximizing incentives, without regard to the desires of the acquiring railroad and absent any direction to do so by the acquiring railroad.

1.2. The proposed merger of CN and KCS is horizontal and will create incentives to soften competition even while the voting trust precludes CN from controlling management of KCS

21. As I explained in my Initial Statement and discuss further below, there are significant areas where shippers appear to benefit currently from horizontal competition between CN and KCS. The CN proposal to acquire immediately the benefits of ownership in KCS with a voting trust would expose the shippers in these areas to an immediate risk of anticompetitive effects. For those shippers who particularly depend on KCS to discipline CN (or vice versa), the use of a voting trust would effectively give CN license to begin raising its prices before the Board can review the competitive consequences of the proposed combination. Allowing CN to incorporate KCS's profits into its own bottom line would make CN internalize the effect on KCS in every situation where it otherwise would have acted as a competitor to KCS. CN would be able to raise prices profitably. Moreover, as CN did so, KCS management would see an opportunity to raise KCS prices profitably. KCS's choice to do so would not need to be dictated by CN. The trust envisions KCS managers following an opportunity to maximize KCS's own profits. It simply does not offer any protection against CN influencing KCS management through its own pricing choices rather than relying on direct control of KCS.

22. If the Board should conclude its review with a determination that the competition lost is so serious that the acquisition should not happen, the affected shippers could very well continue to feel the effects of lost competition for years thereafter. The voting trust allows CN to continue enjoying the benefits of ownership of KCS for up to two years after such a determination. Even where CN has proposed to make a divestiture to allay some of the competitive concerns, the customers in areas affected by that divestiture would be affected by the years CN has proposed to leave those assets in trust before effectuating a divestiture. In either case, CN's incentive, purely from a competition perspective, would be to continue enjoying the benefits of ownership as long as possible. Some shippers may need to commit to long-term contracts during the period of softened competition and CN would have an incentive in seeing that they do to extend the softened competition even further.

23. Additionally, while I have discussed the horizontal competitive effects in the typical framework of pricing choices, similar considerations would apply to investments which competition might drive CN and KCS to make in order to win customers with better service. The loss of competitive investments and improvements to service could affect these two railroads for many years.

1.3. Possible vertical competitive effects of an end-to-end combination like CP-KCS are well addressed by a voting trust

24. In contrast to the horizontal competition issues posed by the CN proposal, CP's acquisition of KCS would be an end-to-end railroad merger.¹⁵ As such, if CP-KCS poses any competitive concerns, these would be vertical in nature rather than horizontal. The Vertical Merger Guidelines discuss the incentives of ownership and the ability of control quite differently than the Horizontal Merger Guidelines. A vertical merger would only warrant scrutiny if it combined one firm's incentives with the control of another firm's ability to influence markets.¹⁶ In that context, a voting trust that effectively insulates control from being acquired precludes the concern.

¹⁵ See Section 5.

¹⁶ U.S. Department of Justice and Federal Trade Commission, "Vertical Merger Guidelines," June 30, 2020, § 4 ("Unilateral Effects"), available at

25. To be specific, the voting trust in CP-KCS precludes CP from having KCS act on CP's behalf. I am not aware of anything CP could do to influence KCS's rivals enough to warrant a concern. That is not to say that CP might not internalize some of KCS's profits to begin acting on them. However, its opportunities to do so are limited to situations where CP can try to work more closely with KCS on interline traffic – the very traffic that will eventually see the full benefit of single-line service after a CP-KCS combination. So, at most, the voting trust could “fail” to stop CP from getting an early start in implementing some of the efficiencies of a CP-KCS combination.

26. Consequently, voting trusts in an end-to-end railroad merger are very distinct in terms of their effectiveness for competition. In a horizontal merger, they allow anticompetitive effects to begin before a review can get substantially started. That does not happen in an end-to-end railroad merger. Instead, if anything, a voting trust may allow some earlier progress towards the efficiencies of single-line service.

2. A CN AND KCS DEAL IS A HORIZONTAL MERGER WITH INDICATIONS OF COMPETITIVE CONCERN FOR SUBSTANTIAL TRAFFIC

27. In this section, I show that a combination of KCS with CN would be a horizontal railroad merger involving two railroads that serve the same corridors and geographic areas. This can be observed simply from a map of the two railroads' route structures. I will show that the areas of overlap evident in the route structure are substantial as a portion of the overall revenues earned by the two railroads. I will also show that standard horizontal railroad merger screens confirm that a combination of KCS with CN is likely to reduce the competitive options of shippers either within corridors or between corridors, and thus poses risks of significant competitive concerns – the kind of horizontal competitive concerns a voting trust allows to begin happening immediately.

28. CN recognizes that its proposal raises competitive issues and proposes a divestiture of KCS tracks between Baton Rouge and New Orleans as a

https://www.ftc.gov/system/files/documents/reports/us-department-justice-federal-trade-commission-vertical-merger-guidelines/vertical_merger_guidelines_6-30-20.pdf.

solution.¹⁷ Contrary to CN's claim, however, this stretch of line does not constitute the "sole area of overlap" between the two networks.¹⁸ As I discuss in Section 3, CN's view of "overlap" is too narrow and would fail to address many of the areas that currently benefit from the horizontal competition between CN and KCS. Moreover, even in areas potentially addressed by the divestiture, the proposal fails to ensure shippers will have the same benefits of competition they currently enjoy. Consequently, the proposed acquisition, even with the divestiture proposal, still raises substantial horizontal competitive concerns.

29. In Section 4, I will illustrate the ways in which the competition between CN and KCS can affect shippers who either play railroads against one another to obtain better service and terms, or shippers who work with one railroad but face their own competitive pressures from nearby rivals who work with the competing railroad. If not for this competition, shippers across the overlap areas are likely to see less incentive for railroads to invest in their service, lower quality of service, and higher prices – all of which contribute to shippers giving up on railroad and turning to potentially less efficient means to transport their goods.

30. Finally, in Section 5, I show that the same railroad merger screens applied in this section to CN-KCS do not show reason for concern about horizontal competition in a combination of CP and KCS. I also show that many current rail movements have the potential to benefit from new single-line service created by a combination of CP and KCS. In other words, if the proposed CN-KCS combination is not allowed, and instead CP and KCS combine, shippers would see enhanced competition – often competition with CN – from the end-to-end CP-KCS transaction. Consequently, the CN proposal is not only worsening competition relative to current conditions, it is depriving shippers of a concrete alternative transaction that would enhance competition in many areas and pose no risk to competition in any other areas.¹⁹

¹⁷ Joint Motion for Approval of Voting Trust Agreement, *Canadian National Railway Company, et al. – Control – Kansas City Southern, et al.*, Finance Docket 36514, May 26, 2021 at p. 33 ("Applicants have committed to divest KCS's line between Baton Rouge and New Orleans...") and Ruest Statement at p. 2 ("CN has concluded that the cleanest and most pro-competitive solution is to divest the KCS line between New Orleans and Baton Rouge").

¹⁸ CN Presentation, JJ Ruest and Patrick J. Ottensmeyer, Wolfe Research Global Transportation & Industrials Conference, May 26, 2021 at p. 5.

¹⁹ The merger premium being paid by CN for KCS could reflect the value to CN of preventing more intense competition from a CP-KCS combination. The Horizontal Merger Guidelines recognize that the party offering the highest compensation to the target's shareholders might be

2.1. A CN and KCS combination is a horizontal merger with significant areas of overlap likely to raise competitive issues

31. A review of the CN and KCS networks reveals that a merger of CN and KCS would combine two railroads that operate large portions of parallel and overlapping tracks. The map in **Exhibit 1**, which shows the CN and KCS networks, makes this clear.

EXHIBIT 1

A Canadian National and Kansas City Southern deal should be considered a horizontal merger



Source: North American Rail Lines; Federal Rail Administration; Kansas City Southern Network Map

Note: This map plots the rail networks of Canadian National Railway ("CN") and Kansas City Southern ("KCS"), including tracks that each railroad either owns or has trackage rights over. KCS has trackage rights over the CN tracks running from Jackson, MS to Mobile, AL which are only depicted as CN tracks on this map.

32. The horizontal overlap would affect shipments throughout the territory served by a combined CN-KCS, but principally comes from the area where KCS and Illinois Central – now part of CN, after the 1999 merger – used to compete. In particular, CN and KCS run parallel north-south lines through the central

doing so for anticompetitive reasons. Horizontal Merger Guidelines, § 2.2 ("Sources of Evidence").

portion of the U.S. and overlapping tracks throughout Mississippi and Louisiana. The networks intersect at a number of locations, including: Springfield, Illinois; Saint Louis, Missouri; Jackson, Mississippi; Baton Rouge, Louisiana; and New Orleans, Louisiana. CN and KCS run parallel tracks in close proximity to one another for a stretch of approximately 70 miles between Baton Rouge and New Orleans, and KCS has trackage rights over a portion of the CN network that connects Mobile, Alabama to Jackson, Mississippi.

33. I next quantify the significance of the business earned by CN and KCS in the overlapping areas of their networks. These areas of overlap generate significant business for CN and KCS.

34. I first identify geographic areas served by both CN and KCS in the 2019 Confidential Waybill Sample. Specifically, I require that both CN and KCS either originate or terminate shipments in that area. I define these areas as “overlap areas.” I considered three types of geographic areas: Bureau of Economic Analysis economic areas (“BEA area”), 4-digit Standard Point Location Codes (“SPLC”), and 6-digit SPLCs.²⁰ The specific conditions of a shipper, including characteristics of the commodity to be shipped, may affect how far away a railroad can be and still present a significant competitive option for that shipper. These three levels of geographic overlap, therefore, correspond to the competitive conditions available to shippers who have a broader or narrower set of available choices. Consistent with the network map, I find that CN and KCS overlap in service provided to origins and destinations particularly in Louisiana and Mississippi, but also in Alabama, Missouri, Illinois, Iowa, and Nebraska.

²⁰ The 4-digit Standard Point Location Codes (“SPLC”) are specific to rail stations located in a county, while the 6-digit codes are specific to rail stations within a city. See Railinc Business Services, 2019 Surface Transportation Board Carload Waybill Sample Reference Guide, December 23, 2020 at p. 70 (“The SPLC data base, copyrighted by the National Motor Freight Traffic Association (NMFTA), is designed to provide each point originating freight and each point receiving freight with a unique code number so constructed as to identify the point as a geographic location. SPL Codes are based on a six-digit system of nesting recognized entities and numbering them in a standard geographic pattern. The nesting system is STATE - COUNTY - CITY (POINT), using two digits to identify each”).

35. I then calculate the revenues earned by CN and KCS from originating and terminating shipments in the overlap areas, and express them as a share of all originating and terminating revenues earned by CN and KCS in the data.²¹ I summarize the results of this analysis in **Exhibit 2**. For instance, as seen in row 1, CN and KCS earn approximately \$5,985 million on originating and terminating shipments in the 2019 Confidential Waybill Sample. Of these revenues, \$1,254 million, or 21.0 percent, were earned from shipments to or from BEA areas that were served by both CN and KCS in the data.

36. In rows two and three, I consider narrower geographies of overlap. Rather than the BEA area, I define the overlap area as a 4-digit SPLC (row 2) or a 6-digit SPLC (row 3). More than 10 percent of all originating and terminating revenues earned by CN and KCS come from 6-digit SPLCs that are served by both railroads.²²

37. The analysis in Exhibit 2 illustrates the significance of the horizontal overlap of the CN and KCS networks even though it intentionally excludes their horizontal competition in bridging traffic that does not originate or terminate in the overlap area. The overlap of the CN and KCS networks is economically substantive and, as I show below, these areas of overlap are the sources of significant risk of horizontal competition issues.

²¹ In the Confidential Waybill Sample, revenues are allocated to railroads based on the length of the segment handled by each railroad.

²² A shipper faced with a multi-carrier movement may negotiate separately for portions of the movement under Rule 11, generating multiple waybills for parts of a single movement. The sampling methodology does not guarantee that the corresponding waybill for the rest of that movement is in the data. Thus, the waybill data for these “Rule 11” movements list origins or terminations that are a point of interchange and not the actual origin or termination of the full movement. In general, traffic that is just transiting an area should not count as part of the originating (terminating) revenues for shipments from (to) that location, so I exclude Rule 11 waybills that indicate the location is an interchange. However, in analyzing the 2019 Confidential Waybill Sample, I have noted that *all* movements to Mexico for which KCS is the terminating railroad are coded as a Rule 11 movement. This appears to be an administrative choice and not necessarily an indication that the origin is actually somewhere else. To avoid removing all information on KCS involvement in terminating movements in Mexico, I treat these waybills as if the origin listed in the waybill is the true origin. If instead I treat these like other Rule 11 waybills with an unknown origin and exclude them from the analysis, I find that share of revenues from overlap areas for the CN and KCS combined is 19.1 percent for BEA overlap areas, 13.5 percent for 4-digit SPLC overlap areas, and 9.6 percent for 6-digit SPLC overlap areas.

EXHIBIT 2**Share of Canadian National and Kansas City Southern Revenues Earned from Geographic Areas in Which They Overlap, 2019 Confidential Waybill Sample**

	Overlap Area	Revenues from Overlap Areas (mil. \$)	Total Revenues (mil. \$)	Revenues from Overlap Areas as Share of Total
1.	BEA Economic Areas	1,254	5,985	21.0%
2.	4-digit SPLC	841	5,985	14.0%
3.	6-digit SPLC	605	5,985	10.1%

Source: 2019 Confidential Waybill Sample

Note: This table reports statistics measuring the extent of overlap between Canadian National Railway (“CN”) and Kansas City Southern (“KCS”) using originating and terminating revenues as observed in the 2019 Confidential Waybill Sample. The analysis does not consider revenues earned by CN and KCS on shipments that they handle and do not originate or terminate. The analysis is performed at three levels of geographic aggregation: BEA areas, 4-digit Standard Point Location Codes (“4-digit SPLCs”), and 6-digit SPLCs. For each level of geographic aggregation, the analysis identifies geographic areas where both CN and KCS originate shipments and aggregates the originating revenues for all the shipments from those overlap areas observed in the 2019 Confidential Waybill Sample. The calculation is repeated for terminating shipments and revenues. The total revenues earned from geographic areas in which CN and KCS overlap (“revenues from overlap areas”) are the combined originating and terminating revenue aggregates. Revenues from overlap areas are then expressed as a share of the railroads’ total combined originating and terminating revenues across all the shipments observed in the 2019 Confidential Waybill Sample. All revenues used for these calculations are based on expanded revenues as reported in the 2019 Confidential Waybill Sample. This analysis excludes originating (terminating) revenues for Rule 11 movements that are not the originating (terminating) segment of a shipment as characterized by the reported rebill code. I make an exception for KCS movements that terminate in Mexico, which *all* appear in the 2019 Confidential Waybill Sample as a Rule 11 movement suggesting some of them did originate at the origin listed in the waybill, and do not exclude the revenues associated with these shipments.

2.2. Preliminary screens show that a merger of CN and KCS is likely to raise concern of reduced competition

38. Two railroads serving the same origins or destinations can compete in numerous ways for business shipping to or from those areas.²³ For instance, CN and KCS may represent two currently independent ways to move the shipper’s product in a specific corridor. The shipper may have a reasonable option to truck goods to either railroad. Alternatively, if they do not, the shipper may bargain for lower rates with a threat to build out to the other railroad. Shippers may also benefit from the competition between CN and KCS in the sense that their business competes with a shipper nearby who is served by the competing

²³ For instance, the Board has raised the prospect of a railroad merger affecting competition through multiple channels, including “elimination of shippers’ buildout, transloading, plant siting, and production shifting choices when two railroads serving overlapping areas merge.” See *Canadian National Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36514, Decision No. 3, May 17, 2021 at p. 4.

railroad as the profits in such a situation could move even if the shipper cannot move. After a merger, any such competition is lost.

39. In this section, I present the results of preliminary screening analyses for a combination of KCS with CN. These screens are designed to evaluate whether a railroad merger is likely to create risk of reduced horizontal competition, and cover several standard ways that competition and geographies are considered when reviewing railroad mergers.

40. The first two, source competition and destination competition, are closely related. Source competition covers the notion that shippers benefit when railroads compete to deliver goods to a particular destination. If a merger significantly reduced the options available for terminating shipments in the area, shippers may no longer be able to leverage the option to source their shipments from different geographic sources into lower prices and higher quality service. Similarly, destination competition considers competition among railroads that can serve different destinations from the same origin area. A merger that reduces the number of railroads available to shippers for originating shipments from the area can soften this competition, harming shippers and leading to higher prices or lower quality service. I refer to these forms of competition – competition to originate or terminate shipments in a particular geography – collectively as geographic competition, and present screening analysis covering them in Section 2.2.1.

41. A third notion of competition is the competition among railroads to ship goods from a specific origin to a specific destination, *i.e.*, a corridor. The focus here is on the number of independent rail options a shipper has for shipping goods on a corridor. A merger that reduces independent options can lead to lessening of competition, higher prices, and lower service quality. The potential for a reduction in this form of competition was the focus of my Initial Statement, which I refer to in Section 2.2.2.

2.2.1. A merger of CN and KCS would likely raise concerns of reduced geographic competition by giving the combined firm control of large shares of shipments into and out of certain origin and destination areas

42. In this section, I focus on potential issues of geographic competition that may result from the proposed merger of CN and KCS.²⁴ In particular, I perform a screening analysis that identifies areas where the merger is likely to consolidate control of originations or terminations. These areas of potential geographic competition concerns would warrant further examination.

43. I begin my analysis of geographic competition issues by identifying states and BEA areas where CN and KCS each originate or terminate a substantial share of the shipments in the area. I then calculate the share of revenues associated with the shipments that would be originated or terminated by the merged firm. Areas with high shares are those in which local shippers may be particularly susceptible to a potential loss of geographic competition from a proposed merger.

44. I find that CN and KCS already each control a large share of shipments going into and out of certain geographies, especially in the areas where the two firms currently operate parallel and overlapping tracks. This is particularly pronounced in Mississippi and Louisiana, where both CN and KCS are already involved in terminating and originating a large share of shipments going into and out of the states. After the merger, the combined CN-KCS would control a high share of shipments, further consolidating shipping options in these areas.

²⁴ Assessment of geographic competition issues is a standard step in analyzing a railroad merger. *Canadian National Railway Company et al. – Control – EJ&E West Company*, Finance Docket No. 35087, Decision No. 16, December 24, 2008 at p. 14 (“In examining the effect of the proposed transaction on geographic competition, the Board examines the effect of the transaction on source competition, when two carriers can transport the same product to the same destination but from different origins, or conversely when two carriers transport the same product from the same origin to two different destinations”). The so-called “50/10” screen is a screening analysis that has been relied on by the Board to assess issues of geographic competition in its past review of railroad acquisitions (see, for example, Verified Statement of Christopher A. Vellturo, Ph.D., *Canadian National Railway Company et al. – Control – EJ&E West Company*, Finance Docket No. 35087, October 29, 2007). In this preliminary analysis, I do not implement the 50/10 screen. Instead, I implement a preliminary screen that is similar in concept, but simpler in implementation that identifies issues of source and destination competition similar to what the full 50/10 screen is likely to identify. I expect to perform a more extensive analysis of geographic competition issues, such as the 50/10 screen, should the CN merger proceed.

45. I summarize the results of this analysis in **Exhibit 3**. I show the states and BEA areas where each of CN and KCS originate or terminate shipments that account for at least four percent of revenues earned on shipments going into or out of the area. Shipments originated or terminated by the merged firm would account for 57 and 40 percent of revenues in the 2019 Confidential Waybill Sample in Mississippi and Louisiana, respectively. Within these states, I find several BEA areas that would be particularly affected by a CN-KCS combination. In the Jackson BEA area, which is completely unaffected by CN's proposed divestiture, the merged firm would originate or terminate shipments that account for 74 percent of revenues. In the Baton Rouge and New Orleans BEA areas, the merged firm would originate or terminate shipments accounting for 57 and 31 percent of revenues, respectively.²⁵

EXHIBIT 3

Share of revenues originated and terminated in Mississippi and Louisiana if Canadian National buys Kansas City Southern, 2019

Location	Pre-merger Shares		Combined CN-KCS Share
	KCS	CN	
State			
1. Mississippi (MS)	31.0%	26.3%	57.3%
2. Louisiana (LA)	15.9%	24.6%	40.4%
BEA Area			
3. Jackson, MS-AL-LA	26.1%	47.4%	73.6%
4. New Orleans, LA-MS	4.9%	25.9%	30.8%
5. Baton Rouge, LA-MS	11.7%	45.5%	57.2%

Source: 2019 Confidential Waybill Sample

Note: This table reports the pre-merger shares of total expanded revenues earned on shipments that were originated and/or terminated by Canadian National Railway ("CN") and Kansas City Southern ("KCS") according to the 2019 Confidential Waybill Sample. The analysis is performed at two levels of geographic aggregation: states and BEA areas. States and BEA areas are included in the table if both of the merging parties' individual shares exceed 4 percent. This analysis excludes revenues for Rule 11 movements that do not originate or terminate in the area as characterized by the reported rebill code. I make an exception for KCS movements that terminate in Mexico, which *all* appear in the 2019 Confidential Waybill Sample as a Rule 11 movement suggesting some of them did originate at the origin listed in the waybill, and do not exclude the revenues associated with these shipments.

²⁵ As previously noted, Rule 11 movements other than the KCS movements to Mexico are excluded from these calculations for each area if the rebill code indicates that area is an interchange point and not the actual origin or termination (as applicable) for the full movement. KCS movements to Mexico are included in the calculations to avoid excluding all movements to Mexico, where it appears some of them likely are originating in the relevant area. Excluding these movements to Mexico, I find combined CN-KCS shares at the state-level of 56.4 percent for Mississippi and 39.5 percent for Louisiana, and at the BEA area-level of 72.7 percent for Jackson, 56.6 percent for Baton Rouge, and 30.7 percent for New Orleans.

2.2.2. A merger of CN and KCS would likely raise concerns of reduced rail choice within corridors covering a large portion of the combined CN and KCS network in the U.S. and in Canada

46. In this section, I focus on competition for shipments between specific origin and destination pairs. Competition covering this notion of geography, the corridor, was the focus of the analysis in my Initial Statement. This is a standard preliminary step in analyzing a railroad merger. I briefly summarize the analysis, which demonstrated that a merger of CN and KCS would likely raise concerns over reduced rail choices in corridors that cover a large portion of the combined CN and KCS network in the U.S. and Canada.

47. This analysis identified corridors where the CN-KCS combination would reduce the number of independent routes between specific origins and destinations based on movements that are observed to occur within the 2019 Confidential Waybill Sample.²⁶ By screening for reductions in the number of independent routes, it identified reductions in choices that are particularly important to shippers. In particular, the analysis focused on situations where the proposed combination reduces the number of independent routes from 3-to-2 or from 2-to-1.

48. This analysis showed that there are significant traditional indicia of horizontal competition concerns raised by a potential CN-KCS transaction. The screening exercise identified a reduction in independent options in many corridors. In particular, that screening exercise identified 31 different corridors as 3-to-2 reductions and another 31 corridors as 2-to-1 reductions. These corridors are associated with significant rail revenues, with total revenues in the 2019 Confidential Waybill Sample for shipments on these corridors in 2019 of approximately \$730 million.²⁷ In **Exhibit 4**, I recreate the map from my Initial Statement that shows how these areas of potential concern are found all along the CN and KCS networks. They are particularly concentrated where the

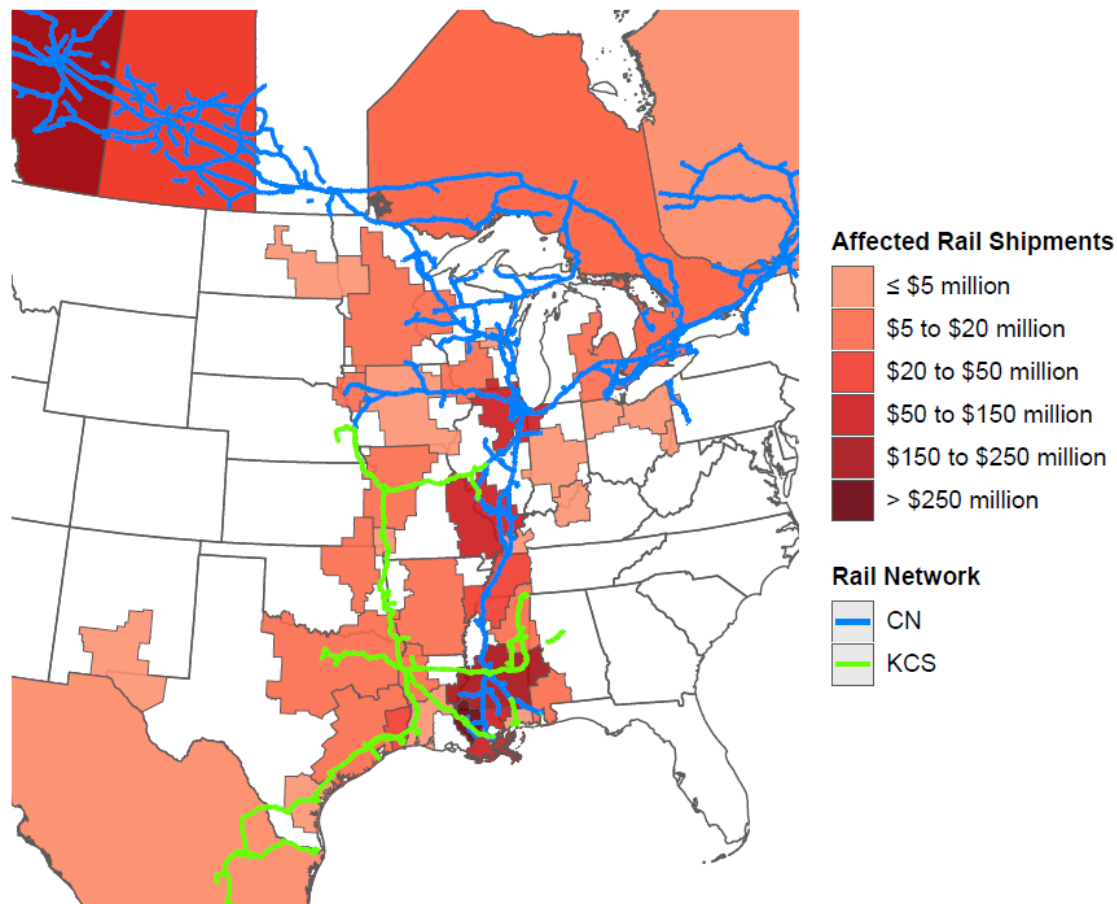
²⁶ As I noted in my Initial Statement, this preliminary screening analysis has been relied on by the Board in its past reviews of railroad acquisitions. See, e.g., *Norfolk Southern Railway Company – Acquisition and Operation – Certain Rail Lines of the Delaware and Hudson Railway Company, Inc.*, Finance Docket No. 35873, Decision No. 6 at pp. 18-20 (STB served May 15, 2015); *Kansas City Southern et al. – Control – Gateway Western Railway Company and Gateway Eastern Railway Company*, Finance Docket No. 33311, Decision at pp. 4-5 (STB served May 1, 1997).

²⁷ See Initial Statement, ¶ 15. As I have continued to work with the Waybill Sample data, I have identified possible errors in the distances reported for each segment of the movement on some waybills. If these are data errors, they could change the categorization of five corridors representing approximately \$60 million of these revenues.

networks overlap, but the effects are not just local to the southern U.S. The potential CN-KCS merger would affect options for north-south shippers from locations as far as Minnesota and into Canada. As I explain in the next section, CN's proposed divestiture does not resolve the reduction in rail choices in these corridors.

EXHIBIT 4

Areas identified as losing rail choice if Canadian National buys Kansas City Southern
Revenues on origin-destination pairs with 2-to-1 and 3-to-2 reduction in independent routes



Source: Initial Statement, Exhibit 1.

Note: This map plots the total revenues for shipments to or from an area as part of any origin-destination (“OD”) pair in which the number of independent routes that are observed in the Waybill Sample would be reduced from two to one or from three to two if Canadian National Railway (“CN”) and Kansas City Southern (“KCS”) merged. The areas that are part of these OD pairs are shaded in red. A darker shade of red indicates more revenues. The map also plots the rail networks of CN and KCS, including tracks each railroad either owns or has trackage rights over. Independent routes are those in which there is no overlap between participating railroads. For example, if there are two available routes, (a) KCS-CN and (b) KCS direct, they would not be independent because KCS is involved in both; however, if the second route instead used Union Pacific (“UP”) single-line service, then the two routes (KCS-CN and UP direct) would be independent. The routes considered in this analysis do not include the identity of railroads that handle an originating or terminating leg of a shipment if that leg is less than 50 miles long. If the set of railroads involved in a movement would constitute an independent route, but for the presence in the movement of originating or terminating railroads that carried for less than 50 miles, it is considered an independent route. Origin and destination areas are defined at the BEA areas level for the U.S., at the province level for Canada, and at the country level for Mexico. The U.S. BEA Economic Areas used to draw the map were published in 1998 by the Bureau of Transportation Statistics.

3. THE HORIZONTAL COMPETITION ISSUES CREATED BY THE PROPOSED CN-KCS MERGER WOULD NOT BE RESOLVED BY CN'S PROPOSED DIVESTITURE

49. CN recognizes that its proposal raises competitive issues and proposes as a solution a narrowly focused divestiture – the approximately 70 miles of KCS tracks that run parallel and in close proximity to CN tracks between Baton Rouge and New Orleans. CN claims this divestiture “eliminates the sole area of overlap” and “should address any competitive concerns” of a CN-KCS combination.²⁸ CN also attempts to downplay the significance of horizontal overlap in the CN and KCS networks by focusing on this short set of parallel tracks and emphasizing that they are less than one percent of the total route-miles that would be operated by a combined CN-KCS.²⁹ However, CN’s characterization of the horizontal overlap between CN and KCS is overly narrow and misleading, and the proposed divestiture would not restore the loss in horizontal competition from a CN-KCS combination.

50. The divestiture leaves significant horizontal issues unaddressed. Tracks between Baton Rouge and New Orleans are not the “sole” source of horizontal overlap in the CN and KCS networks. As noted above, overlap areas are also concentrated in Mississippi, and found in Alabama, Missouri, Illinois, Iowa, and Nebraska. The divestiture is not purported to address horizontal issues arising from overlapping service in these areas. Even in the Baton Rouge and New Orleans area, shippers are unlikely to see full restoration of the competition currently generated by KCS and CN. Some shippers in these areas are unlikely to see their competitive options restored at all. Moreover, where the proposed divestiture does involve the tracks a shipper might currently rely on for competition, the divestiture offer is hardly a guarantee that these shippers will see a restoration of competition.

51. Some limitations of the proposed divestiture can be identified already. However, the proposal is likely to involve many additional complications that are likely to limit its effectiveness for shippers, as well as a complex and

²⁸ CN Presentation, JJ Ruest and Patrick J. Ottensmeyer, Wolfe Research Global Transportation & Industrials Conference, May 26, 2021 at p. 5.

²⁹ Ruest Statement at p. 4 (“between Baton Rouge and New Orleans, where the overlap in parallel lines amounts to less than 1% of the total combined network”); Verified Statement of William J. Rennie at p. 4 (“CN and KCS overlap in a single area that is only approximately 70 miles in length. Within this area, the two companies operate a combined 178.6 route-miles of track, which constitute less than 0.7 percent of the approximately 27,000 route-miles they operate”).

protracted process of attempting to address issues as they emerge for the Board.

3.1. CN's proposed divestiture leaves significant horizontal overlaps unaddressed and is unlikely to restore the horizontal competition lost as a result of a CN-KCS combination

52. CN's characterization of the relevance of the proposed divestiture is misleading. As I showed in Section 2, the competitive significance of the horizontal overlap between the CN and KCS networks is substantial and is present throughout the systems of the two railroads. Indeed, any failings of a proposed divestiture are likely to have consequences that matter in a larger balance.

53. The proposed divestiture's focus on tracks between Baton Rouge and New Orleans means that it leaves completely unaddressed all affected corridors that do not have one of these two as the origin or destination, including the significant volume of business in affected corridors to and from the Jackson, Mississippi BEA area.

54. In addition, reductions in independent rail choice will not be resolved even for corridors with an endpoint of Baton Rouge or New Orleans. Many of the affected corridors connect to the upper Midwest and Canada. Shippers moving goods to or from these northern locations rely on KCS as an option for getting to or from Baton Rouge. After the merger and the proposed divestiture, the option to use KCS is consolidated under CN ownership, reducing the independent choices that shippers previously had for handling this southern portion of shipments in these corridors.

55. Of all the movements that currently appear to benefit from competition between CN and KCS, only movements that are strictly between Baton Rouge and New Orleans are immune to the major defect of CN's proposal – its focus on this small portion of the larger system that contributes to horizontal competition is evident in the screening analysis. Even these movements are not assured to be completely remedied by the divestiture proposal.

56. Thus, CN's divestiture proposal leaves affected shippers falling into one of three buckets of unresolved issues:

1. Shippers whose competitive loss is not addressed at all because their movements do not involve movements between Baton Rouge and New Orleans;
2. Shippers who do use (or could threaten to use) some of KCS's trackage in Baton Rouge, New Orleans, or even between the two, but depend on KCS's larger system for a substantial portion of their movement and so would not see competition restored by a divestiture of only part of what they need; and
3. Shippers who will have to hope that whomever CN divests the KCS tracks to, whenever that happens, will be able to operate and maintain the tracks sufficiently to restore the kind of competition KCS provides them today.

57. The affected corridors discussed in my Initial Statement can offer a useful illustration of these three buckets of shipper issues.³⁰

58. Consider the first bucket. These are movements in corridors that do not touch Baton Rouge or New Orleans. The screening analysis showed that there would be a loss of independent rail choice in many corridors that do not originate or terminate in Baton Rouge or New Orleans. The proposed divestiture does not even purport to address lost competition in these corridors. There are many such corridors, as seen in **Exhibit 5**.

³⁰ As noted above, possible errors in the Confidential Waybill Sample data may affect the categorization of five corridors. I have omitted these five corridors from the maps presented in Section 3.1.

EXHIBIT 5
{{REDACTED}}

{{REDACTED

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}}
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59. Consider the second bucket. These are illustrated by corridors where one endpoint is Baton Rouge or New Orleans, and the other is outside this narrow

area (and in particular, northern locations). Of these, the movements in corridors that originate or terminate in Baton Rouge from northern destinations highlight the issue. These movements are overlaps between CN and KCS because both railroads are options for shippers going between Baton Rouge and northern destinations (either as a single-line carrier or as part of an interline that does not depend on the other railroad). The nature of these movements makes the parallel tracks between Baton Rouge and New Orleans irrelevant to them, and thus the divestiture is not particularly relevant to competition in these corridors. What matters for shippers in these corridors is the competitive alternative that the rest of KCS's route structure provides for getting movements to and from these northern locations. The divestiture does not restore this option; after the merger, the KCS option would be owned by CN.

60. A similar issue applies to shippers in corridors originating or terminating movements in New Orleans for locations in the upper Midwest or Canada. CN and KCS are both currently options for shippers on these corridors. Shippers who use KCS route their movements through Baton Rouge on their way north, and the divestiture does not fully replace this KCS option. Rather, for these shippers, the divestiture only moves CN's consolidation of options from New Orleans to Baton Rouge. That is, the divestiture does not replace the KCS option for getting out of Baton Rouge to the north.

61. **Exhibit 6** demonstrates that many of the overlap corridors which involve Baton Rouge or New Orleans also involve the KCS system beyond Baton Rouge. The corridor which corresponds to the third bucket – the corridor between Baton Rouge and New Orleans – is hard to find on this map without the blow-up. The preponderance of corridors which are not fully resolved demonstrates an important limitation of a potential divestiture buyer. There is no assurance in CN's proposal that the buyer would be willing and able to connect with any other Class I railroad to compete for this traffic. Moreover, if CN can assure that the buyer will not have the traffic from all these current routes of KCS, the buyer's ability to compete even for the shippers within the third bucket of issues may be significantly impaired.

EXHIBIT 6
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3.2. CN's proposal to divest leaves numerous complexities of implementing an effective divestiture unresolved

62. As a general matter, divestitures can be tricky to implement effectively. The Federal Trade Commission, which has extensive experience at overseeing divestitures in many industries, has repeatedly studied its own performance

and found issues to correct.³¹ The Antitrust Division of the Department of Justice also has extensive experience at overseeing divestitures and has published a merger remedies manual, which it revisited and “modernized” in 2020. That manual, nevertheless, recognizes that divestitures pose risks – articulating as one of its principles that “The risk of a failed remedy should fall on the parties, not on consumers.”³²

63. Yet, in its proposal, CN takes no such risk. Rather, it places all the risk on shippers if the Board does not manage to implement a perfect divestiture requirement. A few sources of uncertainty and risk are immediately evident, but the accumulated experience of the FTC and DOJ suggest there is potentially much more risk that is less obvious.

64. First, there is the question of who the buyer would be, and whether that buyer would be able to utilize the divested tracks in a way that would restore the competition lost from an independent KCS. Consider a scenario in which the buyer is another Class I railroad. BNSF and UP serve destinations in the northern Midwest, but already connect to New Orleans. So, a purchase by BNSF or UP would not avoid a reduction there in post-merger choices. CSX and NS have routes oriented to the eastern U.S. and already connect to New Orleans. They would not replace the option KCS currently offers for shipments from this area that move beyond the Baton Rouge area.

65. Next, consider a scenario in which the divested tracks become a new small railroad. Replacing tracks currently integrated with the KCS network with a short-haul line, even if it could connect to a Class I network, would add additional logistics and negotiation costs for shippers. Indeed, CN has emphasized the potential efficiency gains from single-line service.³³ Converting

³¹ Two examples include “A Study of the Commission’s Divestiture Process,” Bureau of Competition of the Federal Trade Commission, 1999, available at <https://www.ftc.gov/sites/default/files/attachments/merger-review/divestiture.pdf>, and “The FTC’s Merger Remedies 2006–2012,” Federal Trade Commission, January 2017, available at https://www.ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/p143100_ftc_merger_remedies_2006-2012.pdf. The latter notes, among other potential challenges with divestiture success, that “buyers of less than an ongoing business—buyers of ‘selected assets’—did not always succeed at maintaining competition, suggesting that the more limited scope of the asset package increases the risk that a remedy will not succeed.”

³² Antitrust Division, U.S. Department of Justice, “Merger Remedies Manual,” September 2020, § 2 (“Principles”), available at <https://www.justice.gov/atr/page/file/1312416/download>.

³³ For example, Ruest Statement at pp. 3, 5–6.

these KCS tracks to a short-haul line would undercut such benefits currently offered by KCS for shippers in this area.³⁴

66. Second, there is a question of what investment the buyer would have in the acquired tracks. CN could find a buyer at some price for tracks that are burdened with debt or with poor logistics or with an inability to obtain scale. The purchase price in such a situation might have to be particularly low to generate interest, but a buyer might nevertheless be found. Whether such a buyer has an incentive and ability to compete effectively, though, is another question.

67. Finally, I understand that the divestiture would not occur until 2023 at the earliest.³⁵ Thus, whatever benefits the divestiture might offer would not be realized for several years. Meanwhile, the voting trust arrangement proposed by CN would immediately convey incentives created by this horizontal transaction to soften competition. The resulting harm to competition would accumulate during the period while the Board performs its review and during the time CN has said it would take to perform any divestiture.

68. Consequently, CN's proposed divestiture cannot be assumed to resolve the horizontal issues created by a CN-KCS combination. Even the third bucket of shippers – those who seem to be the only ones targeted by CN for any possibility of replicating the competition lost in the merger – are likely to see an effect of lost horizontal competition.

4. EXAMPLES OF COMMODITIES FREQUENTLY SHIPPED TO/FROM OVERLAP AREAS DEMONSTRATE COMPETITION THAT IS NOT ADDRESSED BY CN'S DIVESTITURE PROPOSAL

69. The analysis in Section 2.2.1 identified areas where a CN and KCS deal has the potential to reduce local competition for shippers shipping to or from the

³⁴ In contrast, a CP-KCS combination would not only retain KCS service in this area, but would integrate KCS with CP to provide additional single lines from this area to the northern Midwest and Canada. I discuss this in more detail in Section 5.

³⁵ Ruest Statement at pp. 4 (“in connection with any approval for the combination, CN will divest the KCS line between Baton Rouge and New Orleans”), 5 (“Once an agreement for the divestiture is in place, approval will be sought from the STB as part of our Application”), and 13 (“the full STB regulatory process...will extend through 2022”).

area, potentially harming these shippers through higher prices or reduced quality. Yet, geographic concentrations may mask important patterns among shipments of specific commodities,³⁶ and are thus only a component of an analysis of geographic competition issues. The screening analysis the Board has relied upon in past proceedings combines an analysis of geographic areas with analysis of specific commodities. This provides a more complete assessment of how local competition issues may manifest in each geographic area.

70. To capture this idea within a preliminary analysis, in this section I supplement the analysis of geographic concentration that I presented in Exhibit 3 with an illustration of the concern as it relates to some of the highest-revenue commodities that I observe shipped into and out of Jackson, Baton Rouge, and New Orleans in the 2019 Confidential Waybill Sample. In each of the examples described below, CN and KCS compete to originate or terminate commodity shipments in a particular BEA area, handling the commodities at the same or geographically proximate SPLCs. Shippers of these commodities would have none or few alternative railroads after a CN-KCS merger based on observed patterns from the 2019 Confidential Waybill Sample. These examples also make clear why CN's proposed divestiture is likely to be insufficient to restore lost geographic competition to pre-merger levels, including for shippers in the areas within Baton Rouge and New Orleans.

Example 1: {{REDACTED}} shipped from Jackson, MS

71. First, consider the {{REDACTED}} million from shipments of {{REDACTED}} originating in the Jackson, MS area.³⁷ {{REDACTED}} Shipments of this product originate from four different SPLCs within the BEA area. I show these locations on the map in **Exhibit 7**.

³⁶ For instance, it may be that CN and KCS originate and terminate different commodities in these areas, so that the merger does not substantially consolidate options for any particular set of shippers in the area. On the other hand, there may be particular commodities for which CN and KCS each account for a greater share of revenues than they do overall in the area. Shippers of these commodities could potentially be at even greater risk.

³⁷ The seven-digit STCC code for {{REDACTED}}.

EXHIBIT 7
{{REDACTED}}

{{REDACTED}}

}}

{{REDACTED}}
{{REDACTED}}

}}

72. {{REDACTED}} Shippers looking to originate {{REDACTED}} from Jackson currently have two options. After the merger, they will have one. The proposed divestiture would not address this reduction in rail choice.

Example 2: {{REDACTED}} shipped to Baton Rouge, LA

73. Second, consider the {{REDACTED}} million from shipments of {{REDACTED}} terminating in the Baton Rouge, LA area.³⁸ {{REDACTED}}

³⁸ The seven-digit STCC code for {{REDACTED}}.

See **Exhibit 8** for a map of {{REDACTED}}

EXHIBIT 8
{{REDACTED}}

{{REDACTED}}

}}

{{REDACTED}}
{{REDACTED}}

}}

74. Currently there are two options for shippers moving this product from {{REDACTED}} into Baton Rouge. After the merger, they would have a single option. This example also illustrates one way in which the proposed divestiture falls short of restoring lost rail choice in the Baton Rouge area. The divestiture of tracks between Baton Rouge and New Orleans would not help shippers currently relying on competition between CN and KCS to bring shipments from Canada into Baton Rouge.

Example 3: {{REDACTED}} shipped to New Orleans, LA

75. Third, consider the {{REDACTED}} million from shipments of {{REDACTED}} terminating in the New Orleans area.³⁹ {{REDACTED}} Shipments of this product terminate at four different SPLCs within the BEA area, as seen in the map in **Exhibit 9**.

EXHIBIT 9
{{REDACTED}}

{{REDACTED}}

}}

{{REDACTED}}
{{REDACTED}}

}}

76. {{REDACTED}}

}} For shippers looking to terminate shipments of {{REDACTED}} in New Orleans, there are only three options, with CN or KCS handling the vast majority of shipments

³⁹ The seven-digit STCC code for {{REDACTED}}.

{{REDACTED}}. The merger would reduce these options to two.

77. The divestiture would target the tracks used by KCS to terminate these shipments, but would only affect a portion of the movements that are currently competitive. Approximately 90 percent of these shipments originate in the upper Midwest.⁴⁰ Shipments from these locations that use KCS to terminate in New Orleans rely on the KCS tracks running into Baton Rouge from the north, which CN is not divesting. Thus, after the merger and the proposed divestiture, the shippers who currently see CN and KCS as their best two options, perhaps because they are located in {{REDACTED}}, may still have two choices for moving shipments on the last leg from Baton Rouge to New Orleans – CN and the divestiture buyer (assuming the terms of the divestiture allow the buyer to effectively compete for this leg) – but would no longer have the threat of switching between CN and KCS as leverage when negotiating prices to get their shipments to Baton Rouge and eventually to New Orleans.

78. The examples discussed in this section show that the proposed merger of CN and KCS is likely to raise concerns over its effect on geographic competition. Shippers moving goods to or from the affected areas are likely to face reduced horizontal competition and higher prices from a merger between CN and KCS. Moreover, many of these areas are completely unaddressed by the proposed divestiture, and even in the narrow area potentially affected by the divestiture, competition would not be fully restored to its pre-merger level. These horizontal issues would warrant further examination should the review of a CN-KCS combination proceed. Instead of allowing such examination before shippers are presented with the consequences of losing competition, CN's proposal to implement a voting trust allows those consequences to begin immediately.

⁴⁰ {{REDACTED}}

5. THE ALTERNATIVE TO A CN-KCS COMBINATION IS AN END-TO-END RAILROAD MERGER WITH NONE OF THE HORIZONTAL COMPETITION ISSUES AND WITH BENEFITS OF NEW SINGLE-LINE SERVICE

79. Part of a merger analysis is to compare the proposed merger to the world that would most likely exist but-for the proposed merger. That is often implemented by assuming the current state of competition would continue but-for the merger. In this case, the alternative is not simply more of the same. Instead, the alternative presents an opportunity to achieve new single-line service without the horizontal competitive concerns of a CN-KCS combination.

5.1. A CP and KCS combination would be a vertical merger of end-to-end networks that does not raise horizontal competition concerns

80. A review of the CP and KCS networks reveals that a combination of CP and KCS would combine two networks that are end-to-end, only connecting in one location, Kansas City. The map in **Exhibit 10**, which shows the CP and KCS networks, including both owned tracks and trackage rights, make this clear.

81. In addition, when I perform the analysis presented in Exhibit 2 for CP and KCS, I find that the only BEA area served by both CP and KCS is Kansas City. Revenues earned by CP and KCS on originations and terminations in the Kansas City area account for 6.1 percent of all shipment revenues earned on originations and terminations by CP and KCS in the 2019 Confidential Waybill Sample. These shares are even lower when I consider narrower geographies of overlap, such as 4-digit and 6-digit SPLCs.⁴¹ Moreover, since traffic on KCS is primarily southward of Kansas City and traffic on CP is necessarily northward, the overlap of all originating or terminating traffic in Kansas City likely overstates the competition between CP and KCS which would be limited to those shippers who are able to go either north or south.⁴²

⁴¹ For all originating and terminating revenues, CP and KCS earned 3.1 percent and 2.9 percent in overlapping 4-digit and 6-digit SPLCs, respectively.

⁴² Rule 11 movements other than the KCS movements to Mexico are excluded from these calculations for each area if the rebill code indicates that area is an interchange point and not the actual origin or termination (as applicable) for the full movement. KCS movements to Mexico are included in the calculations to avoid excluding all movements to Mexico where it appears some of them likely are originating in the relevant area. Excluding these movements to Mexico, I find that share of revenues for CP and KCS combined is 3.3 percent for the Kansas City BEA area, 2.5 percent for overlapping 4-digit SPLCs, and 2.4 percent for overlapping 6-digit SPLCs.

EXHIBIT 10

A Canadian Pacific and Kansas City Southern deal is a vertical combination of complementary networks



Source: North American Rail Lines; Federal Rail Administration; Kansas City Southern Network Map

Note: This map plots the rail networks of Canadian Pacific Railway ("CP") and Kansas City Southern ("KCS"), including tracks that each railroad either owns or has trackage rights over.

82. The end-to-end nature of their networks means preliminary screens of a CP and KCS combination would be unlikely to raise significant potential horizontal competition issues.

83. I perform a similar geographic competition analysis for the CP-KCS combination to the one I described above (in Section 2.2.1) for CN-KCS. In contrast to CN-KCS, I find the analysis of a CP-KCS deal does not identify areas that are particularly likely to raise concerns. I find that there are *no* states or BEA areas where both CP and KCS originate or terminate shipments that account for more than four percent of CP and KCS combined revenues.

84. Even in the Kansas City area, the only location where the CP and KCS networks connect, the merger would not result in a substantial consolidation of options for shippers. In the state of Missouri, CP and KCS originate or

terminate shipments that account for only 2.1 and 6.5 percent of revenues, respectively. In the Kansas City BEA area, the shares for CP and KCS are 2.5 and 9.1 percent, respectively.⁴³ These results reflect that there are many options besides CP and KCS for shipping into and out of Missouri and the Kansas City area. This screen suggests there is unlikely to be concern with reduced geographic competition from a CP and KCS combination.

85. An assessment of specific commodity types is also unlikely to reveal substantial issues. For shipments going into or from the Kansas City area handled by CP, the origins and destinations are in the northern U.S. and Canada. For shipments going into or from the Kansas City area handled by KCS, the origins and destinations are the southern U.S. and Mexico. Thus, for there to be a commodity-specific concern within the Kansas City area, the commodity would need to be one for which shippers were competing to ship it both north and south from or into Kansas City. Moreover, even then there would be many other Class I options for shippers, as evidenced by the relatively low shares of origins and terminations accounted for by CP and KCS in the area.

5.2. A CP and KCS combination would benefit competition with opportunities for new single-line service

86. In this section, I present preliminary analysis that evaluates the extent to which a CP-KCS combination would enable the creation of new single-line service. Creating a new single-line service offering can enhance competition in a corridor. Single-lines reduce double marginalization and can increase convenience and reliability for shippers. Adding a new single-line to a corridor with few existing Class I single-lines can put competitive pressure on the incumbent to the benefit of shippers. Such benefits created by a CP-KCS combination are an appropriate consideration in evaluating CN's proposed acquisition of KCS. In the absence of a CN-KCS combination, shippers would gain benefits of new single-line service that are not currently available to them.

⁴³ Rule 11 movements other than the KCS movements to Mexico are excluded from these calculations for each area if the rebill code indicates that area is an interchange point and not the actual origin or termination (as applicable) for the full movement. KCS movements to Mexico are included in the calculations to avoid excluding all movements to Mexico where it appears some of them likely are originating in the relevant area. Excluding these movements to Mexico, I find CP and KCS shares are 2.2 and 4.7 percent for Missouri, respectively, and 2.7 and 4.4 percent for the Kansas City BEA area, respectively.

87. I find that a CP-KCS combination would offer the opportunity for new single-line services in many corridors. Many of these are corridors in which shippers currently have only one Class I single-line option, mainly BNSF, UP, or CN. I use the example of shippers moving grain from the upper Midwest to Texas and the Gulf region as an illustration of the opportunities that would be created by a CP-KCS combination.

88. I begin with an analysis that screens for potential opportunities for a CP-KCS combination to create new single-line service in corridors to compete with existing single-line service offered by other Class I railroads. Specifically, I identify all corridors (origin-destination pairs) that have the potential for a new single-line service from a merged CP-KCS. I determine that a corridor has the potential for new single-line service if one of CP or KCS serves the origin but not the destination, and the other serves the destination but not the origin. I then remove potential new single-line routes that appear to be circuitous or infeasible due to trackage rights restrictions. I focus on corridors for which the 2019 Confidential Waybill Sample data show at least \$5 million in shipments and at least 80 percent on a single-line route.

89. I summarize the results of this preliminary analysis in **Exhibit 11**. I show the number of corridors for which a CP-KCS combination would create the opportunity for a new single-line service and the total corridor revenues in the 2019 data. In row 1, I show totals across all corridors. This screen identifies a CP-KCS combination would create the potential for new single-line service in 74 corridors.

90. To better understand the current competitive conditions in these corridors, I break down the totals from row 1 based on how many other Class I railroads currently offer a single-line service for that origin-destination (rows 2–4). A CP deal offers the potential for new single-line service in 31 corridors that are currently served by a single incumbent Class I single-line (row 2).

91. In particular, a CP-KCS combination creates opportunities for the merged firm to create a new single-line to compete in corridors where BNSF, UP, or CN are currently the sole incumbent single-line option for shippers. A CP deal would create opportunities for new single-line service in 15 corridors (\$240 million) where BNSF is currently the sole incumbent single-line (row 5), and in 8 corridors (\$89 million) where UP is currently the sole incumbent single-line (row 6). In addition, a CP deal would create an opportunity for a single-line

service to compete in 5 corridors where CN currently operates the only Class I single-line option (row 7). These corridors account for \$111 million in the 2019 data.

EXHIBIT 11

Potential for new single-line service created by a combination of Canadian Pacific with Kansas City Southern, 2019 Confidential Waybill Sample

		Number of Corridors	Revenues (mil. \$)
1. Overall		74	2,135
Existing Single-line Service Options			
2. One Existing Option		31	468
3. Two Existing Options		33	1,396
4. Three or More Existing Options		10	271
Single Incumbent Single-line Service Option			
5. BNSF		15	240
6. UP		8	89
7. CN		5	111
8. CSX		2	19
9. NS		1	9

Source: 2019 Confidential Waybill Sample

Note: A corridor is identified as having the potential for new single-line service if one of CP or KCS serves the origin but not the destination, and the other serves the destination but not the origin. Potential single-line routes that appeared to be circuitous or infeasible due to trackage rights restrictions were removed. This analysis is limited to corridors with at least \$5 million in total revenues and more than 80% of revenues earned from single-line services in the 2019 Confidential Waybill Sample. Revenues reported are total expanded revenues earned by all railroads serving the corridors.

92. To illustrate where these opportunities are and what types of shippers would be likely to benefit from them, I perform another screen that focuses on grain shipments from locations in the upper Midwest to destinations in Alabama, Louisiana, and Mississippi (“Gulf States”), and Texas. Shippers in these corridors relying on single-line service to move grain to the southern U.S. tend to have limited options, typically offered by BNSF, UP, or CN. A CP-KCS combination would allow the merged firm to create a new single-line in these corridors to compete with these incumbents, who currently face limited, if any, competition from other Class I single-lines.

93. In **Exhibit 12**, I summarize the results of this screen. Shippers moving grain from Iowa, Minnesota, and Wisconsin to locations in the Gulf States and Texas tend to rely on single-line service (between 86 and 100 percent of tonnage is moved via single-line) and currently have few choices, if any. For

instance, {{REDACTED

}} A CP-KCS combination would create the opportunity for the merged firm to offer a new single-line service to compete with CN's single-line in this corridor. A merger of CN-KCS would forego this procompetitive opportunity, leaving CN as the sole single-line in the corridor.

94. Similarly, {{REDACTED

}} A combination with KCS would give CP the opportunity to add a single-line in these corridors to compete with these dominant incumbents.

EXHIBIT 12

Single-line service for grain shipments from the upper Midwest to Texas and Gulf States

Origin State	Single-line Tonnage Share	Share of Single-line Tonnage Shipped by:			Opportunity for New CP-KCS Single-line
		UP	BNSF	CN	
Gulf State Destination (AL, LA, MS)					
1. Iowa	{{REDACTED}}	—	—	100%	✓
2. Minnesota	{{REDACTED}}	53%	47%	—	✓
3. Wisconsin	{{REDACTED}}	44%	—	56%	✓
Texas Destination					
4. Iowa	{{REDACTED}}	5%	95%	—	✓
5. Minnesota	{{REDACTED}}	1%	99%	—	✓
6. North Dakota	{{REDACTED}}	—	100%	—	✓
7. Wisconsin	{{REDACTED}}	100%	—	—	✓

Source: 2019 Confidential Waybill Sample

Note: This exhibit reports statistics about shipments of grain (4-digit Standard Transportation Commodity Code: 0113). The analysis considers grain shipments originating from the states of Iowa, Minnesota, North Dakota, and Wisconsin that terminate in the Gulf States (Alabama, Louisiana, and Mississippi) and Texas. For each origin-destination pair, the exhibit reports the tonnage share that was shipped using a single-line service (i.e., using a single railroad without interchanges with other railroads) and the share of single-line tonnage shipped by specific Class I Railroads. This analysis excludes shipments flagged as a Rule 11 shipment based on the reported rebill code. A corridor is identified as having the potential for new single-line service if one of CP or KCS serves the origin but not the destination, and the other serves the destination but not the origin.

95. A CP-KCS combination would offer the opportunity for new single-line services in many corridors. In the absence of a CN-KCS combination, shippers would benefit from new single-line service not currently available to them. As the procompetitive opportunities from new single-line service created by a CP-KCS combination would come without risk of reduced horizontal competition, the alternative to a CN-KCS acquisition is an improvement and not merely the current competitive landscape.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct. I further certify that I am qualified and authorized to sponsor and file this testimony.

Executed on June 28, 2021

A handwritten signature in cursive script, appearing to read 'W. Robert Majure', written in black ink.

W. Robert Majure

APPENDIX A

APPENDIX A

W. Robert Majure, Ph.D. Vice President

Cornerstone Research

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ACADEMIC BACKGROUND

- 1990 – 1994 **Massachusetts Institute of Technology** Cambridge, MA
Ph.D., Economics
Specialization: Industrial Organization, Microeconomics, Econometrics
Thesis: Disequilibrium Game Theory
- 1986 – 1990 **University of Virginia** Charlottesville, VA
B.A., Economics and Mathematics

PROFESSIONAL EXPERIENCE

- 2019 – Present **Cornerstone Research, Inc.** Washington, DC
Vice President
Provide financial and economic analysis for commercial litigation matters. Support experts in preparing for deposition and trial testimony.
- 2010 – 2018 **Antitrust Division – U.S. Department of Justice** Washington, DC
Director of Economics
Senior career executive supervising the Antitrust Division's Economic Analysis Group. Helped formulate economic evidence and testimony for cases in industries such as software (*U.S. v. H&R Block, Inc., et al.*), telecommunications (*U.S. and Plaintiff States v. AT&T Inc., et al.*), video (*U.S. v. AT&T Inc., DirecTV Group Holdings, LLC, and Time Warner Inc.*), publishing (*U.S. v. Apple, Inc., et al.*), airlines (*U.S., et al. v. US Airways Group, Inc. and AMR Corp.*), oilfield services (*U.S. v. Halliburton Co. and Baker Hughes Inc.*), and health insurance (*U.S. and Plaintiff States v. Aetna Inc., and Humana Inc. and U.S. and Plaintiff States v. Anthem, Inc. and Cigna Corp.*).
- 2003 – 2010 **Antitrust Division – U.S. Department of Justice** Washington, DC
Chief of Competition Policy Section
Managed a section of about 18 economists and other staff. Supervised economic analysis of antitrust investigations in various industries including computer software (*U.S. v. Oracle Corp.*), real estate (*U.S. v. Kentucky Real Estate Commission*), and telecommunications (*U.S. v. Cingular Wireless et al.*). Testified in *U.S. v. SBC Communications Inc. and AT&T Corp.* and *U.S. v. Verizon Communications Inc. and MCI, Inc.* Consulted on appellate arguments of the United States in Circuit Court (including *FCC v. Prometheus Radio Project*).

APPENDIX A

W. Robert Majure, Ph.D.
Vice President

- 1997 – 2003 **Antitrust Division – U.S. Department of Justice** Washington, DC
Assistant Chief of Economic Regulatory Section
- Assisted with the management of a section of about 18 economists and other staff. Supervised economic analysis of antitrust investigations in various industries including telecommunications (*U.S. v WorldCom and Sprint*), computer software (*U.S. v Mathworks and Wind River*), publishing, radio and television advertising (*U.S. v Univision and Hispanic Broadcasting Corp*), electricity, and airlines. Consulted on appellate arguments of the United States in Circuit Court and the U.S. Supreme Court (including *Iowa Utilities Board v FCC and U.S.*).
- 1994 – 1997 **Antitrust Division – U.S. Department of Justice** Washington, DC
Economist
- Performed economic analysis in antitrust investigations. Applied developments in the fields of industrial organization, microeconomics, and econometrics to practical questions raised in antitrust analysis. Examined mergers or practices in telecommunications (including *U.S. v Sprint and Joint Venture Co.*), computer software, and banking. Testified in the merger of Union Pacific Railroad and Southern Pacific Railroad (before the Surface Transportation Board).

TESTIMONY

Real Estate Exchange, Inc. v Zillow, Inc. et al. – Filed declaration in support of motion for preliminary injunction.

U.S. v SBC Communications Inc. and AT&T Corp. and *U.S. v. Verizon Communications Inc. and MCI, Inc.* – Filed declarations in Tunney Act proceeding to explain the economic analysis of the United States for the proposed mergers and of the proposed consent decrees.

ICC Finance Docket No. 32760 – Submitted testimony on behalf of the U.S. Dept. of Justice analyzing prospective merger of Union Pacific Railroad and Southern Pacific Railroad.

PUBLICATIONS

“Comparing Vertical Merger Guidelines Across Jurisdictions” with Peter Davis and Kostis Hatzitaskos in *Law360* February 2020.

“Revisiting Guidance on MFN Terms” with Andrew Sfekas in *Antitrust Chronicle* September 2019.

“Economics at the Antitrust Division 2016-2017: Healthcare, Nuclear Waste, and Agriculture,” with A. Gerstle, H. Knudsen, D. Williamson, and J. Lee, *Review of Industrial Organization*, Vol 51, Issue 4, 2017, pp. 515-528

“The Year in Review: economics at the Antitrust Division: 2011,” with F. Scott Morton, *Review of Industrial Organization*, Vol. 41, Issue 4, 2012, pp. 321-331

“The Antitrust Division: Economic Issues Presented in 2010-2011,” *Review of Industrial Organization*, Vol 39, Issue 4, 2011, pp. 327-334

“The Year in Review: Economics at the Antitrust Division, 2004–2005,” with E. Emch and K. Heyer, *Review of Industrial Organization*, Vol 27, Issue 3, 2005, pp. 197-221

APPENDIX A

W. Robert Majure, Ph.D.
Vice President

“Ensuring Fair and Efficient Access to the Telecommunications ‘Bottleneck’” with D. Rubinfeld, in C.D. Ehlermann and L. Gosling (eds.), Third Competition Law Annual 1998: Regulating Telecommunications (Hart Publishing: Oxford)

“An Empirical Analysis of Bank Branching: Portugal 1989-1991” with L. Cabral, in The Empirical Analysis of Industrial Organization Conference Report of the Centre for Economic Policy Research

WHITE PAPERS

“Comments on the January 2020 Draft Vertical Merger Guidelines,” with Kostis Hatzitaskos, Aviv Nevo, and Ana McDowall, February 2020, available at <https://media.justice.gov/vod/atr/comments-draft-vmg/dvmg-0012.pdf>.

“Comparison with the EU Non-Horizontal and the UK Merger Assessment Guidelines,” with Peter Davis and Kostis Hatzitaskos, February 2020, available at <https://media.justice.gov/vod/atr/comments-draft-vmg/dvmg-0011.pdf>.

“Review: Selected Research of Andrew Sweeting, New Bureau of Economics Director” with Andrew Sfekas, Ross Askenazi, and Laurien Gilbert, January 2020, available at <https://www.cornerstone.com/Publications/Articles/Selected-Research-of-Andrew-Sweeting.pdf>

HONORS AND AWARDS

President’s Award for Meritorious Executive	2017
Assistant Attorney General’s Award for Excellence	2015
Attorney General’s John Marshall Award for Legal Advice (Nominated)	2004
Assistant Attorney General’s Award for Excellence	2001
Distinguished Service Award	1997
National Science Foundation Fellowship	1990 – 1993
Phi Beta Kappa	1989

CONFERENCE PARTICIPATION

8 th Annual Bill Kovacic Antitrust Salon	2020
Discussed vertical merger guidelines and enforcement issues in a panel hosted by George Washington University School of Law and <i>Concurrents Review</i> .	
“New Debates and Tensions in Antitrust: The 2020 Vertical Merger Guidelines”	2020
Discussed newly issued vertical merger guidelines with attorneys and economists in government and private practice.	
ABA panel “Sequences & Sparks: Life Sciences Innovation Mergers.” (podcast)	2020
Discussed issues of innovation competition, potential competition, and merger enforcement.	
DOJ Workshop on Proposed Vertical Merger Guidelines	2020
Discussed issues of vertical merger analysis and suggested modifications to draft guidelines.	
ICN Chief/Senior Economist Workshop	2016
Discussed tools and techniques of current interest with senior economists representing competition authorities around the world.	

APPENDIX A

W. Robert Majure, Ph.D.
Vice President

FCC Roundtable on Media Ownership Policies 2001
Discussed economic issues related to prospective changes in the FCC's rules governing media ownership.

PERSONAL

U.S. Citizen. Married with two daughters and one son.

APPENDIX B

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500

**CANADIAN PACIFIC RAILWAY LIMITED, ET AL. – CONTROL – KANSAS CITY
SOUTHERN, ET AL.**

Finance Docket No. 36514

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

EXPERT STATEMENT OF W. ROBERT MAJURE, PH.D.

April 30, 2021

1. My name is W. Robert Majure. I am a Vice President at Cornerstone Research. Prior to joining Cornerstone Research, I worked for approximately 25 years in the Antitrust Division of the U.S. Department of Justice (“DOJ”) as an economist, Assistant Section Chief, Section Chief, and ultimately as the Director of Economics.

2. I earned my Ph. D. in Economics from Massachusetts Institute of Technology in 1994 and a B.A. from the University of Virginia in 1990. My main area of expertise is the economics of industrial organization – particularly issues of competition.

3. While at the DOJ, I performed and supervised economic analyses of competition issues in various industries including transportation, telecommunications, banking, computer software and hardware, heavy industry, mining and drilling, healthcare, entertainment, and railroads. I submitted testimony on competitive effects in the merger of the Union Pacific and Southern Pacific Railroads and on the suitability of remedy in *U.S. v. SBC Communications Inc. and AT&T Corp.* and *U.S. v. Verizon Communications Inc. and MCI, Inc.* I also served on the committee that drafted the 2010 Horizontal Merger Guidelines. I received awards for my work at the DOJ, including Presidential recognition for my contributions as a senior executive of the civil service.

4. A copy of my *curriculum vitae* is attached as Appendix A.

5. I have been asked by counsel for Canadian Pacific (“CP”) to examine competition issues related to the proposed acquisition of Kansas City Southern (“KCS”) by CP. My analysis is still in process. In light of the competing proposal to acquire KCS by Canadian National (“CN”), I have been asked by counsel for CP to describe my preliminary findings and how these compare to competitive issues that would be raised in an acquisition of Kansas City Southern by Canadian National.

6. I am being compensated for my work on this matter at my standard billing rate of \$900. I have been assisted by staff of Cornerstone Research, who worked under my direction. My compensation in this matter is not in any way contingent or based on the content of my opinion or the outcome of this or any other matter.

7 Fundamentally, railroad mergers generally fall into one of two categories: (i) end-to-end or (ii) horizontal. End-to-end mergers combine two systems that each serve a distinct geographic area. End-to-end railroad mergers have typically been recognized as posing lower risks of competitive concerns and a higher likelihood of improving overall quality and competition as single-line service is extended between the two distinct areas.¹ In contrast, horizontal mergers involve two railroads that serve the same corridors and geographic areas. Horizontal railroad mergers are more likely to reduce the competitive options of shippers either within a corridor or between corridors, and thus pose greater risks of significant competitive concerns.

8 A combination of KCS with CP would constitute an end-to-end merger. In contrast, a combination of KCS with CN would be largely horizontal: throughout the entire region where KCS and Illinois Central (“IC”) (which was acquired by CN in 1999)² historically competed for north-south traffic.

9 This categorization is supported by my preliminary analysis in which I use the Confidential Waybill Sample to perform the standard preliminary step in analyzing a railroad merger. Specifically, for each proposed transaction, I have identified corridors where the acquisition would reduce the number of independent routes between specific areas (*i.e.*, specific origins and

¹ As the Board explained in its April 23, 2021 waiver decision in the CP docket: “The interrelationship between the CP and KCS networks in fact appears to be end-to-end in nature, . . . which likely raises fewer competitive concerns than a transaction that is not end-to-end.” *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, Finance Docket No. 36500, Decision No. 4 at 2 (STB served Apr. 23, 2021) (also citing Freight Rail Customer Alliance, National Coal Transportation Alliance, Private Railcar Food & Beverage Association, Inc. Opp’n 2, Apr. 1, 2021 (acknowledging that the Transaction “appears to be ‘end-to-end,’” which “carries potential to increase both efficiency and competition for the benefit of shippers”)). See also, *e.g.*, *Norfolk Southern Corp. & Norfolk Southern Ry. Co. – Control & Consolidation Exemption – Algers, Winslow & Western Ry.*, Finance Docket No. 34839 at 8 (STB served Feb. 15, 2007); *Norfolk Southern Ry., Pan Am Rys., et al. – Joint Control & Operating/Pooling Agreements – Pan Am Southern LLC*, Finance Docket No. 35147 (STB served Mar. 10, 2009) at 5. The Board has also repeatedly recognized that end-to-end mergers creating a single-line service enhance competition. See, *e.g.*, *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated – Control – Illinois Central Corporation, Illinois Central Railroad Company*, Finance Docket No. 33556, Decision No. 37, at 22 (STB served May 25, 1999) (“The chief benefit” of the “entirely end-to-end” merger “is that it will make possible a new, single-line service alternative for many shippers In particular, the merger should significantly intensify competition for the north-south traffic that has achieved greater significance due to NAFTA.”). See also, *e.g.*, *Canadian National Railway Company, Grand Trunk Corporation, and WC Merger, Sub, Inc. – Control – Wisconsin Central Transportation Corporation, Wisconsin Central LTD., Fox Valley & Western LTD., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link LTD*, Finance Docket No. 34000, Decision No. 10, at 11-12 (STB served Sept. 7, 2001); *Kansas City Southern – Control – Kansas City Southern Ry., Gateway Eastern Ry., & The Texas Mexican Ry.*, Finance Docket No. 34342, Decision No. 12, at 17 (STB served Nov. 29, 2004).

² *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated – Control – Illinois Central Corporation, Illinois Central Railroad Company*, Finance Docket No. 33556, Decision No. 37 (STB served May 25, 1999).

destinations) based on movements that are observed to occur within the data.³ This screening exercise has the benefit of using data on actual movements to identify routes – including interchanges between separate railroads – that are practical for shippers. By screening for reductions in the number of independent routes, it also identifies reductions in choices that are particularly important to shippers. From a competition perspective, reductions in the routes that can potentially be used to bargain against a specific railroad need to be independent of that railroad. This is because it is hard to successfully bargain for better rates with a threat to switch to another route if that route also depends on getting a rate from the same railroad.

10. Consistent with that focus on identifying the lost choices that are most important to shippers, a common practice in railroad merger reviews is to focus on situations where a proposed acquisition reduces the number of independent routes from 3-to-2 or from 2-to-1. In the former (a 3-to-2 reduction), a shipper still has some potential for competition but significantly less than before. In the latter (a 2-to-1 reduction), the loss of competition is even worse. A shipper that previously had some potential for competition no longer has *any* competition—*i.e.*, the shipper would essentially face a monopoly on rail transport post-merger.

11. To implement this standard screen for horizontal competitive issues in a railroad merger, I use the 2019 Confidential Waybill Sample.⁴ For origin and destination areas, I use the Bureau of Economic Analysis (“BEA”) Economic Areas within the United States, provinces within Canada, and a combined area for Mexico.⁵

12. As I continue to perform my analysis, I expect to incorporate the fact that shippers of specific commodities have more or less ability to avail themselves of competitive options that are nearby even if a railroad does not have direct access to a specific facility. For this preliminary assessment, and to illustrate at an overall level the corridors that warrant further investigation in either of the

³ This preliminary screening analysis has been relied on by the STB in its past reviews of railroad acquisitions. *See, e.g., Norfolk Southern Railway Company – Acquisition and Operation – Certain Rail Lines of the Delaware and Hudson Railway Company, Inc.*, Finance Docket No. 35873, Decision No. 6, at 18-20 (STB served May 15, 2015); *Kansas City Southern et al. – Control – Gateway Western Railway Company and Gateway Eastern Railway Company*, Finance Docket No. 33311, Decision, at 4-5 (STB served May 1, 1997).

⁴ My work with these data is preliminary and ongoing. I expect to incorporate additional data as my work continues.

⁵ Due to differences in the data in the geographic specificity available for Canada and Mexico, I use these more aggregate geographic units for Canada and Mexico in my preliminary analysis. My work is ongoing.

proposed acquisitions, I treat any movement of a commodity between the defined areas as informative about the possibility of shippers having competitive options or not.⁶ Likewise, I treat a terminating or originating railroad carrying less than 50 miles as not determinative of whether a route is independent.⁷

13. My examination of the data confirms that a CP-KCS transaction would be an end-to-end merger. Notably, my initial analysis does not suggest risk of reduced horizontal competition resulting from an acquisition of KCS by CP.

14. In contrast, there are significant traditional indicia of horizontal competition concerns raised by a potential CN-KCS transaction. For an acquisition by CN, the screening exercise identifies a reduction in independent options in many corridors. This is not surprising given that CN and KCS have broadly parallel routes. In particular, 31 different corridors screen as 3-to-2 reductions and another 31 corridors screen as 2-to-1 reductions. Eight corridors screen as having higher order reductions in the number of independent routes (e.g., reductions from 6-to-5 or from 4-to-3). Consistent with the standard focus on the reductions most likely to generate significant effects for shippers, for the purposes of this analysis I ignore the eight corridors with higher-order reductions. Rather, I focus my analysis on the 62 corridors with a reduction of either 3-to-2 or 2-to-1.

15. Exhibit 1 illustrates how these horizontal overlaps would affect shippers throughout the systems of CN and KCS. This map details the areas which are part of a corridor that the screening exercise identified as a 3-to-2 or a 2-to-1 reduction—*e.g.*, where customers would lose independent rail choice post-merger. Each area is shaded to reflect the total amount of railroad revenues in such corridors for that area. Total revenues for shipments on these corridors in 2019 was approximately \$730 million. As I noted above, in this analysis I combine all commodities shipped in a corridor.⁸ I recognize that doing so to measure the overall effect could combine commodities of very different values. By measuring total revenues, I normalize for these differences in values across

⁶ Movements within the Baton Rouge BEA screen as a 3-to-2 reduction. All other movements in the screen are between BEAs. The total revenue on movements within Baton Rouge is \$35 million.

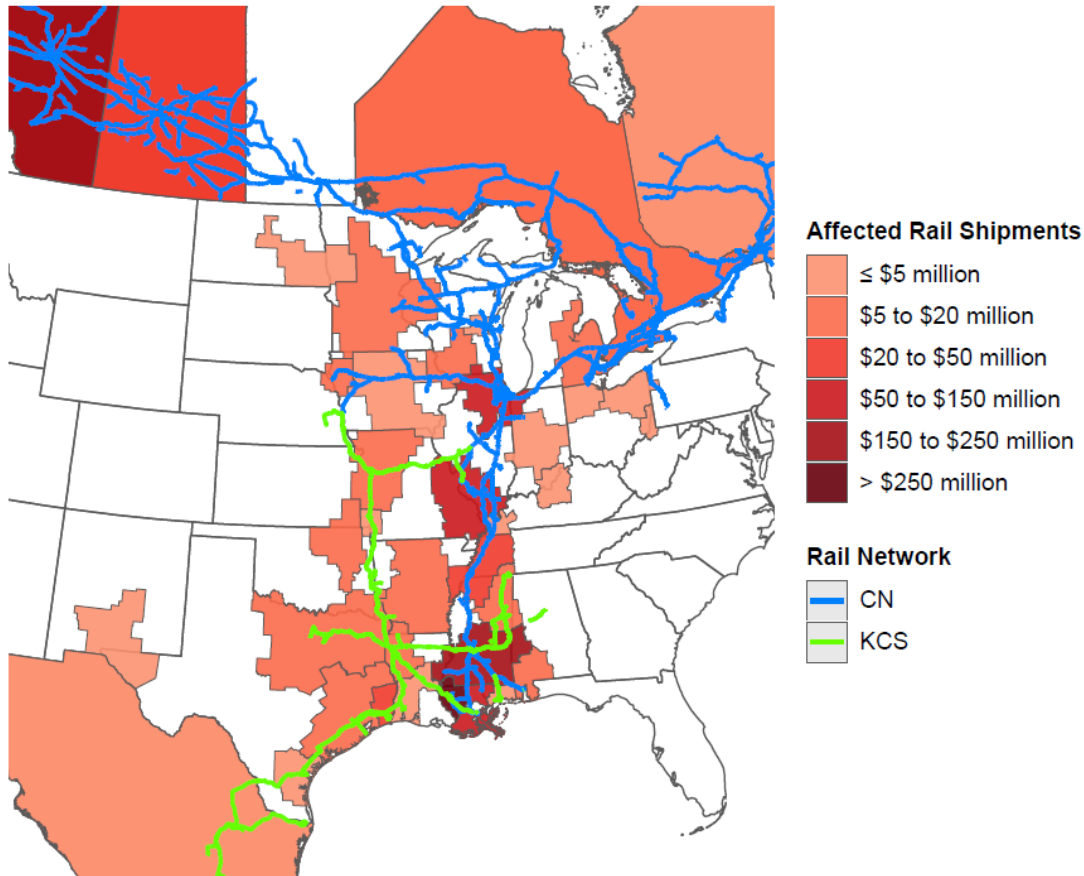
⁷ If the set of railroads involved in a movement would constitute an independent route, but for the presence in the movement of originating or terminating railroads that carried for less than 50 miles, I consider the set an independent route.

⁸ As my analysis continues I expect to examine competition impacts for different commodities, which may have different geographic dimensions.

commodities within a corridor.⁹ I have overlaid on this map the tracks and trackage rights of KCS and CN.

EXHIBIT 1

***Areas identified as losing rail choice if Canadian National buys Kansas City Southern
Revenues on origin-destination pairs with 2-to-1 and 3-to-2 reduction in independent routes***



Source: 2019 Confidential Waybill Sample; North American Rail Lines, Federal Rail Administration; Kansas City Southern Network Map, available at <https://www.kcsouthern.com/en-us/why-choose-kcs/our-network/network-map>

Note: This map plots the total revenues for shipments to or from an area as part of any origin-destination (“OD”) pair in which the number of independent routes that are observed in the Waybill Sample would be reduced from two to one or from three to two if Canadian National Railway (“CN”) and Kansas City Southern (“KCS”) merged. The areas that are part of these OD pairs are shaded in red. A darker shade of red indicates more revenues. The map also plots the rail networks of CN and KCS, including tracks each railroad either owns or has trackage rights over. Independent routes are those in which there is no overlap between participating railroads. For example, if there are two available routes, (a) KCS-CN and (b) KCS direct, they would not be independent because KCS is involved in both; however, if the second route instead used Union Pacific (“UP”) single line service, then the two routes (KCS-CN and UP direct) would be independent. The routes considered in this analysis do not include the identity of railroads that handle an originating or terminating leg of a shipment if that leg is less than 50 miles long. If the set of railroads involved in a movement would constitute an independent route, but for the presence in the movement of originating or terminating railroads that carried for less than 50 miles, it is considered an independent route. Origin and destination areas are defined at the Bureau of Economic Analysis (“BEA”) Economic Areas level for the U.S., at the province level for Canada, and at the country level for Mexico. The U.S. BEA Economic Areas used to draw the map were published in 1998 by the Bureau of Transportation Statistics.

⁹ Economists often use the price paid (or revenue) as a way to normalize differences in value across different options.

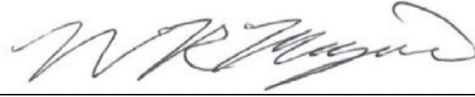
16. Exhibit 1 demonstrates several clear points, including the following. First, there are many areas (with significant associated rail revenues) that would experience reduction in independent competition following a potential CN-KCS merger. Second, these areas of potential concern are found all along the CN and KCS networks, and are particularly concentrated where the networks overlap. Third, the effects are not just local to the southern United States. The potential CN-KCS merger would affect options for north-south shippers from locations as far as Minnesota, and even further north into Canada.

17. Exhibit 1 demonstrates the issues raised in a broadly horizontal acquisition such as CN's proposal for KCS that are not present in an end-to-end merger such as CP's proposed acquisition of KCS. These indicia of significant horizontal problems warrant further investigation. In particular, and among other concerns, CN and KCS's parallel service to north-south traffic, including traffic from various parts of Canada and Texas, as well as the specific overlaps in areas of Mississippi and Louisiana, combine to generate competitive issues that warrant further investigation on behalf of shippers throughout the system currently served by CN and by KCS. I would anticipate evaluating these issues in greater depth if CN's proposed transaction is to proceed.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct. I further certify that I am qualified and authorized to sponsor and file this testimony.

Executed on April 30, 2021

A handwritten signature in dark ink, appearing to read 'WR Majure', is written above a horizontal line.

W. Robert Majure

EXHIBIT 5

VERIFIED OPINION LETTER OF MELANIE L. AITKEN



Bennett Jones

Bennett Jones (US) LLP
Washington, D.C., United States
T: 202.802.8122
T: 416.777.4855

Melanie L Aitken
Managing Principal
Direct Line: 202.802.8122
e-mail: aitkenm@bennettjones.com

June 27, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington DC 20423-0001

Dear Ms. Brown:

Re: 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

I have been asked to respond to the letter of Lawson Hunter dated May 25, 2021 filed by the Canadian National Railway Company (CN) in support of its application for approval of its proposed voting trust in connection with its proposed acquisition of Kansas City Southern (KCS).

I appreciate the opportunity to provide this submission to the Board. I recognize that the Canadian approach to voting trusts and so-called "hold separates", as raised by Mr. Hunter, a lawyer at one of CN's Canadian law firms working on the CN/KCS transaction, may have limited relevance to the Board as it considers and applies its own rules and procedures. However, in case the Canadian experience is of interest to you, I am grateful for the chance to correct the impression invited by Mr. Hunter's submission, particularly as it relates to Canada's review of transportation mergers raising material competition concerns.

The bottom line is that Canadian competition and transportation agencies do not permit voting trusts or hold separates while evaluating whether a proposed transaction with meaningful overlaps raises competition concerns. Voting trusts or hold separates occur, if at all, only after the responsible competition or transportation agency has completed an exhaustive competitive effects review.¹

While Mr. Hunter gives prominence in his letter to Canada's telecommunications regulator, the Canadian Radio-television and Telecommunications Commission (CRTC), the CRTC's own policy does not support Mr. Hunter's position that voting trusts are "routinely used": the CRTC is crystal clear

¹ Save for, as discussed later, in the irrelevant circumstance where the target firm will not survive until closing.

that voting trusts are the exception not the rule, and to be allowed only if "necessary to satisfy the requirements of securities legislation". As such, the CRTC's approach weighs against CN's application to use a voting trust here; at a minimum, it has limited relevance to the assessment facing the Board.

Professional Background

I am co-head of the competition and foreign investment practice of Bennett Jones LLP. From 2009 to 2012, I served as Canada's Competition Commissioner, in charge of the Canadian Competition Bureau (CCB), having previously served as the Senior Deputy Commissioner leading merger review from 2006 to 2009. Having returned to private practice, I focus on global antitrust and competition law and litigation, including large complex mergers. I acted on the first Canadian transportation merger to be reviewed under the *Canada Transportation Act* merger review process, described in detail below. A complete biography is attached.

The Approach of the Commissioner of Competition

As head of the Canadian Competition Bureau ("CCB"), the Commissioner is responsible for enforcing Canada's *Competition Act*. The Commissioner's mandate includes reviewing proposed transactions to determine whether they are likely to substantially lessen or prevent competition. Similar to the process under the U.S. *Hart-Scott-Rodino Antitrust Improvements Act of 1976*, parties to proposed Canadian transactions that exceed certain monetary thresholds must notify the Commissioner and are subject to an initial 30-day mandatory waiting period. The Commissioner can extend the initial waiting period by making a formal request for additional information, known as a supplementary information request (SIR), similar to the U.S. 'second request'. The parties cannot close until at least 30 days after they certify compliance with the SIR. Many complex transactions do not close for many months even after SIR compliance as the parties wait for the Commissioner to complete his review. In practice, the Commissioner will issue a SIR for every transaction that raises material competition concerns.

Contrary to the impression invited by Mr. Hunter and in contrast to what CN submits the Board should do here, the Commissioner **does not** agree to voting trusts or hold separates while reviewing the competitive effects of a proposed transaction involving viable firms.

The Commissioner set out the CCB's policy with respect to hold separates in the 2006 Information Bulletin on Merger Remedies in Canada.² The Bulletin states that the Commissioner "will not normally agree to hold separate provisions pending completion of a merger investigation" nor even "normally agree to hold separate provisions pending completion of negotiations." That policy has remained unchanged for the last fifteen years. In 2007, the Commissioner cited the Bulletin when specifically opposing the acquisition of one brewery by another where the parties had proposed to close into a hold separate while the Commissioner's investigation remained pending.

² See <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02170.html>.



Consistent with the Bulletin, the Commissioner has agreed to hold separates only in three limited and quite specific circumstances. None of these exceptional circumstances apply to CN's voting trust application here.

First, and most common, the Commissioner has agreed to a hold separate when he and the merging parties have settled upon a divestiture remedy. Such agreement follows an exhaustive review by the CCB of the transaction's likely competitive effects, a detailed consideration of the effectiveness of the proposed remedy and a conclusion by the Commissioner that the remedy cures the competitive concern(s). The agreed upon set of assets is then separated and protected pending (only) the sale of those assets to a buyer approved by the Commissioner. The period of the hold separate is typically 6-8 months. During this period, the parties and the hold separate manager know that the assets will be divested and will not revert to the consolidated entity.

Second (and having occurred only once in the last 20 years), the Commissioner has sought a hold separate where he has concluded that a divestiture is required to remedy a likely substantial lessening or prevention of competition, but the parties contest the requested divestiture. Again, the Commissioner reached that conclusion **only after** an exhaustive review of competitive effects. On this single occasion, in the Parkland matter to which Mr. Hunter refers, after a 7-month review the Commissioner concluded that a small number of the assets involved in the transaction (17 of the 393 assets) would likely lead to a substantial lessening of competition. The Commissioner sought to have only those 17 assets – each of which was a viable stand-alone retail business or supply agreement – held separate pending divestiture, while permitting the rest of the transaction to close. The parties contested the requested divestiture and hold separate order. Ultimately, the Competition Tribunal ordered that only seven assets be held separate (the Commissioner and the merged entity later agreed to six divestitures to finally resolve their dispute).

Third, the Commissioner has agreed to a hold separate before completing an investigation only twice since 2006. On both occasions, the sole rationale was that the target companies were "failing firms" because they would not survive if closing were to be delayed.³ Of course, KCS is plainly not a "failing firm", so these two examples are not relevant to the Board's consideration of CN's proposed voting trust except insofar as they are the exceptions that prove the rule set out in the Commissioner's 2006 Bulletin.

The Commissioner's stated policy and practice demonstrate that the Commissioner would not agree to a hold separate where, as here, the process of reviewing a proposed transaction with material overlaps and related competition issues has just (or barely) begun. In a case with material horizontal overlaps between viable firms, the Commissioner would allow closing **only after** completing his investigation and determining if remedies were necessary to address the substantial lessening or prevention of competition. As such, to the extent the Board considers the Commissioner's approach to hold separates relevant, that approach weighs heavily against approval of CN's proposed voting trust at this early stage.

³ See Registered Consent Agreement regarding American Iron & Metals Co. and 6876544 Canada Inc. <https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/463767/index.do> and Registered Consent Agreement regarding American Iron & Metal Company Inc. and 11715216 Canada Inc. <https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/465287/index.do>.



The Approach of the CRTC

Unlike the Commissioner of Competition, Canada's telecommunications regulator, the CRTC, on several occasions, has approved the use of a voting trust before it has completed its own review of a proposed transaction involving the transfer of broadcasting licences. However, the CRTC's experience weighs against CN's voting trust or, at a minimum, is less relevant to the Board's assessment because the CRTC's policy on voting trusts indicates that they are to be resorted to in only *very* limited circumstances: where a voting trust is "necessary to satisfy the requirements of securities legislation".⁴ In fact, the CRTC states that "in every case" merger agreements should condition closing on the completion of CRTC review – with no use of a voting trust – except in those unusual cases where clearly mandated by securities laws:

In light of the importance of the prior approval regime, *purchase and sale agreements conditional on the Commission's prior approval of the transfer of ownership or control will be required in every case* involving transfers of ownership or control of broadcasting undertakings, *except where the vendor can clearly demonstrate to the Commission that trust arrangements are necessary to satisfy the requirements of securities legislation.* (emphasis added)

As indicated in the quotation above, the CRTC values and intends to maintain a robust prior approval regime. Indiscriminate use of voting trusts could significantly impair the viability of that regime, as the CRTC notes later in its policy when discussing how it relies on vendors to demonstrate that the proposed transaction is the best possible proposal under the circumstances. The CRTC cautions that voting trusts may erode the vendor's incentives to properly vet prospective buyers and transactions:

The Commission reminds licensees of the regulatory requirement that the Commission's prior approval be obtained for transfers of ownership or control of broadcasting undertakings. *The Commission emphasizes that, as it does not solicit competing applications for transfers of ownership or control, the onus is on the licensee to demonstrate that the application is the best possible proposal under the circumstances.* Accordingly, prospective vendors have the responsibility to consider the appropriateness of the prospective buyer in light of regulatory concerns. Such concerns include for example, financial viability, concentration of ownership (vertical and horizontal integration), foreign ownership, and benefits. *These considerations may not take on the same importance for the vendor when a sale can be finalized and the assets or shares placed in trust before Commission approval.* (emphasis added)

It is notable that a voting trust is not even proposed in the context of the largest telecommunications transaction in Canadian history; namely, Rogers Communications' proposed \$26 billion acquisition of

⁴ Public Notice CRTC 1999-196 <https://crtc.gc.ca/eng/archive/1999/PB99-196.htm>.



Shaw Communications, which is currently under review by the CRTC and the Commissioner of Competition.

To the extent that the Board considers the CRTC's approach regarding the use of voting trusts relevant at all, that approach would, like the Competition Commissioner's, seem to weigh against approval of CN's proposed voting trust here given that the CRTC allows their use only in extraordinary cases, and the express limits on their use (only where "necessary to satisfy the requirements of securities legislation").

The Approach of the Minister of Transport

I recognize that the Commissioner and the CRTC are imperfect analogues to the Board's own plenary authority over railroad consolidations and its particular mandate and review process; as such, their approaches may be of limited relevance.

To the extent that there is a Canadian analogue to the Board's mandate and review process, it is likely the public interest review under the *Canada Transportation Act (CTA)*, which, once triggered, gives the Federal Cabinet⁵ exclusive authority to permit or deny the proposed transaction. Similar to the Board's regulatory mandate, the CTA empowers the Minister of Transport to determine the effect of the proposed transaction on the public interest and competition to inform Cabinet's decision.⁶

Critically, the CTA review process does not permit a voting trust or a hold separate.

Once the Minister of Transport triggers a review, the parties are prohibited from closing until they receive approval from the Cabinet. If there is a material overlap and associated risk of anticompetitive effects, the statutory review process ensures that the Minister of Transport can complete the review of the potential competitive effects (and all other relevant considerations) before an ownership change alters incentives and impacts competition during the period of the review or risks making any remedy more problematic to implement.

Although CTA reviews can be lengthy, merging parties have easily withstood even very long reviews. Most recently, Air Canada (represented by Stikeman Elliot, also counsel to CN in this transaction) and Air Transat waited 18 months for the review process to complete.⁷

⁵ As a technical matter, approval is required from the Governor in Council, which refers to Canada's head of state, the Governor General, as advised by the Federal Cabinet. As the Governor General is largely a symbolic head of state, in practice, the decision rests with the Federal Cabinet.

⁶ The CTA requires the Commissioner of Competition to submit a report to the Minister of Transport regarding any concerns regarding potential prevention or lessening of competition that may occur as a result of the transaction.

⁷ Air Transat approved Air Canada's offer on June 27, 2019. Permission was received from the Governor in Council on February 11, 2021. The deal never closed because of European antitrust concerns and was abandoned on April 2, 2021.



June 27, 2021

Page 6

Conclusion

Thank you again for considering this response.

Yours truly,

A handwritten signature in blue ink, reading "Melanie L. Aitken". The signature is written in a cursive style with a long horizontal flourish at the end.

Melanie L Aitken



VERIFICATION

I, Melanie L. Aitken, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 27th day of June, 2021.



Melanie L. Aitken



Melanie L. Aitken

Managing Principal, Bennett Jones (US) LLP

Co-Head of Competition, Antitrust & Foreign Investment Practice

T: 416.777.4855 / E: aitkenm@bennettjones.com

United States of America

EDUCATION

University of Toronto, BA, 1988

University of Toronto, LLB, 1991, Dean's Key

BAR ADMISSIONS

Ontario, Canada, 1993

Licensed to practice Canadian law as a Special Legal Consultant in the District of Columbia

Melanie Aitken is the Managing Principal of Bennett Jones (US) LLP, which carries on the practice of Canadian law in Washington, DC, in association with Bennett Jones LLP. She is also co-head of the competition and foreign investment practice of Bennett Jones. She specializes in global antitrust and competition law and litigation, working closely with colleagues in our Toronto and other offices.

Melanie served as Canada's Competition Commissioner, in charge of the Canadian Competition Bureau from 2009 to 2012, having previously served as the Senior Deputy Commissioner leading merger review from 2006 to 2009.

While serving as Commissioner, Melanie led many high-profile civil and criminal matters and worked extensively with leaders of international antitrust authorities around the world on enforcement and policy cases, holding leadership roles in key international organizations, such as the Steering Committee of the International Competition Network. Melanie is credited with revitalizing the Bureau as an active enforcement agency. Most notably, she led the introduction of major amendments to Canada's competition laws, introducing a US-style second request merger review process in Canada, and a new per se criminal cartel offence. While establishing an unprecedented successful litigation record for the Bureau, Melanie initiated a landmark case that liberalized the Canadian real estate industry, brought cases forward in significant matters (including a challenge to Visa and MasterCard over card acceptance rules, and a challenge to a major airline merger to monopoly); during her tenure, the Bureau won the first court-ordered merger prohibition since the 1990s.

Melanie was a partner at Bennett Jones and Davies Ward Philips & Vineberg before joining the Bureau in 2005. She has acted as counsel in the Supreme Court of Canada and represented the merging parties in Canada's leading efficiencies case, Superior Propane. Melanie has an active antitrust advisory, trial and commercial practice, representing major

Canadian and US companies in significant matters across a broad range of industries, including financial services, large retail, telecommunications, pharmaceutical, airlines, oil and gas, consumer products and organized sport.

Melanie's recent experience includes Counsel to: Tiffany & Co. in connection with the US\$16-billion transaction with LVMH; Mylan N.V. in its US\$12-billion combination with Pfizer Inc.'s Upjohn business; American Airlines in its defence to class actions alleging capacity discipline, and Covid-related complaints; Bristol-Myers Squibb in its US\$74-billion acquisition of Celgene; Allergan plc. in its US\$63-billion sale to AbbVie; Fiserv, Inc. in its US\$22-billion acquisition of First Data; Time Warner in its US\$85-billion acquisition by AT&T; Alere, Inc. in its US\$5.3-billion acquisition by Abbott; St. Jude Medical Inc. in its US\$25-billion acquisition by Abbott; and Starwood Hotels & Resorts Worldwide, Inc. in connection with its US\$12.2-billion acquisition by Marriott International, Inc.

Melanie is a frequent speaker and commentator on competition issues, and has taught as an Adjunct Professor at Osgoode Hall and Queen's Law Schools. She is active on the C.D. Howe Institute's Competition Policy Council, and sits on the Advisory Boards of the Global Antitrust Institute, Schulich School of Business (Toronto, Canada), and W@CompetitionAmericas, and has been appointed a Fellow of the American Bar Foundation. Melanie also serves as a non-governmental advisor to the International Competition Network, a network of the world's competition authorities fostering convergence to best practices in global antitrust enforcement.

Select Experience

- Counsel to **Mylan N.V.**, in its US\$12-billion combination with Pfizer Inc.'s Upjohn business.
- **Tiffany & Co.**, as Canadian antitrust counsel in connection with the US\$16-billion transaction with LVMH.
- Counsel to **Mylan Inc.**, in its US\$5.3-billion acquisition of generic drug assets from Abbott Laboratories.
- **Bristol-Myers Squibb**, as Canadian antitrust counsel, in its US\$74-billion acquisition of Celgene Corp.
- Canadian counsel to **Allergan plc.**, regarding all competition law matters and filings in its acquisition by AbbVie Inc. for US\$63-billion (The Deal Awards 2020 Healthcare, Pharma & Biotech Deal of the Year).
- **Mitsubishi Heavy Industries, Ltd.**, in its acquisition of Bombardier Inc.'s Canadair Regional Jet (CRJ) series aircraft program for approximately US\$550-million.
- Counsel to **American Airlines** in defense to class actions regarding allegations of capacity discipline; and Covid-related refunds complaints.
- Counsel to **JPMorgan** in defence to class actions regarding allegations of foreign exchange manipulation, and precious metals.
- **Fiserv, Inc.**, in its acquisition of First Data in a transaction valued at approximately US\$22-billion, to create a leading payments and financial technology provider.
- **Signify**, as Canadian antitrust counsel in connection with its \$1.4-billion acquisition of the lighting business of Eaton Corporation.
- **Tervita Corp.**, in its acquisition of all issued and outstanding common shares of Newalta Corp. and US\$250-million senior secured notes offering.

- Canadian counsel to **Cheung Kong (Holdings) Limited and Hutchison Whampoa Limited**, in a CAD\$84-billion (implied enterprise value) reorganization and combination of their respective businesses and the separation of their non-property and property businesses into two new Hong Kong-listed companies, CK Hutchison Holdings Limited and Cheung Kong Property Holdings Limited. The transaction also involved a transfer of approximately 6 percent of the shares of Husky Energy Inc.
- **Enercare Inc.**, a rental water heater provider, in its successful defense of an abuse of dominance investigation undertaken by the Competition Bureau. The matter was discontinued by the Bureau in September 2019 with no remedies.
- **Inuvialuit Development Corporation**, as owner of Canadian North airline, in the merger of Canadian North and First Air (owned by Makivik Corporation), to create an Inuit-owned unified northern Canadian airline.
- Canadian counsel to **Conagra Brands, Inc.** in its US\$10.9-billion acquisition of Pinnacle Foods Inc.
- Counsel to **Bumble Bee Foods**, in a Canadian class action regarding allegations of price-fixing in Tuna.
- Canadian counsel to **Alere Inc.**, in its US\$5.3-billion acquisition by Abbott Laboratories.
- Canadian counsel to **St. Jude Medical, Inc.**, regarding all competition law matters and filings in connection with its acquisition by Abbott Laboratories for US\$25-billion.
- Canadian counsel to **Starwood**, in its US\$12.2-billion acquisition by Marriott International, Inc.
- Advisory counsel to **Anheuser-Busch InBev**, in its US\$103-billion acquisition of SABMiller.
- Canadian counsel to **Canadian Pacific Railway Limited**, in its proposed US\$28-billion merger with Norfolk Southern Corp.
- Counsel to **Repsol S.A.**, in its US\$8.3-billion acquisition of Talisman Energy Inc.
- Canadian competition counsel to **Safeway Inc.**, in the CAD\$5.8-billion sale of substantially all of its Canadian assets to Sobeys Inc.
- Counsel to **Metalmark Capital**, in its US\$2.5-billion acquisition of Kissner Milling Company Limited and Kissner Group Inc. by an investor group lead by Metalmark Capital.
- Canadian competition counsel to **Norbord Inc.**, in its CAD\$763-million acquisition of Ainsworth Lumber Co., Ltd.
- Counsel to **Enercare Inc.**, in its acquisition of Direct Energy's Ontario Home Service Business for CAD\$550-million and its CAD\$340-million acquisition of Service Experts.
- Counsel to **Darling International Inc.**, in its acquisition of all the assets of Rothsay, a division of Maple Leaf Foods Inc., for approximately CAD\$645-million.
- Canadian counsel to **Energizer Holdings, Inc.**, in its US\$185-million acquisition of the Stayfree® pad, CareFree® liner, and o.b.® tampon feminine hygiene brands from Johnson & Johnson, Inc.
- Canadian counsel to **Cameron International Corp.** in its US\$14.8-billion acquisition by Schlumberger Ltd.

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Ranked, Competition/Antitrust (Expertise based abroad in Canada)

- **The Legal 500: Canada**
Leading Lawyer, International Expertise
Recommended, Competition and Antitrust
- **The Canadian Legal Lexpert Directory**
Most frequently recommended, Competition Law
- **Best Lawyers in Canada**
Recognized in the areas of Competition / Antitrust Law
- **Legal Media Group's Guide to the World's Leading Competition and Antitrust Lawyers/Economists**
Recognized as a leading lawyer in Competition and Antitrust
- **Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada**
Ranked, Competition
- **Lexpert Special Edition - Canada's Leading Litigation Lawyers**
Recognized as one of Canada's leading litigators
- **Lexpert Special Edition - Canada's Leading Finance and M&A Lawyers**
Recognized as a leading Finance and M&A lawyer
- **Lexpert Zenith Award**
Recognized as a leading woman lawyer in Canada
- **Who's Who Legal: Competition**
Recognized globally as a leading Competition lawyer in Canada

Recent Insights, News & Events

- **Melanie Aitken on Public Service as a Competitive Edge**
In the News / May 10, 2021
Melanie Aitken is featured in Canadian Lawyer on how the opportunity of public service was both a career highlight and translated into a competitive edge in her legal career.
- **159 Lawyers in Canadian Legal Lexpert Directory**
Announcements / April 29, 2021
159 Bennett Jones lawyers have been ranked in the annual edition of The Canadian Legal Lexpert Directory. 26 are in the highest category of Most Frequently Recommended.
- **36 Bennett Jones Lawyers in Lexpert's Special Edition on Finance and M&A**
Announcements / April 16, 2021
Thirty-six Bennett Jones lawyers are ranked in the 2021 Lexpert Special Edition – Canada's Leading Finance and M&A Lawyers.
- **Bennett Jones Acting for CP Railway in US\$29-billion Combination with Kansas City Southern**
Announcements / March 22, 2021
Bennett Jones is acting as Canadian counsel for Canadian Pacific Railway in its combination with Kansas City Southern to create the first rail network connecting the United States., Mexico, and Canada. Under the merger agreement, CP has agreed to acquire KCS in a stock and cash transaction representing an enterprise value of approximately US\$29 billion. The transformative transaction has the unanimous support of both boards of directors.
- **Bennett Jones in Chambers Global 2021**
Announcements / February 22, 2021
Bennett Jones has 51 lawyer rankings in 18 practice areas in Chambers Global 2021. Chambers and Partners is an independent research company operating across 200 jurisdictions delivering detailed

rankings and insight into the world's leading lawyers.

■ **Bennett Jones Highly Recommended in Global Competition Review 100**

Announcements / December 17, 2020

Bennett Jones has once again been ranked as Highly Recommended in Global Competition Review's 2021 edition of the GCR 100, a comprehensive listing of the world's top competition practices.

■ **Twenty-Five Bennett Jones Lawyers in Lexpert/ALM 500 Directory**

Announcements / December 17, 2020

Twenty-five Bennett Jones lawyers are recognized in the 2021 Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada.

■ **40 Bennett Jones Lawyers in Lexpert's Special Edition on Litigation**

Announcements / November 27, 2020

Forty Bennett Jones lawyers are ranked in the 2020 Lexpert Special Edition – Canada's Leading Litigation Lawyers. This annual feature profiles Lexpert-ranked lawyers in business-related litigation and appears in the December issue of the Globe and Mail's Report on Business Magazine.

■ **Bennett Jones Advises on \$3.2-Billion Agreement to Acquire K+S Americas Salt Business,**

■ **Including Morton Salt and Windsor Salt**

Announcements / October 05, 2020

Bennett Jones served as Canadian counsel to Stone Canyon Industries Holdings LLC (SCIH) and Kissner Group Holdings in their agreement to acquire K+S Aktiengesellschaft's North and South American salt [...]

■ **Melanie Aitken on Competition in the Digital Economy**

In the News / June 19, 2020

Melanie Aitken comments in a Financial Post story on how Canada's federal government is studying how Australia and France are levelling the playing field between news producers and global online [...]

■ **Bennett Jones Celebrates International Women's Day 2020**

Announcements / March 06, 2020

The women at Bennett Jones reflect on living fulfilling lives and having successful careers in our video honouring International Women's Day 2020.

■ **Bennett Jones in Chambers Global 2020**

Announcements / February 13, 2020

Bennett Jones has 50 lawyer rankings in 17 practice areas around the world in Chambers Global 2020.

■ **Melanie Aitken on BNN Bloomberg on Antitrust Concerns in U.S. Election**

Announcements / January 30, 2020

Melanie Aitken appears live on BNN Bloomberg to discuss some of the big antitrust issues surfacing in the U.S. presidential election.

■ **Bennett Jones Named to GCR 100**

Announcements / January 20, 2020

Bennett Jones has once again been ranked as Highly Recommended in Global Competition Review's 2020 edition of the GCR 100.

■ **Twenty-three Bennett Jones Lawyers in Leading 500 in Canada**

Announcements / December 13, 2019

Twenty-three Bennett Jones lawyers are recognized in The 2020 Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada.

■ **Bennett Jones: Canada's Leading Litigation Lawyers**

Announcements / November 29, 2019

Thirty-five Bennett Jones lawyers are ranked in the Lexpert special edition of Canada's Leading Litigation Lawyers.

■ **Bennett Jones is Top-Tier in The Legal 500**

Announcements / November 18, 2019

Bennett Jones has been recommended as a Top-Tier firm in 5 practice areas in The Legal 500 Canada 2020 guide.

■ **Melanie Aitken on the Canadian Competition Bureau and Big Tech**

In the News / July 24, 2019

Melanie Aitken comments in the Toronto Star on the Canadian Competition Bureau saying it is closely monitoring big technology firms to ensure they do not engage in anti-competitive conduct, as regulators around the globe crack down on the world's leading digital companies.

■ **Melanie Aitken on BNN Bloomberg on U.S. Calls to Break Up Big Tech**

In the News / July 22, 2019

Melanie Aitken appeared live on BNN Bloomberg to discuss recent calls in the U.S. to break up big tech.

■ **Melanie Aitken and James Comey on Regulating Big Tech**

Announcements / June 11, 2019

Melanie Aitken teamed with former FBI Director James Comey at C.D. Howe Institute's Regent Debate to debate whether or not governments should regulate big tech to protect the public interest. They faced off against David Plouffe and Robert Atkinson. David was Barack Obama's campaign manager and served as a White House senior advisor. Robert is president of the Information Technology and Innovation Foundation in Washington, D.C. The sold-out event was held at The Carlu in Toronto. Hugh MacKinnon was on the 10-person jury. The Regent Debates are a marquee platform for serious discussion on policy issues that are essential to Canada's future.

■ **C.D. Howe Regent Debate on Big Tech with James Comey**

Speaking Engagements / June 11, 2019

Melanie speaks at the C.D. Howe Institute's next Regent Debate on whether or not governments should regulate big tech to protect the public interest.

■ **Melanie Aitken on BNN Bloomberg on Regulation of Big Tech**

In the News / May 28, 2019

Melanie Aitken appeared live on BNN Bloomberg to speak on big tech regulation in the market place. She was asked if laws need to change to keep up and said that regulation always has a tradeoff.

■ **Bennett Jones in Chambers Global 2019**

Announcements / February 14, 2019

Bennett Jones has 48 lawyer rankings in 15 practice areas around the world in Chambers Global 2019.

■ **Bennett Jones Named to GCR 100**

Announcements / January 25, 2019

Bennett Jones has been ranked as Highly Recommended in Global Competition Review's 2019 edition of the GCR 100. This comprehensive listing of top competition practices provides a quantitative and qualitative analysis of the law firms and economic consultancies doing the most important antitrust work around the world.

■ **Bennett Jones—Lexpert's Leading Canadian Litigation Lawyers**

Announcements / November 30, 2018

27 Bennett Jones lawyers are ranked in the Lexpert special edition of Canada's Leading Litigation Lawyers. The issue profiles Lexpert-ranked lawyers in business-related litigation and appears in December's Report on Business Magazine in the Globe and Mail.

■ **Bennett Jones in Who's Who Legal: Canada 2018**

Announcements / November 01, 2018

64 Bennett Jones lawyers are ranked in 19 areas of Who's Who Legal: Canada 2018. The guide identifies the foremost legal practitioners in multiple areas of business law for their annual publication.

■ **Melanie Aitken on BNN on Bread Price-Fixing: More to Come?**

In the News / March 07, 2018

Melanie Aitken appears live on BNN to provide an update on Canada's bread price-fixing scandal—and why more details will likely continue to emerge as other participants look to strike a deal with the

Competition Bureau. She also says it is possible makers of other consumer products could be engaging in similar price-fixing conspiracies.

- **Bennett Jones in Chambers Global 2018**

Announcements / February 15, 2018

Bennett Jones has 49 lawyer rankings in 15 practice areas around the world in Chambers Global 2018. This includes:

- **Report Shows Global Shift Towards Behavioural Remedies**

Articles / February 09, 2018

Melanie Aitken is quoted on behavioural remedies in Janith Aranze's article "Report shows global shift towards behavioural remedies" from Global Competition Review.

- **Melanie Aitken on CTV National News on Bread Price-Fixing**

In the News / January 31, 2018

Melanie Aitken appears on CTV National News to comment on Canada's bread price-fixing scandal. She says that while Loblaw Cos. Ltd. and George Weston Ltd. have gained immunity from prosecution because they agreed to plea, it's different for the other five companies involved. Everybody else who is ultimately charged, and if convicted, faces both fines and in the case of individuals the potential for imprisonment.

- **Melanie Aitken on BNN Loblaw Price Fixing Case**

In the News / December 20, 2017

Melanie Aitken appears live on BNN to comment on the potential scenarios that might lie ahead for the Competition Bureau's investigation into the bread price-fixing case amongst Canada's grocers. Melanie says so far, Loblaw has been handling the case in a savvy manner.

- **Interesting Times in Competition Policy**

Blog / November 24, 2017

In the United States and internationally, some unfamiliar questions are being asked about the role of competition policy in the global economy. At the inaugural GCR Live Women in Antitrust conference [...]

- **Melanie Aitken in Law Times on Working with Canada's Competition Bureau**

In the News / September 25, 2017

Melanie Aitken comments in Law Times on how companies can best work with Canada's Competition Bureau in a landscape of increasingly large multi-national deals. An important part of the approach is co-operating early with the Bureau. Melanie says if the context is that the American company has information and is wondering if it should share it with the Canadian bureau, her advice would be to do so.

- **Melanie Aitken on BNN on Canada-U.S. Trade Talks**

In the News / June 15, 2017

Melanie Aitken appeared live on BNN for a one-on-one interview on how Canada can best position itself in trade talks on revising the NAFTA. She says that aligned mutual self-interest between should drive talks, as both countries could benefit from updates to the agreement. She also discussed the importance of support from government and business leaders in Canada and the U.S., as well as support at the state level by members of Congress. Melanie is a board member of the Canada-America Business Council.

- **Public Mergers and Acquisitions in Canada**

Guides / May 10, 2017

Canadian public merger and acquisition transactions in 2016 (in-bound and out-bound) comprised over C\$400 billion in value with at least one-third of the transactions in Canada being fueled by foreign buyers. The second edition of the guide provides an overview of the current Canadian legal system for anyone contemplating a public merger and acquisition transaction in Canada. It describes, among other things, acquisition techniques, deal strategy and tactics, minority shareholder rights, directors' duties, regulatory approvals, cross-border considerations and tax and employment matters. The new edition of the guide is particularly timely in light of significant changes to Canada's take-over bid regime over 2016/2017.

- **Four Bennett Jones Practices Ranked Band 1 by Chambers Global 2017**

Announcements / March 16, 2017

The 2017 Chambers Global Rankings are out and Bennett Jones is once again noted as a top-ranked law firm. Forty-nine lawyers in 25 practice areas are recognized in the publication. Of particular note are the four practices and nine lawyers recognized in Band 1.

■ **Melanie Aitken in Law Times on Competition Law and Cross-Border Deals**

In the News / September 22, 2016

Melanie Aitken comments in Law Times on the competition law challenges in getting regulatory approval for cross-border mergers. This includes her insights on the efficiencies defence in the Competition Act. Section 96 is a provision that is unique to Canada.

■ **Global Competition Review: Annual Brussels Conference and Melanie Aitken**

In the News / July 04, 2016

Global Competition reports on its upcoming flagship GCR Live 8th Annual Brussels Conference where Melanie Aitken will be a speaker on the first day. She will appear on a panel that will look at whether the current environment is one of harder deals and tougher regulators. The Conference will also look at the potential impact of Brexit on competition law and policy.

■ **Melanie Aitken on Bloomberg TV Canada**

In the News / January 27, 2016

Melanie Aitken appeared live on Bloomberg TV Canada to provide her insights on competition and foreign investment in the Canadian economy.

■ **GCR Live 3rd Annual Event**

Speaking Engagements / September 18, 2015

Melanie Aitken co-moderates the keynote address, "Current Challenges in U.S. Antitrust Enforcement," at the Global Competition Review event in New York.

■ **Is the Competition Bureau Targeting You? New IP Enforcement Guidelines**

Blog / June 12, 2015

On June 9, 2015, the Canadian Competition Bureau released updated draft Intellectual Property Enforcement Guidelines (IPEGs) for public comment. The comment period is open until August 10, 2015. It is [...]

■ **Melanie Aitken in the Globe and Mail on Competition Bureau's Investigation of Google**

In the News / May 14, 2015

In the Globe and Mail article by Simon Doyle, "Google's Rivals Look to Help Canadian Probe Into Search Giant," Melanie Aitken comments on the Competition Bureau's decision to seek experts on search engines and online marketing for their investigation into Google's advertising and search practices in Canada.

■ **The Compliance Conundrum in the Electronic Age: A Canadian Perspective**

Articles / April 15, 2015

Melanie L. Aitken and Emrys Davis, The Compliance Conundrum in the Electronic Age: A Canadian Perspective (April 15, 2015) (published at the ABA 2015 Antitrust Spring Meeting).

■ **Bennett Jones Receives Top Honours in Four Practice Areas by Chambers Global Rankings**

Announcements / March 18, 2015

The 2015 Chambers Global Rankings have been published and once again Bennett Jones LLP remains one of the top ranked law firms in the country, with 18 rankings out of 28 categories and 60 individually ranked lawyers.

■ **Melanie Aitken Interviewed by BNN on Oil and Gas Markets**

In the News / January 20, 2015

On the Business News Network, Melanie Aitken discusses the challenges to foreign investment in oil and gas in Canada.

■ **Oil and Gas Summit 2015: Fundamentals, Financials, Prices, and Politics**

Speaking Engagements / January 19, 2015

Melanie Aitken presents "Challenges to Foreign Investment in Oil and Gas Markets in Canada: How to Understand and Manage the New Uncertainties" at the Oil and Gas Summit 2015: Fundamentals,

■ **Melanie Aitken in Canadian Lawyer on Club Coffee Complaint**

In the News / November 17, 2014

In the Canadian Lawyer article by Jennifer Brown, "Bitter Battle Brewing Over Coffee Cup Format," Melanie Aitken comments on the complaint Club Coffee filed with the Competition Bureau of Canada about Keurig Green Mountain's K-cup format.

■ **Enforcement, Antitrust Policies Highlight ABA Antitrust Fall Forum**

Speaking Engagements / November 06, 2014

Melanie Aitken speaks on "Criminal Antitrust Outlook" at the American Bar Association's Antitrust Fall Forum in Washington, D.C.

Melanie Aitken Comments on the Canadian Competition Bureau Quoted by Global

■ **Competition Review**

In the News / September 18, 2014

In the Global Competition Review article by Harry Phillips, "Aitken Questions Canada Advocacy Drive, Readiness For Challenge," Melanie Aitken's comments are quoted from the Canadian Bar Association 2014 Annual Competition Law Fall Conference Program.

■ **2014 Annual Competition Law Fall Conference Program**

Speaking Engagements / September 17, 2014

Adam Kalbfleisch is the 2014 Fall Conference Chair. Melanie Aitken participates in the panel, "Top 10 Changes That Should Be Made To Canadian Competition Law and Institutions" on September 18, 2014. Sheridan Scott moderates the panel, "Hot Issues In Intellectual Property" on September 19, 2014.

Melanie Aitken in Bloomberg BNA Antitrust & Trade Regulation Report on Canada

■ **Competition Bureau Merger Reviews**

In the News / August 29, 2014

In the Bloomberg BNA Antitrust & Trade Regulation Report article by Peter Menyasz, "Canadian Lawyers See Eastlink Case As Confirmation of Bureau's Approach," Melanie Aitken comments on the Canadian Competition Bureau's intervention in Eastlink's proposed acquisition of Bruce Telecom.

■ **Biennial IBA Latin American Regional Forum Conference 2014**

Speaking Engagements / March 12, 2014

Melanie Aitken speaks during the Antitrust session of the IBA's Biennial IBA Latin American Regional Forum Conference in Conrad Punta del Este, Uruguay.

■ **Melanie Aitken in Lexpert on New Commissioner of Competition**

In the News / March 01, 2014

In the Lexpert article, "Competitive Changes," Melanie Aitken comments on John Pecman's appointment as Commissioner of Competition for Canada's Competition Bureau.

Ontario Bar Association's Institute 2014 - Canadian Corporate Counsel Association -

■ **Ontario Chapter**

Speaking Engagements / February 07, 2014

At, "In-House Compliance Programs - What Every Corporate Counsel Should Know," for the Ontario Bar Association's Institute 2014 at the Westin Harbour Castle Conference Centre in Toronto, ON, Melanie Aitken presents "Navigating Competition Compliance Issues" during the session, "A Smorgasbord of Key Compliance Topics".

Melanie Aitken in Bloomberg BNA Antitrust & Trade Regulation Report on Canada

■ **Competition Bureau(1)**

In the News / February 01, 2014

In the Inside Counsel article by Chris DiMarco, "The Northern Border: Dispelling Fears About The Investment Canada Act," Melanie Aitken comments on The Investment Canada Act.

Midwinter Meeting of the ABA's Mergers and Acquisitions Committee of the Business Law

■ **Section**

Speaking Engagements / January 31, 2014

At the midwinter meeting of the ABA's Mergers and Acquisitions Committee of the Business Law Section, Melanie Aitken Chairs the panel, "New Challenges to International Merger Filings".

■ **Bennett Jones Works on Top Two Deals of the Year**

Announcements / January 16, 2014

In their ranking of the top ten deals of 2013, Lexpert Magazine places Sobeys' acquisition of Safeway at the top. Bennett Jones represented Safeway before the competition Bureau, the necessary step to closing the deal.

■ **Melanie Aitken receives Zenith Award: Celebrating Women Leaders in the Legal Profession**

Announcements / September 25, 2013

TORONTO – At the 2013 Zenith Awards in Toronto, Melanie Aitken was recognized with a group of her peers for her leadership in the legal profession.

The Changing Regulation of Canadian Oligopolies: Complementary Enforcement Roles for

■ **Section 90.1 and Joint Dominance**

Articles / April 09, 2013

Melanie L. Aitken and Emrys Davis, The Changing Regulation of Canadian Oligopolies: Complementary Enforcement Roles for Section 90.1 and Joint Dominance, (April 9, 2013) (published at the ABA 2013 Antitrust Spring Meeting).

■ **Bennett Jones and Melanie Aitken Mentioned in The American Lawyer**

In the News / January 16, 2013

In the American Lawyer article, "Bennett Jones Stakes Claim as First Large Canadian Firm to Open in DC," Brian Baxter reports on the opening of a new Bennett Jones office in Washington and the rehiring of former Commissioner of Competition, Melanie Aitken, as the office's managing principal and co-chair of the firm's competition, antitrust and foreign investment practice.

■ **Melanie Aitken's Return to Bennett Jones in the Global Competition Review**

In the News / January 16, 2013

In the Global Competition Review article, "Aitken Opens DC Office for Bennett Jones," Ron Knox reports that Melanie Aitken has rejoined Bennett Jones and will manage the firm's new office in Washington, D.C.

■ **Melanie Aitken in Canadian Lawyer Magazine on Return to Bennett Jones**

In the News / January 15, 2013

In the Canadian Lawyer article by Jennifer Brown, "Aitken Goes to Washington", Melanie Aitken comments on leaving the Competition Bureau and rejoining Bennett Jones to head the new Washington, D.C. office.

■ **Hugh MacKinnon and Melanie Aitken in the Deal Pipeline**

In the News / January 15, 2013

In the Deal Pipeline article by William McConnell, "Canada's Former Competition Chief Opens Washington Office," Bennett Jones Chairman and CEO Hugh MacKinnon and Melanie Aitken are quoted on the former Competition Commissioner's return to Bennett Jones.

■ **Hugh MacKinnon and Melanie Aitken in the Financial Post**

In the News / January 15, 2013

In the article, "Melanie Aitken to Run New Washington Office of Bennett Jones," the Financial Post quotes Chairman and CEO Hugh MacKinnon and Melanie Aitken on the former Competition Bureau Chief's return to Bennett Jones.

■ **Melanie Aitken Discusses Rejoining Bennett Jones on BNN**

In the News / January 15, 2013

On the BNN show, Market Sense, Melanie Aitken talks to the hosts about her former position as the Commissioner of Competition and on rejoining Bennett Jones to head a new office in Washington, D.C.

■ **Melanie Aitken's Return to Bennett Jones in Bloomberg Businessweek**

In the News / January 15, 2013

In the Bloomberg Businessweek article, "Former Canada Competition Watchdog Aitken Joins Law Firm," Theophilos Argitis reports on Melanie Aitken's return to Bennett Jones after stepping down as

EXHIBIT 6

**CANADIAN NATIONAL ANALYST CALL
TRANSCRIPT EXCERPTS
(APR. 20, 2021)**

20-Apr-2021

Canadian National Railway Co. (CNI)

CN and Kansas City Southern Merger Call

CORPORATE PARTICIPANTS

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

Rob Reilly

Executive Vice President & Chief Operating Officer, Canadian National Railway Co.

Sean Finn

Executive Vice President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

Ghislain Houle

Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

OTHER PARTICIPANTS

Chris Wetherbee

Analyst, Citigroup Global Markets, Inc.

Fadi Chamoun

Analyst, BMO Capital Markets Corp. (Canada)

Cherilyn Radbourne

Analyst, TD Securities, Inc.

Ken Hoexter

Analyst, BofA Securities, Inc.

Allison M. Landry

Analyst, Credit Suisse Securities (USA) LLC

Brian P. Ossenbeck

Analyst, JPMorgan Securities LLC

Scott H. Group

Analyst, Wolfe Research LLC

Brandon R. Oglenski

Analyst, Barclays Capital, Inc.

Thomas Wadewitz

Analyst, UBS Securities LLC

David Vernon

Analyst, Sanford C. Bernstein & Co. LLC

Jason Seidl

Analyst, Cowen & Co. LLC

Justin Long

Analyst, Stephens, Inc.

Konark Gupta

Analyst, Scotia Capital, Inc.

Bascome Majors

Analyst, Susquehanna Financial Group LLLP

Benoit Poirier

Analyst, Desjardins Securities, Inc.

Jeffrey Kauffman

Analyst, Vertical Research Partners

MANAGEMENT DISCUSSION SECTION

Operator: Good morning, and welcome to the CN Conference Call.

Please note that this event is being recorded. I would now like to turn the conference call over to Paul Butcher, Vice President of Investor Relations. Please go ahead.

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

So, good morning and thank you for joining us today on the conference call regarding CN's proposal to combine with Kansas City Southern.

With me today are JJ Ruest, our President and Chief Executive Officer; Ghislain Houle, Executive Vice President and Chief Financial Officer; Rob Reilly, Executive Vice President and Chief Operating Officer; and Sean Finn, Executive Vice President, Corporate Services and Chief Legal Officer.

Earlier this morning, CN issued a press release announcing our compelling superior proposal to combine with KCS. You may obtain a copy of this press release and the presentation that we will refer to on today's call on our website at www.cn.ca or www.connectedcontinent.com. This call is being webcast live and a replay will be available on the Investor Relations section of our website.

Before we begin, I would like to draw your attention to the forward-looking statements and additional legal information, which are available at the beginning of the presentation. As a reminder, today's conference call contains certain projections and other forward-looking statements within the meaning of the US and Canadian securities laws. These statements are subject to risks and uncertainty that may cause actual results to defer materially from those expressed or implied in these statements and are more fully described in our cautionary statement regarding forward-looking statements in our presentation.

At the end of the prepared remarks, we will conduct a Q&A session and we ask that you limit yourself to one question.

I will now turn the call over to JJ, our Chief Executive Officer.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

Well, thank you, Paul, and thank you all of you for joining us this morning. I am here with my team, who most of you are familiar with. We are a team with significant rail industry experience that is focused on excellence in operation, safety, the environment, technology, M&A and regulatory matter. Rob and I will walk you through the presentation and Ghislain and Sean will engage during the Q&A.

On page 5, as you all know by now, this morning, we announced a superior proposal to combine with KCS. The team is very excited about this announcement and what it means for the future of both companies, our stakeholders and the bright future of the industry. KCS is the ideal partner for us and at the right time.



CN's proposal represent a 21% premium to CP's offer and more than double the amount of cash per share resulting in not just a greater value, but also greater certainty of value for KCS shareholders. KCS shareholders will receive \$200 in cash and 1.059 shares of CN common stock for each KCS common share. KCS preferred shareholders would continue to receive \$37.50 in cash for each preferred share. KCS shareholders are expected to own 12% of the combined company. The stock consideration will also allow KCS shareholders to participate in CN's dividend, as well as the upside of a stronger, more diverse company with greater scale than the company that would otherwise be produced by the combination of KCS and CP.

Our superior access to the capital market, stronger balance sheet, lower costs of financing and ability to realize superior and higher quality synergies allow us to make a more attractive offer to KCS shareholders while expecting to generate attractive accretion to our CN shareholders. These higher quality synergies and new revenue opportunities are driven by the significant [ph] environmental (00:04:16) benefit tied to the conversion of long haul truck to the more cost effective rail intermodal supply chain.

We also believe that our proposal present a lower execution risk than a competing offer. We have finalized a \$19.3 billion of financing commitment from JPMorgan and RBC to support our proposal. Additionally, our proposal is not subject to CN shareholders' approval, removing a condition as compared to the CP transaction.

We see significant value in KCS, in its team, in its experience and its network, and we intend to build and strengthen the joint business through this transaction. To that end, we intend to continue operating the KCS business in United States and Mexico under the KCS name and brand, and we would establish Kansas City as the headquarter of the combined company US operation.

Overall, we are the better bid, the better partner, the better railway and the best solution for KCS, and for the North American economy.

On page 6, the combination of CN and KCS would create a premium railway for the 21st century, connecting ports of the United States, Mexico, and Canada, to facilitate trade and to power economic prosperity across North America. Our combination with KCS would create a company with broader reach, greater scale and with the ability to connect more customers to more rail destination and port, with robust single owner, single operator service. By competing head to head at lower cost with safer service and better fuel efficiency, from Mexico to the heartland of America, the result will be a safer, faster, cleaner, and stronger railway than any other proposed combination for KCS. In addition, CN has recently undertaken major new ESG initiative that will reinforce our status as a leader and we will bring those to the KCS business as well.

Lastly, based on our conservative and preliminary analysis of publicly available information, the combined company is expected to achieve EBITDA synergies, approaching \$1 billion with the vast majority coming from additional revenue opportunities. We anticipate the transaction will be accretive to CN non-GAAP diluted earning per share in the first full year following termination of the voting trust and CN assuming control of KCS, and double-digit accretion upon full realization thereafter.

The strong cash flow generation of the combined company would allow the company to rapidly delever following the close of the transaction. We are confident in our ability to achieve all necessary regulatory approval to close into our voting trust and then ultimately receive approval to combine with KCS.

We'll go in slide 7. As I've mentioned before, with safer service, better fuel efficiency on key routes from Mexico to the heartland of America, the result would be a safer, faster, cleaner and stronger railway. CN bring its extensive operating expertise as a pioneer precision scheduled railroading with our premier three-coast access. KCS will

QUESTION AND ANSWER SECTION

Operator: Thank you. At this time, we will be conducting a question-and-answer session. [Operator Instructions] Your first question comes from the line of Chris Wetherbee with Citi. Chris, your line is open.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

Hey. Good morning, Chris.

A

Chris Wetherbee

Analyst, Citigroup Global Markets, Inc.

Good morning, guys. Good morning. So, maybe I can ask a question to start on sort of the bigger picture thought here. So, JJ, you and I talked in the past about potential M&A and you've always felt that that was likely down the road. In the past, you've talked a little bit about eastern rails. What sort of mix case you jumped the line in terms of your preference to be the right rail for you now, particularly considering that there's another offer out there?

Q

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

So, thank you, Chris, for the question. So, definitely at this point, the board of KCS has decided to crystallize the value for KCS shareholders and the company is now available for change in transactions. So, we want to partner. It's not very often that a Class I railroad or a large property become available. And we've always had a vision of combining the two company, what it could do for North America, and especially at this time. At this time, we're about to see the economic recovery post-COVID. The USMCA or some of you refer to NAFTA has been renewed. And that has definitely a tailwind, rising tide for the North American economy north-south.

A

There's also the near-shoring in Mexico that are looking better. The labor costs in the Chinese coastal province has gone up to the point where manufacturing in Mexico makes more and more sense. And by the time you add all these things, what's really missing in North America at this point is really a true north-south continental railroad, a premium railroad for this decade, for the 21st century, a railroad that can really rival with truck. And as Rob mentioned, a lot of the freight today that moves in the north-south is only getting a partial ride by rail, or it's actually moving all truck. And these are huge distance and [ph it's embedded (00:21:00) in a scale where CN has very strong intermodal, where CN has very strong fuel efficiency and putting together a network for the next decade and the 21st century that would connect the USMCA, NAFTA, countries has a lot of value. And that's why you see the value of the acquisition that we can create and also that's why we can justify the offer we're making this morning to KCS.

So, there's a bright future out there for a continental railroad that connects north-south and it's in that mind that we're approaching it. The why now, the board of KCS has decided that if you want to crystallize the value for their shareholders, therefore the opportunity is now.

Chris Wetherbee

Analyst, Citigroup Global Markets, Inc.

Okay. That's helpful.

Q

Good morning, Ken.

Ken Hoexter

Analyst, BofA Securities, Inc.

Q

Hi. Good morning. Just a big part of the mergers we've heard about have been about enhancing competition. Can you talk about your thoughts on the environment and then walk through the process?

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Yes. On the regulatory process, Sean can give you some color into that. Sean?

Sean Finn

Executive Vice President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Sure. Thanks a lot, Ken. Clearly, it's about enhancing competition and being pro-competitive. This is a growth story and very much with the expertise of my colleagues and our experience in having done several acquisitions that required STB approval. We're comfortable that we can make the case showing how one of the smallest Class I railway joining CN will provide additional choices to shippers and customers across North America and in the US. And that's ultimately a test the STB will look at is there enhanced competition. And what we've shown in the past that when we have the issues at the STB application and we sit down with the shippers and the customer associations and talk about what's required. We have taken steps to mitigate both from a competitive point of view when required, but also from an environmental assessment point of view.

And on the regulatory risk per se overall, it is not any worse or any more complicated than what the CP is proposing. It's exactly the same process with a voting trust and ultimately down the road a control approval by the STB. One major difference is that CN does not require a shareholder approval, contrary to CP in their transaction. So in this case, the exactly same STB structure and STB risk, no different. Both the voting trust and then control and secondly, no shareholder proposal which we think makes this transaction or this bid a better proposal on the basis that there is less execution risk.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Thank you.

Ken Hoexter

Analyst, BofA Securities, Inc.

Q

Thank you.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Thank you, Ken.

Operator: Your next question comes from the line of Allison Landry with Credit Suisse. Allison, your line is open.

Allison M. Landry

Analyst, Credit Suisse Securities (USA) LLC

Q

Good morning. Thanks.

Brandon R. Oglenski

Analyst, Barclays Capital, Inc.

Q

Hey. Good morning, JJ. Just want to ask very quickly with the focus on financial returns, I understand this could be a great operational asset for you. But paying the right price matters down the road to get returns out of it. So, can you talk to pretty lofty valuation that you're bidding at here?

Ghislain Houle

Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

Yeah.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

So, Ghislain will take it.

Ghislain Houle

Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

Yeah, Brandon. Thanks for the question. Listen, when we run the financial model and again, we're working with some of the publicly available information as we speak, we're more or less – on a return standpoint, more or less in line with our internal threshold. And as you know our internal ROI threshold at CN on new projects is in the range of about 12%. So we're in that range. Obviously, as JJ mentioned, we haven't engaged with the team of KCS. So we need to firm up those numbers as hopefully as we move forward. But this is what we're looking at as we speak.

Brandon R. Oglenski

Analyst, Barclays Capital, Inc.

Q

Thank you.

Ghislain Houle

Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

A

Thanks for the question, Brandon.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Thank you.

Operator: Your next question comes from the line of Tom Wadewitz with UBS. Tom, your line is open.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Good morning, Tom.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Hi. Yes. Yeah. Good morning. Congratulations on the bid as well. It's an aggressive move. Interesting to see. How do you think about the import – well, I guess, two questions. How do you think about the importance of voting

EXHIBIT 7

**CN Q1 2021 EARNINGS CALL
TRANSCRIPT EXCERPTS
(APR. 26, 2021)**

26-Apr-2021

Canadian National Railway Co. (CNI)

Q1 2021 Earnings Call

CORPORATE PARTICIPANTS

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

Rob Reilly

Executive Vice President & Chief Operating Officer, Canadian National Railway Co.

Ghislain Houle

Chief Financial Officer & Executive Vice President, Canadian National Railway Co.

Sean Finn

Secretary, Chief Legal Officer & EVP, Canadian National Railway Co.

OTHER PARTICIPANTS

David Vernon

Analyst, Sanford C. Bernstein & Co. LLC

Scott H. Group

Analyst, Wolfe Research LLC

Cherilyn Radbourne

Analyst, TD Securities, Inc.

Thomas Wadewitz

Analyst, UBS Securities LLC

Allison M. Landry

Analyst, Credit Suisse Securities (USA) LLC

Kenneth Hoexter

Analyst, BofA Securities, Inc.

Brian P. Ossenbeck

Analyst, JPMorgan Securities LLC

Jason Seidl

Analyst, Cowen and Company

Justin Long

Analyst, Stephens, Inc.

Chris Wetherbee

Analyst, Citigroup Global Markets, Inc.

Jonathan Chappell

Analyst, Evercore ISI

Brandon R. Oglenski

Analyst, Barclays Capital, Inc.

Amit Mehrotra

Analyst, Deutsche Bank Securities, Inc.

Benoit Poirier

Analyst, Desjardins Securities, Inc.

**Brian P. Ossenbeck***Analyst, JPMorgan Securities LLC*

Q

Hey, good afternoon. Thanks for taking the question. Just had a quick one on the end markets. Can you just remind us what impact do you think you'll see from the ELD mandate when it becomes effective in Canada mid this year? We've heard some concerns about the availability of devices being certified. Is that really something that you're focused on having an impact on some of your end markets that will overlap with trucking?

Jean-Jacques Ruest*President, Chief Executive Officer & Director, Canadian National Railway Co.*

A

So, maybe I can pick this one up. Most trucking firm in Canada do cross borders have to have the equipment already, because that's what is a legal requirement in the United States. So, then you left with only the fleet that's only running in Canada that has to meet that mandate by midyear. So, the impact is, I would say, I would qualify is slightly positive, because already a good portion of the fleet has to be converted, because a number of equipment move cross border. So, the impact is a slight positive, but I think it's coming up at a time when the economy is going to be strong. So, really the economy is going to be a bigger factor than the ELD implementation. Thank you.

Brian P. Ossenbeck*Analyst, JPMorgan Securities LLC*

Q

All right. Got it. Thanks, JJ.

Operator: And your next question comes from the line of Jason Seidl with Cowen.

Jean-Jacques Ruest*President, Chief Executive Officer & Director, Canadian National Railway Co.*

A

Hi, Jason.

Jason Seidl*Analyst, Cowen and Company*

Q

Thank you very much. Hey, JJ and team. Thanks for taking my question. I want to talk on any of the customer overlap that may exist and maybe you could walk us through some of your options on how to sort of plicate the STB, and the customers going forward with the deal.

Jean-Jacques Ruest*President, Chief Executive Officer & Director, Canadian National Railway Co.*

A

So, the overlap that is well known is between Baton Rouge and New Orleans where both CN and KCS has a parallel line. And we know the detail of that, and we think we can definitely solve that. As Sean said earlier to the one problem, none of them are insolvable and we will resolve them. And Rob you want to are there so called overlap?

Rob Reilly*Executive Vice President & Chief Operating Officer, Canadian National Railway Co.*

A

Yeah. I think you hit it. The overlap, just like we said on Tuesday, is really between Baton Rouge and New Orleans, where we do have a few customers that their options will go from two to one. We knew that going in, and we said that. Again that represents less than 1% of the combined railroads network. So, we will remedy it. There's



number of things you can do with that including divestiture of the line, but we'll cross that bridge when the time comes, but we will handle it.

Other places that are out there that have been mentioned. I'll just go through them real quick Jackson, Mississippi, there is no two-to-one. East St. Louis, no two-to-one. Springfield, Illinois no two-to-one. Council Bluffs, no two-to-one. Mobile, Alabama no two-to-one. In fact the port of Mobile Alabama has sent in their support for our proposed merger, so they get it.

If for some reason, there is another issue out there, we'll work with our customers to remedy that as we always have. And as JJ said, it's important to note that in a little over three business days, over 500 letters of support, that's significant in terms of what we're seeing out there. Thanks for the question.

Jason Seidl

Analyst, Cowen and Company

Q

Appreciate the clarification.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Hopefully, this helped clarify. Everything has been said on this in the last week, so thank you for the question, Jason. Next question.

Operator: Your next question comes from the line of Justin Long with Stephens.

Justin Long

Analyst, Stephens, Inc.

Q

Thanks and good afternoon. I wanted to ask about the 75 locomotive orders that you mentioned. I think you got approval for that from the board. Any color you can give on the expected timing of those units, and when they should be delivered? And is this an order that's contingent on the merger being approved, or is this predicated on just the standalone business, and the growth you're expecting?

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

So, I'll pass it on to Rob, but just to clarify the approval of the board for the grain fleet expansion, and the locomotive fleet expansion took place before we made the offer to KCS. Rob?

Rob Reilly

Executive Vice President & Chief Operating Officer, Canadian National Railway Co.

A

Yeah. That's exactly right. It had nothing to do with the merger, and does not have anything to do with the merger. It's really based on growth, and growth prospects we see over the next 12 to 24 months. In terms of timing, we expect to get roughly 25 of those here in the second half of this year, the other 50 first half of next year. There could be some variability. If volume is bigger than that. We could post some of those forward, but that's about what will look like in terms of the timing.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A



small pie. We're looking for a bigger pie and therefore asset changing with other railroad as well as competing much harder with truck which obviously what we created now as a premier railroad of the 21st century focused on the economy ahead.

The economy ahead of us is going to be much more related to consumers and to intermodal, all are less reliant on thermal coal and crude has been good and bad at times. Crude is too volatile to actually do a merger of this size. And so, I mean, our view is always from the beginning, this is pro competition, it's to create new product, it's about growth and it's about creating reason for freight shipper to use the rail network. Rob, you want to add?

Rob Reilly

Executive Vice President & Chief Operating Officer, Canadian National Railway Co.

A

Yeah, you nailed it. I think you hit on all the key points. I just reemphasize as JJ said, we plan on keeping the gateways open. There's no plans to shut those, so as far as your question on the airline that's our plan.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Yeah. And just to add, when you look at the ports, Mobile, New Orleans, Montreal, Quebec City, Halifax, Vancouver, Rupert, Lazaro Cardenas' Veracruz, all these ports with this combination can really connect to even more indolent market. You could connect St. Louis, Memphis, Kansas City to all three coasts. Transatlantic trade to Kansas City, South American tolls to Kansas City coming from the West as well you could potentially give an opportunity again for Lazaro Cardenas to potentially be an option for those to import product in Houston and or export product from Houston back to Asia.

When you look at the map, you got to look at what you could do to actually enhance the economy and enable something that was put together with a lot of effort USMCA, enabled the continent also to do more it's way within itself. You have now the content of a finished vehicle North America requires the higher content made from North America so that means more product, more parts moving within the continent, very long haul and that's what this combination is all about is to support and enable the economy ahead, no intention of reducing competition or closing gateway.

Brandon R. Oglenski

Analyst, Barclays Capital, Inc.

Q

Thank you, JJ.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Thank you.

Operator: And your next question comes from the line of Amit Mehrotra with Deutsche Bank.

Amit Mehrotra

Analyst, Deutsche Bank Securities, Inc.

Q

Thanks for letting me ask the question. JJ, I want to ask a previous question slightly in different way if I could, so bear with me for a second. I mean you and the team have obviously done a lot of work, offered a compelling proposal I think that's undeniably, but at the end of the day the outcome is quite binary. And what I was hoping, you could help us with is, how CNI is impacted by a potential CP, KCS merger, both I guess with respect to the



competitive implications for CNI and then also there's an outcome like that necessitate the need for your company and the CNI or to pursue other acquisition opportunities to counterbalance that competitive implication.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

So thanks for the question, so that's really a question for later, it is something we have been talking about obviously for the last many, many years as to the so-called endgame. I'll focus really is the opportunity at hand. The board of KCS had decided that they are willing to partner with the end of the railroad, a strategic partner and CN, from the very beginning of when we got privatized the first thing that we did was made an acquisition early on and beyond Central we had a marketing alliance with KCS and then early days we have been focused on was at that time known as NAFTA.

NAFTA has now been renewed with somewhat differently, but a lot of the quite NAFTA attraction was still there today. So that's really the focus we have. If this doesn't happen then we will see at that time but there is a lot of value and we believe as Sean was saying earlier that we can resolve this different issues as they come and that's what we're focused on right now, but just look at the CN networks the way it is today with three coasts huge amount of potential just standalone, just remember when we started 25 years ago the company was nowhere where it is today.

We build it up over 17, 18 different acquisitions, big and small. We've built it up organic growth and that is always be the case. We're very nimble and we are going to keep doing that. Right now we're focusing on one specific, the KCS and NAFTA railroad, USMCA railroad, it doesn't mean that our future is any different long-term. We have a bright future, no matter what, but we think that this is the time to do this one transaction first time since I joined CN that actually KCS is actually willing to merge with some another railroad, so we will jump on that.

Amit Mehrotra

Analyst, Deutsche Bank Securities, Inc.

Q

Okay, very good. Thank you. Best of luck.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Thank you.

Sean Finn

Secretary, Chief Legal Officer & EVP, Canadian National Railway Co.

A

JJ, if I may just I wanted to be clear that when we talked about the voting trust before clearly our application, there is no date yet for the KCS shareholder vote but our application today we're looking to have, our voting trust approved on the same timeline as CP's voting trust the same standards and the same criteria and that will be done prior to the voting trust of KCS. It might have a voting trust by the end of May or June and while presumptuous I'm assuming that's what it could play [indiscernible] (55:06), but clearly want to be clear that we want to ensure that the FTB rules on both voting trust prior to the KCS shareholder vote later this year.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Very important point, thank you, Sean.

EXHIBIT 8

**CN VIRTUAL FIRESIDE CHAT
HOSTED BY TD SECURITIES
TRANSCRIPT EXCERPTS
(MAY 5, 2021)**

Virtual Fireside Chat hosted by TD Securities

Company Participants

- Cherilyn Radbourne, Analyst
- Jean-Jacques Ruest, President, CEO & Director
- Paul Butcher, Vice-President of IR
- Sean Finn, EVP of Corporate Services, Chief Legal Officer & Corporate Secretary

Presentation

Cherilyn Radbourne {BIO 4836137 <GO>}

Well good morning or good afternoon, depending on where you're joining us from. It's Cherilyn Radbourne with TD Securities here. Today we're very pleased to be hosting CN to discuss the regulatory framework and M&A timeline for the proposal to acquire Kansas City Southern.

Joining me on the line, I want to welcome J.J. Ruest, the company's President and Chief Executive Officer; Sean Finn, Executive Vice President, Corporate Services and Chief Legal Officer; and Paul Butcher, Vice President of Investor Relations. (Operator Instructions) With that, J.J., Sean and Paul, thank you very much for being with us. I'll turn things over to you.

Paul Butcher {BIO 17913555 <GO>}

All right. Thanks, Cherilyn. This is Paul Butcher. So thank you all for joining us today. Before we begin, I'd like to draw your attention to the forward-looking statements and additional legal information which are available at the beginning of the presentation.

As a reminder, today's conference call contains certain projections and other forward-looking statements within the meaning of the U.S. and Canadian securities law. These statements are subject to risks and uncertainty that may cause actual results to differ materially from those expressed or implied in these statements and are fully -- more fully described in our cautionary statements regarding forward-looking statements in our presentation. Now for more information about CN's superior proposal to combine with KCS, please visit www.connectedcontinent.com. I will now turn it over to J.J., our president and CEO.

Jean-Jacques Ruest {BIO 7027447 <GO>}

Thank you, Paul. Thank you for all of you for joining us today. So very much appreciate you giving us some of your time. So it's been two short weeks since we announced our superior proposal to combine with the Kansas City Southern. In that time, we received overwhelming support for our proposal, including over 700 support letters, and still

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authorization. The existing management of KCS and their Board continue to steward KCS while in trust.

Dave Starling, the former President and CEO of KCS will serve an independent trustee who holds the stock at KCS during the period between the voting trust being approved, set up and closed and the ultimate approval by the STB. Finally, financial contribution, CN will receive dividends from the trust coming out of KCS. Secondly, KCS will retain excess cash flow in its ongoing cash flow management when it comes to KCS. That is the governance structure and the financial implications during the voting trust.

With respect to the acquiring of control, CN acquires full control of KCS upon the approval by the STB at the end of 2022. The operation will continue, obviously in the U.S. and Mexico, under the Kansas City Southern name and brand. We've committed to that from our proposal, from our bid.

Kansas' headquarters will be combined with CN's U.S. headquarters in Kansas City. We will keep our facilities open in Illinois and elsewhere, but the U.S. headquarters of CN and KCS U.S. operations will be in Kansas City. And four members of the KCS Board will join the CN Board at the time of the full approval by the STB.

What is the impact of this financially? Obviously the results of KCS will be consolidated into CN. We benefit from all the cash accumulated by KCS. Obviously we integrate this and realize the synergies going forward. And finally, as we said before, expect it to be highly accretive on a CN adjusted diluted EPS basis. Until the STB approves the process, and based on the public interest test, CN will not have control at KCS.

Therefore, the concerns about competitive issues are not well based because the KCS Board and made will continue to compete with respect to the business it has and realize that these two railways can peak today and it will continue to compete during the voting trust process.

One comment about -- quite a bit of debate appeared in the various media about -- and various places about CN's view about the current rules. So I go to the next page, if I could, Slide 8. I want to make a few comments to clarify CN's position as it relates to STB's ultimate approval process. We have asked the STB to evaluate a KCS merger under the more robust standards referred to as the current merger rules.

Regardless of the acquirer, it doesn't matter who buys it, we believe the current merger rules are the only appropriate framework for the STB to review a KCS transaction. The rules of 20 years ago are no longer the rules of today when it comes to KCS as it is today. We decided that from day 1. It's not just us saying that. We've received over 700 support letters from customers and stakeholders who expressly support and believe that this transaction should be reviewed by the under what is referred to as the current rules.

Why are we doing this? Why would we accept to apply the current rules? It's all about doing the right thing. It's part of our culture at CN. We try and do the right thing for customers, for employees, for the environment and for communities. This is no different,

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For example, a customers in Kansas City that relies on OVC is good, will be able to route its import via the port of Montreal or the port of New Orleans, or the port of Rupert, opening up all three coasts to the Kansas City BEA. Or a farmer in Gilman, Illinois, will be able to seamlessly access the multimodal river barge option of St. Louis or ship by rail into the entire Mexican grain market with single line service.

Underpinning this enhanced competition, CN is also committing to make infrastructure investment of approximately USD 250 million in key communities across the new network. Meaning more economic opportunity and more jobs up and down the new railroad. We are committed to preserving access to all existing gateways. Let me repeat that. We are committed to preserving access to all existing gateways to enhance route choice and to increase rail traffic.

This commitment to provide bottleneck protection and keeping the gateway open will empower customers choose the best route for their need, ensuring robust pricing competition, establishing a new standard for low-carbon freight transportation that is safer, faster and cleaner. That is a more -- a pro-competitive combination.

If you go on Page 10. Page 10, we show the CN, KCS combined network. It is a highly complementary network that will increase multimodal competition. A CN, KCS combination is an end-to-end transaction. It's an end-to-end transaction with less than 1% of the network overlapping with CN. We are committed to implementing arrangement with customers and the STB to address any demonstrated competitive concern that may arise as a result, we firmly believe there is no unsalable regulatory concern, especially under the new rule. Sean?

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Sean Finn {BIO 3754603 <GO>}

Yes. The next slide, please. I think it's important to spend a moment and talk about the competitive issues or landscape with respect to the CN, KCS combination. Obviously our competitor has suggested that our proposed combination with KCS somehow raises extensive and complex relay concerns. This map debunks that assertion. There are no insoluble regulatory problems. It is clearly not the case. You just take a moment and look at this map closely.

CN, KCS is North-south route are 100 miles apart. As you can see, the red versus the blue. We'll compete with multiple other rail lines plus trucking and barge routes on the Mississippi River. CSX has a route option for Mobile to Chicago through Nashville. NS has a route option from New Orleans and Mobile to Chicago through Lexington. Union Pacific has a route option from Houston to Chicago through St. Louis. BNSF has a route option from Houston to Chicago through St. Louis. Not to mention the Mississippi River, as I said, has barge traffic, and truck along the I-35 and I-55 will remain significant competitive North-South options for customers.

Customers will have several choices and no choices will be removed. To the contrary, they'll have more choices. To suggest that the KCS combination will somehow diminish

And we are confident that the STB, when faced with these two voting trusts in the same transaction, will come to that conclusion, and that's been our position. There's no difference being the current rules or the old rules, the standards that are being put forward to approve these are very clear. We're confident that we meet the both standards of not controlling the KCS, nor having any concern about the financial viability if CN or KCS were to unwind.

The attempt to try and conflate and confuse people by bringing into the voting trust application, the issues of competition, is simply noise. It's unfortunate that we're complicating things in that way. But we're very confident that the STB has a long history of dealing with the applicants fairly and in an open and transparent fashion, and we're convinced that they will do so in this case, and we'll come to the view that it is in the public interest to approve both voting trusts at the same time under the same standards and under the same process.

A - Cherilyn Radbourne {BIO 4836137 <GO>}

Okay. Maybe just a question on the dissolution of the voting trust, if that became necessary. How long would the party take to do that? And would the STB provide additional flexibility in the event of a change in the economic environment?

A - Sean Finn {BIO 3754603 <GO>}

Yes. In the unlikely event that the STB would come to the view that it would not be possible to approve a CN, KCS combination, I repeat, unlikely event, in our view, based on our willingness to enter this transaction and not keep the gateway open, addressed any competitive issues, make sure that there are any concerns when it comes to KCS customers or shippers that are losing access to the two railways, for example. The only point we see is that small portion between New Orleans or Louisiana and Baton Rouge.

But in that event, normally, the parties would have two years after that decision by the STB to divest of the (inaudible). Obviously we are confident that, at that time, depending on market conditions. But as it stands today there is interest in the KCS, both by a strategic acquirer, but also by private equity. So we remain very confident that we're not going to get to that point. But if it were to be the case, the STB, and we work with the STB at that point to make sure that the asset is divested of in a way that did not, in any way impact the financial viability of KCS, nor of CN, obviously.

And that's partly why you'll appreciate that there is -- there will be cash retained in KCS had during the voting trust period, we're not going to obviously have site dividends, the cash will remain there to ensure that it has the wherewithal to face that divestiture if it's required. But again that is a very unlikely scenario in our view. We remain confident that we can get this transaction approved by the STB and complete the combination of the two railways together in a very efficient and beneficial way for our customers and for stakeholders up and down and the communities up and down both networks.

A - Cherilyn Radbourne {BIO 4836137 <GO>}

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So there have been a number of questions that have come in. To just summarize, I think some of them are asking, in the event that the STB were to reject your voting trust, is there any way to agree to sort of a regular way merger transaction in the context of Class 1s? Or effectively, is the voting trust necessary to any Class 1 combination?

A - Sean Finn {BIO 3754603 <GO>}

I think the way I look at this more is from the KCS shareholders' perspective, because Class 1 mergers take quite a bit of time for a thorough review by the STB, there is precedents and practices by which voting trust have been used before. One of the most recent examples was our CN, IC acquisition recently, 1998, but still, it's a very good precedent to how it's done.

So there is a requirement for this transaction to proceed that there'll be a voting trust in place, and that is a requirement that has been required by the KCS Board and their shareholders so that they can -- when the voting trust is approved, and funded in the fall of 2021 that they can take their shares and their cash from the voting trust and not be subject to the regulatory risk, any regulatory risk, going forward.

So it's very much their decision and a boarding trust is required, and we remain confident that our voting trust will be approved by the STB. It's in the public interest to do so to allow ultimately, the KCS combination, but also to allow the KCS shareholders to come to a view that what is the best offer based on the value of being put. So Cherilyn, we remain confident it will be approved, and it is a condition required by the KCS Board and their shareholders.

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A - Cherilyn Radbourne {BIO 4836137 <GO>}

Okay. Let's move on from there. So the public interest in relation to the question of the voting trust seems to be fairly narrow as you articulated it. But in relation to the transaction itself, the concept is fairly broad. Can you elaborate on what stakeholder groups are relevant to evaluating the public interest and speak to how those stakeholder groups can provide input to the process?

A - Sean Finn {BIO 3754603 <GO>}

Yes, Cherilyn. It's a very good question and very important question also. Any interested party can appear in an STB application. Our experience has been customers associations, communities, other railways, short line association. So quite a broad group of people can come forward in the context of the -- looking at the public interest of the overall transaction approval.

And obviously our experience has been, you must engage with them. Where you can, you attempt as much as you can, and that is the STB's preference that we settle these issues with those communities or those customers or those stakeholders. The remedies available are quite broad. But at the same time, if you're proactive, and you've come to the view there are no unsalable regulatory problems.

And in fact, at some point, we might make some further major investment in Chicago to create new level of competition that doesn't exist today. That's for later. But no, we -- the fact that we own the EG&E that nobody else has owned that nobody else has its ring road around the city. We're coming from Chicago from the old IC and then taking a hard right almost on the outskirts of the city on the a G&E, makes this a product that will actually reduce the truck congestion in Chicago. So we hope anyway because a lot of what we are trying to do here is to convert long-haul truck into Intermodal.

A - Cherilyn Radbourne {BIO 4836137 <GO>}

Okay. We're at about 45 minutes here. I think there's a few more important questions that we should address. So I'm going to go a little bit longer here. How does CN respond to the argument that a CP, KCS deal would not be so impactful as to trigger downstream transactions, but that a CN, KCS combination could or would trigger those downstream effects?

A - Jean-Jacques Ruest {BIO 7027447 <GO>}

I mean that's -- again that's a bit of a self-serving. Our focus -- I think the KCS was always viewed as a railroad that, at some point, might combine with somebody else. I think CP for a long time, was viewed as a logical railroad to do that. You don't really disturb that much the balance between the East and the West, the big four railroad. The CN, KCS combination in the United States still makes us the fifth largest railroad meaning that in terms of scale, we would still be quite a bit much smaller than the European (inaudible), who are huge, or the CSX and the NS on the outskirt.

When you look at the involvement of the other railroad into this file so far, I'm not getting the sense that they see this as a -- maybe they would rather see no merger whatsoever for their own selfish needs, but I don't see that as a signal that they feel that this will push them into an East-West transaction. The compelling story is very strong about the future of Mexico. The future of Mexico does need a railroad that's really is a much better equipment than what the KCS has today to really fully exploit the potential of the USMCA.

CN is best-in-class when it comes to Intermodal, we can rival with the best-in-class, the UP and the BN. We would love to compete with them. We want to compete with a different product, a better product, a seamless product, a product that can also go beyond Chicago to the East, still on the railroad.

I don't think that means that they will want to compete with us and make sure the gateway stays open at Laredo, which we will do. The same way we will keep the gateway open over Kansas City because, frankly, we would want as much business coming from the CP as possible as they can bring to the new network because it's -- more freight is better for the rail industry, and it's better for the economy.

And anything that can be put on railroad as opposed to be on the highway is a good thing. So we just don't see what they see. Again it's a bit self serving. We think ultimately, KCS will be sold. It's be CN or CP. In either of the two cases, we don't see how that means that it is the beginning of the requirement for future merger.

EXHIBIT 9

**CN VIRTUAL FIRESIDE CHAT
HOSTED BY BERNSTEIN
TRANSCRIPT EXCERPTS
(MAY 7, 2021)**

Virtual Fireside Chat hosted by Bernstein

Company Participants

- David Vernon, Sanford C. Bernstein
- Doug MacDonald, Canadian National Railway Company
- Jean-Jacques Ruest, Canadian National Railway Company
- Paul Deegan, Canadian National Railway Company

Presentation

David Vernon {BIO 16688886 <GO>}

Good morning, everyone. My name is David Vernon. I'm with Bernstein. I am pleased to be joined today by J.J. Ruest, CEO of Canadian National; Doug McDonald, Senior Vice President; and Paul Butcher, Head of Investor Relations. We are going to do a bit of a deep dive fireside chat here on the operational benefits of the CN/KCS proposal. The focus here is really on kind of what -- how two plus two becomes five when you put these two networks together.

We're going to start off with some prepared remarks. I'm going to hand over to Paul to provide the necessary disclosures, then we'll go through the slides. And at the end, we'll do a Q&A. (+++presentation Operator Instructions) With that, Paul, I'll hand it over to you.

Paul Deegan {BIO 15162019 <GO>}

Thank you, David. So before I begin, I'd like to draw your attention to the forward-looking statements and additional legal information, which are available at the beginning of the presentation. So as a reminder, today's conference call contains certain projections and other forward-looking statements within the meaning of the U.S. and Canadian securities law.

These statements are subject to risks and uncertainties that may cause actual results to differ materially from those expressed or implied in these statements and are fully described in our cautionary statement regarding forward-looking statements in our presentation.

From more information about CNS superior proposal to combine with KCS, please visit www.connectiveconfidence.com. I would now like to turn it over to JJ, our President and CEO.

Jean-Jacques Ruest {BIO 7027447 <GO>}

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Bloomberg Transcript

And the same thing could be said for Lázaro, Cardenas and Veracruz, one of our partners, Hutchison Port, who work in Quebec City for the last two years actually own and operate container terminal in Veracruz and Lázaro, and it's quite exciting to see what we could do with CN/KCS combination to expand their zone of influence. In their case, they'd like to have its own effluence that would reach into the southern part of Texas, namely Houston.

FINAL

A - David Vernon {BIO 16688886 <GO>}

Okay. And maybe if we think about that notion of sort of this creating a new route versus the intermodal side, can we talk a little bit about timing, right? I mean you sort of oriented is around an \$8 billion number with some potential upset of the revenue to the extent that MCA drives on things like Quebec aluminum into Mexico. But as you think about the challenge of opening up these new lanes or driving the highway conversion, like, what's the rate at which you think you can kind of tap into that opportunity from the day you get control of the network?

A - Jean-Jacques Ruest {BIO 7027447 <GO>}

Yes. So from the day that the voting trust would be approved and the shareholders of KCS with both in our favor, so we can buy the company but put it in trust. Now we will not control what the KCS does, but we could start working directly with customers and terminal operators to try to prepare a division that we will be able to roll out in late 2022.

So we can work with terminal operator in Mexico, not so much that we can implement how they work with KCS, but we can definitely put the groundwork of how we would market our product to the ocean shipping line. Do the premarketing of the proposed product and work in that front.

I think the same thing on Cargo, Doug, we could also work with a number of the green producers that are located both on CN and KCS and start to really get their mind around what kind of product we would offer them in terms of, example, accessing grain in the Opera Mississippi for barge network, same thing with aluminum producers in Quebec, start to get them their mind around how they would better access the part producer in Mexico with the aluminum grade, et cetera, et cetera. So maybe,

Doug, you want to talk about some of the premarketing we could do with many of these producers ahead of the controlling the combination just as premarketing and getting them predisposes to where they would want to take a bigger role post integration.

A - Doug MacDonald {BIO 16635634 <GO>}

Yes. Thanks, JD. And a lot of times, our customers need time to develop their markets or develop their sales. So it takes a lot of work, and we can do that while the companies in trust.

We would work as an example with our lumber producers on how they would access deeper into the KCS network over time that would allow them to position either new

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receivers to be able to sell into that as well as to have a new product. So the same could be said for pulp, but another great article is like steel.

So we have a large steel franchise on CN, that we have some really great customers that produce high-strength steel for the automotive industry. That would love to be able to have single line service down into Mexico today to the production sites.

FINAL

So that's an obviously opportunity we'd have to work with them around will they want to sell down there? How could we look at working with them to move it down cost efficiently. Some of these required transloads near destination that we would have to look at developing with them.

So each one of our customer areas and would need to have specific plans put in place. It takes time to develop, but I'm sure we can get it done very quickly and be ready for when we would actually be able to look at taking over.

A - Jean-Jacques Ruest {BIO 7027447 <GO>}

That's right. So we will take the time between the voting trust and the STB final approval to do the premarketing with all of these buyers and sellers and have them focus on the benefit of exploiting this new supply chain logistics.

A - David Vernon {BIO 16688886 <GO>}

So -- and I'd love to kind of maybe just distill that down, right? As analysts were going to at some point, have to put these numbers into a spreadsheet. If you get that -- from change of control being sort of day 0, is this two years, three years, five years, like can you give us some directional sort of indication about when you think these markets will -- this market opportunity will be fully acceptable? Like roughly directionally anyway, how long will it take to kind of unlock this opportunity?

A - Jean-Jacques Ruest {BIO 7027447 <GO>}

Yes. It might be a little too early to have a definite view on where -- because we're still doing to do diligence some of these opportunities. And I think it would be fair to expect a seasoning period as we start the integration of the two company, the two business plan, and we're targeting to do that hopefully with the STB by the second half of 2022.

But at the same time, the time that we talked about, the \$8 billion of total accessible market was based on the market exist today. We're not really adding in the benefit of new shoring without really adding in a strong with USMCA without adding in our port strategy, especially as it relates to the mid-America destination and port export as well as what could be done in Mexico with our partners. So I think there's a lot of puts and takes.

And our vision here is to always have as many playing card as possible so that if something takes more time to deploy, that we would have other things that would come on top of that. And I think the proof of that would be our track record on our -- between

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EXHIBIT 10

**CN FOREIGN ISSUER REPORT (FORM 6-K)
(MAY 14, 2021)**

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FORM 6-K
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Report of Foreign Issuer
Pursuant to Rule 13a-16 or 15d-16
of the Securities Exchange Act of 1934

For the month of May 2021

Commission File Number: 001-02413

Canadian National Railway Company
(Translation of registrant's name into English)

935 de la Gauchetiere Street West
Montreal, Quebec
Canada H3B 2M9
(Address of principal executive offices)

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40-F:

Form 20-F ☐Form 40-F ☒

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Yes ☐No ☒

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

Yes ☐No ☒

Indicate by check mark whether by furnishing the information contained in this Form, the Registrant is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934:

Yes ☐No ☒

If "Yes" is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b): N/A

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Canadian National Railway Company

Date: May 14, 2021

By: /s/ Sean Finn

Name: Sean Finn

Title: Executive Vice-President Corporate
Services and Chief Legal Officer

CANADIAN NATIONAL RAILWAY COMPANY

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Items	Description
1	Press Release, dated May 13, 2021
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Exhibit 1



North America's Railroad

NEWS RELEASE

CN PROPOSAL DEEMED SUPERIOR BY KANSAS CITY SOUTHERN

CN's enhanced proposal of \$325¹ per share values KCS at an enterprise value of \$33.6 billion

With Confirmatory Due Diligence Complete, CN Looks Forward to Promptly Entering into Merger Agreement with KCS

MONTREAL, May 13, 2021 – CN (TSX: CNR, NYSE: CNI) today announced that following the completion of confirmatory due diligence, it submitted an enhanced binding superior proposal and merger agreement to the Kansas City Southern (NYSE: KSU) (“KCS”) Board of Directors. The KCS Board has determined CN’s proposal to be a “Company Superior Proposal” and has announced its intention to terminate the previously executed March 21, 2021 merger agreement with Canadian Pacific Railway Limited (TSX: CP, NYSE: CP) (“CP”). CN looks forward to promptly entering into a definitive merger agreement with KCS to create the premier railway for the 21st century.

CN’s proposal offers KCS shareholders \$325 per common share based on yesterday’s closing price of CN shares, which implies a total enterprise value of \$33.6 billion, including the assumption of approximately \$3.8 billion of KCS debt. Under the terms of CN’s revised proposal, KCS shareholders will receive \$200 in cash and 1.129 shares of CN common stock for each KCS common share, with KCS shareholders expected to own 12.6% of the combined company. This represents an implied premium of 45% when compared to KCS’ unaffected closing stock price on March 19, 2021. KCS’ preferred shareholders will continue to receive \$37.50 in cash for each preferred share. Under the terms of the revised proposal, a wholly owned subsidiary of CN has also agreed to reimburse \$700 million to KCS in connection with their payment of the termination fee to CP under the merger agreement with CP.

“We are delighted that KCS has deemed CN’s binding proposal superior, recognizing the many compelling benefits of our combination and expressing confidence in CN’s ability to obtain the necessary approvals and successfully close the transaction. Our proposal offers a clear path to completion and is structured in a way that gives KCS shareholders both greater immediate value and the opportunity to participate in the future upside of the combined company. Together, CN and KCS will seamlessly connect ports and rails in the United States, Mexico and Canada by providing superior service, enhanced competition and new market access to move goods across North America safely and efficiently. We are encouraged by the widespread support we have received for the transaction thus far and will continue to work closely with KCS and all relevant stakeholders to fully realize the benefits and opportunities available through a combined CN-KCS.”

¹ All figures in U.S. dollars, except where noted. All conversions between Canadian dollars and U.S. dollars are based on a 0.827 foreign exchange rate as of May 12, 2021. Where applicable, figures are based on CN and CP closing share prices on the NYSE of \$110.76 and \$391.87, respectively, as of May 12, 2021.

- JJ Ruest, president and chief executive officer of CN

“We are the better bid, better partner, better railway and best solution for KCS, and are pleased that the KCS Board of Directors has recognized the superiority of our proposal. We look forward to continuing to engage constructively with KCS’ Board to execute a definitive merger agreement in the near term and deliver the benefits of this transaction to both companies’ stakeholders.”

- Robert Pace, Chair of the Board of CN

The combination of CN and KCS will:

- **Create the premier railway for the 21st century:** The combination of CN and KCS will further accelerate CN’s industry-leading growth profile by connecting North America’s industrial corridor to create new options for shippers and new revenue for the combined company. A CN-KCS combination is the right solution to bring the USMCA to life in a meaningful way.
- **Have strong stakeholder support.** CN has received more than 1,000 letters of support from customers, partners and elected officials since it first made its proposal; this is nearly double the number of support letters filed by CP, in less than half the time.
- **Be pro-competitive:** CN and KCS will create a safer, faster, cleaner and stronger railway that is ideally positioned to support the growth of an emerging consumption-based economy through better service options and customer choice. Specifically, this combination will create an express route that connects the U.S., Mexico and Canada with a seamless single-owner, single-operator service, and preserve access to all existing gateways to enhance route choices and ensure robust price competition.
- **Accelerate innovation and environmental efficiency:** CN and KCS share cultures that are committed to safety, service and environmental stewardship. CN and KCS will accelerate innovation and investment as CN brings its industry-leading safety technology and fuel efficiency to the KCS network. The combined company will yield demonstrable benefits for the environment across the states and regions traversed by KCS’ tracks by converting significant volumes of truck traffic onto rails, which deliver better fuel efficiency at lower cost. Expected conversion of truck traffic to rails will also reduce traffic congestion in these regions and prevent thousands of tons of emissions from entering the atmosphere every day.

-
- **Have a clear path to close:** CN is confident in its ability to obtain approval from the Surface Transportation Board (“STB”) and other regulatory bodies on a timeline consistent with the proposed CP transaction. CN has proposed to use a voting trust and trustee that are identical to those the STB approved for CP’s proposed acquisition. KCS shareholders will receive the merger consideration immediately upon the closing of CN’s voting trust, which is expected to be in the second half of 2021. Moreover, CN’s proposed transaction will not require the approval of CN’s shareholders, eliminating a closing condition present in the proposed CP transaction and thereby providing greater certainty of closing. The completion of the transaction would be expected to take place in the second half of 2022.

For more information about CN’s superior proposal to combine with KCS, please visit www.ConnectedContinent.com.

About CN

CN is a world-class transportation leader and trade-enabler. Essential to the economy, to the customers, and to the communities it serves, CN safely transports more than 300 million tons of natural resources, manufactured products, and finished goods throughout North America every year. As the only railroad connecting Canada’s Eastern and Western coasts with the U.S. South through a 19,500-mile rail network, CN and its affiliates have been contributing to community prosperity and sustainable trade since 1919. CN is committed to programs supporting social responsibility and environmental stewardship.

Forward Looking Statements

Certain statements included in this news release constitute “forward-looking statements” within the meaning of the United States Private Securities Litigation Reform Act of 1995 and under Canadian securities laws, including statements based on management’s assessment and assumptions and publicly available information with respect to KCS, regarding the proposed transaction between CN and KCS, the expected benefits of the proposed transaction and future opportunities for the combined company. By their nature, forward-looking statements involve risks, uncertainties and assumptions. CN cautions that its assumptions may not materialize and that current economic conditions render such assumptions, although reasonable at the time they were made, subject to greater uncertainty. Forward-looking statements may be identified by the use of terminology such as “believes,” “expects,” “anticipates,” “assumes,” “outlook,” “plans,” “targets,” or other similar words.

Forward-looking statements are not guarantees of future performance and involve risks, uncertainties and other factors which may cause actual results, performance or achievements of CN, or the combined company, to be materially different from the outlook or any future results, performance or achievements implied by such statements. Accordingly, readers are advised not to place undue reliance on forward-looking statements. Important risk factors that could affect the forward-looking statements in this news release include, but are not limited to: the outcome of any possible transaction between CN and KCS, including the possibility that a transaction will not be agreed to or that the terms of any definitive agreement will be materially different from those described; the parties' ability to consummate the proposed transaction; the conditions to the completion of the proposed transaction; that the regulatory approvals required for the proposed transaction may not be obtained on the terms expected or on the anticipated schedule or at all; CN's indebtedness, including the substantial indebtedness CN expects to incur and assume in connection with the proposed transaction and the need to generate sufficient cash flows to service and repay such debt; CN's ability to meet expectations regarding the timing, completion and accounting and tax treatments of the proposed transaction; the possibility that CN may be unable to achieve expected synergies and operating efficiencies within the expected time-frames or at all and to successfully integrate KCS' operations with those of CN; that such integration may be more difficult, time-consuming or costly than expected; that operating costs, customer loss and business disruption (including, without limitation, difficulties in maintaining relationships with employees, customers or suppliers) may be greater than expected following the proposed transaction or the public announcement of the proposed transaction; the retention of certain key employees of KCS may be difficult; the duration and effects of the COVID-19 pandemic, general economic and business conditions, particularly in the context of the COVID-19 pandemic; industry competition; inflation, currency and interest rate fluctuations; changes in fuel prices; legislative and/or regulatory developments; compliance with environmental laws and regulations; actions by regulators; the adverse impact of any termination or revocation by the Mexican government of KCS de México, S.A. de C.V.'s Concession; increases in maintenance and operating costs; security threats; reliance on technology and related cybersecurity risk; trade restrictions or other changes to international trade arrangements; transportation of hazardous materials; various events which could disrupt operations, including illegal blockades of rail networks, and natural events such as severe weather, droughts, fires, floods and earthquakes; climate change; labor negotiations and disruptions; environmental claims; uncertainties of investigations, proceedings or other types of claims and litigation; risks and liabilities arising from derailments; timing and completion of capital programs; and other risks detailed from time to time in reports filed by CN with securities regulators in Canada and the United States. Reference should also be made to Management's Discussion and Analysis in CN's annual and interim reports, Annual Information Form and Form 40-F, filed with Canadian and U.S. securities regulators and available on CN's website, for a description of major risk factors relating to CN.

Forward-looking statements reflect information as of the date on which they are made. CN assumes no obligation to update or revise forward-looking statements to reflect future events, changes in circumstances, or changes in beliefs, unless required by applicable securities laws. In the event CN does update any forward-looking statement, no inference should be made that CN will make additional updates with respect to that statement, related matters, or any other forward-looking statement.

No Offer or Solicitation

This news release does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Additional Information and Where to Find It

This news release relates to a proposal which CN has made for an acquisition of KCS. In furtherance of this proposal and subject to future developments, CN (and, if a negotiated transaction is agreed, KCS) may file one or more registration statements, proxy statements, tender offer statements or other documents with the U.S. Securities and Exchange Commission ("SEC") or applicable securities regulators in Canada. This news release is not a substitute for any proxy statement, registration statement, tender offer statement, prospectus or other document CN and/or KCS may file with the SEC or applicable securities regulators in Canada in connection with the proposed transactions.

INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE PROXY STATEMENT(S), REGISTRATION STATEMENT(S), TENDER OFFER STATEMENT, PROSPECTUS AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC OR APPLICABLE SECURITIES REGULATORS IN CANADA CAREFULLY IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT CN, KCS AND THE PROPOSED TRANSACTIONS. Any definitive proxy statement(s), registration statement or prospectus(es) and other documents filed by CN and KCS (if and when available) will be mailed to stockholders of CN and/or KCS, as applicable. Investors and security holders will be able to obtain copies of these documents (if and when available) and other documents filed with the SEC and applicable securities regulators in Canada by CN free of charge through at www.sec.report and www.sedar.com. Copies of the documents filed by CN (if and when available) will also be made available free of charge by accessing CN's website at www.CN.ca.

Participants

This news release is neither a solicitation of a proxy nor a substitute for any proxy statement or other filings that may be made with the SEC and applicable securities regulators in Canada. Nonetheless, CN and its directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed transactions. Information about CN's executive officers and directors is available in its 2021 Management Information Circular, dated March 9, 2021, as well as its 2020 Annual Report on Form 40-F filed with the SEC on February 1, 2021, in each case available on its website at www.CN.ca/investors/ and at www.sec.gov and www.sedar.com. Additional information regarding the interests of such potential participants will be included in one or more registration statements, proxy statements, tender offer statements or other documents filed with the SEC and applicable securities regulators in Canada if and when they become available. These documents (if and when available) may be obtained free of charge from the SEC's website at www.sec.gov and www.sedar.com, as applicable.

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EXHIBIT 11

**CN 14TH ANNUAL WOLFE RESEARCH GLOBAL
TRANSPORTATION & INDUSTRIALS CONFERENCE
TRANSCRIPT EXCERPTS
(MAY 26, 2021)**

14th Annual Wolfe Research Global Transportation & Industrials Conference

Company Participants

- Jean-Jacques Ruest, President, CEO & Director
- Pat Ottensmeyer, CEO, President & Director
- Paul Butcher, IR
- Scott Group, Analyst

Presentation

Scott Group {BIO 15308951 <GO>}

Good morning, everyone. Welcome to day two of the Wolfe Research Global Transportation and Industrials Conference. I'm Scott Group, I'm the Transport analyst here at Wolfe. We've got a really exciting start to our conference today. We've got the first comment -- joint comments from CN and KSU together since announcing their merger last week. Really, really happy to be joined by JJ Ruest, President and CEO of CN; and Pat Ottensmeyer, President and CEO of Kansas City Southern.

Paul Butcher from Investor Relations at CN has a quick comment he's going to make. Then JJ and Pat are going to make a quick presentation. Then we will get right into questions. So Paul, I pass it to you.

Paul Butcher {BIO 17913555 <GO>}

Thank you, Scott. So before we begin, I'd like to draw your attention to the forward-looking statements and additional legal information, which are available at the beginning of the presentation. As a reminder, today's conference call contains certain projections and other forward-looking statements within the meaning of the U.S. and Canadian securities laws.

These statements are subject to risks and uncertainties that may cause actual results to differ materially from those expressed or implied in these statements and are more fully described in our cautionary statement regarding forward-looking statements in our presentation. I will now turn it over to JJ Ruest, CN's President and CEO.

Jean-Jacques Ruest {BIO 7027447 <GO>}

Well thank you, Paul. Start with me on Page 4. Good morning, everyone. Thank you for joining us today early. I am very pleased to be joined today with Pat at a major moment of the history of CN and KCS as you know, as of last Friday Kansas City Southern entered into a merger agreement with CN. We're very excited about the future and our combined

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companies. Together, we will deliver significant value and benefit to our customers, value employees, shareholders and communities.

Scott Group {BIO 15308951 <GO>}

Pat?

Pat Ottensmeyer {BIO 1394024 <GO>}

Okay. Thank you. Good morning. Good morning, Scott. Good morning, everyone. I'm also very pleased to be here to talk about this exciting and transformative transaction and be able to answer any questions that you have. As JJ mentioned, last Friday the Kansas City Southern Board of Directors unanimously approved the transaction with Canadian National, and we are totally focused and excited to join forces at this point with Canadian National to pursue this transaction and the regulatory approval. We think this combination is truly an exceptional opportunity for all of our stakeholders, obviously shareholders, but importantly, customers, employees, communities, and the whole spectrum of stakeholders. So with that, back to JJ.

Jean-Jacques Ruest {BIO 7027447 <GO>}

Thank you. Fantastic, Pat. So we'll go on Page 5. So this morning, we took a reporting step by signing a renewed motion for the approval of the borders with the STB. We did We are confident that our will demonstrate why our combination true competitive that it will provide economic growth and that it will realize multiple network benefits across the continent.

Very importantly, our filing with the STB includes CN's commitment to divest KCS 70-mile line between and This divested represent less than 0.7% of the 27,000 route mile of our combined network. We believe this commitment eliminates the only area that were (technical difficulty) between CN and KCS network and should address any competitive concern with the STB.

We'll go on Page 6. Our filing of this morning also outlined the public interest benefits of the combined CS -- CN and KCS network. We will preserve connectivity's by keeping all existing gateways open. We will add new single-line route that will be faster and more cost-effective for our customers across the combined network. We will deliver important supply chain benefit across each of our major segments, we will contribute to major environmental benefits by taking trucks off the road emission.

The support of our customers, communities and other stakeholders has been very positive and very strong. They recognize a competitive benefit of our combination, including providing better service and more competitive shipping options.

Pat Ottensmeyer {BIO 1394024 <GO>}

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I just would comment and echo JJ's comments, we're very excited about the benefits that this combination offers to customers and other stakeholders. We have very, very highly complementary networks that, in combination, will enhance competition, particularly as it relates to the connectivity between the U.S., Mexico and Canada with new, seamless, single-owner, single-operator service options.

Importantly, as JJ mentioned, the filing this morning commits to preserve access to all existing gateways. Importantly, our combination here connects two of the most well-known, established, premium corridors in North America, specifically the KCS section of the Meridian Speedway route between Shreveport and Jackson and then the CN Route from Jackson to Chicago to access the upper Midwest and Canada.

We believe that will allow us to immediately start capturing the exciting revenue opportunities that we've described once we are able to exit the voting Trust and begin the combination and integration of the 2 networks.

Jean-Jacques Ruest {BIO 7027447 <GO>}

So we'll move on Page 7. Moving on Page 7, we remain firmly committed to maintain our strong financial profile and an investment-grade (technical difficulty) we currently have the highest rating in the sector, resulting from our strong balance sheet, disciplined capital allocation and robust free cash flow.

We anticipate to reduce our debt very quickly. We have stopped our share buyback, and we will continue to generate strong free cash flow. We expect our leverage to be at 3.3x by 2023 and below 3x by 2024. The our 2 major credit rating agency, S&P and Moody's, have publicly confirmed that they expect us to remain investment-grade following our transaction.

Pat Ottensmeyer {BIO 1394024 <GO>}

As JJ mentioned, the plan here is to use a standard plain vanilla voting trust. While we entrust, KCS will continue to operate independently. Dave Starling, who many of you know, is our former President and CEO, will be the trustee. We're very confident that this will satisfy the STB's requirements for independence and are confident that, that will lead to an approval of the voting trust.

Once the KCS is in trust, I will continue to lead the company, and our management team will stay in place. We will have strong incentives to continue to operate and perform and continue to invest in our network as we have planned to as an independent company.

The merger agreement with CN references our capital allocation policy that had been approved and communicated to investors prior to this transaction. So we think that will go a long way in terms of demonstrating the commitment to preserve the financial condition, the financial quality and financial strength of KCS while we're in trust. So with all of that, again we feel very confident that the ingredients of this transaction and the structure that has been proposed will be satisfactory to the STB. JJ?

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A - Jean-Jacques Ruest {BIO 7027447 <GO>}

So as I said earlier, we're looking for the month of June for the STB to put a decision on the voting trust. Once the voting trust is approved, majority of the KCS shareholders will need to approve the transaction into our shareholders' vote, which we're confident will happen sometime end of the summer.

The Mexican competition (technical difficulty) combination. Once we have all the required approval, our target is to close in voting trust in the second half of 2021, which means that we look forward to closely with the STB to close the transaction sometime in 2022.

A - Scott Group {BIO 15308951 <GO>}

How about that second part, if the voting trust is blocked? Do you view this as, is there an appeal process? Is this game over? Or can you guys agree to continue the process of STB approval on the merger itself?

A - Jean-Jacques Ruest {BIO 7027447 <GO>}

In the outside chance this was going to happen, then we will reconvene within CN. We'll have a dialogue with KCS, and then we'll decide at that time, what's the appropriate decision at that moment.

A - Scott Group {BIO 15308951 <GO>}

Okay. Pat, I want to ask you, in the process of determining that this was a superior offer, was this just about sort of a superior price or was there a consideration that this creates a superior network in terms of size and reach? How do you think about the pro forma network of CN-KCS relative to the other transaction?

A - Pat Ottensmeyer {BIO 1394024 <GO>}

Well Scott, I'll just --

A - Jean-Jacques Ruest {BIO 7027447 <GO>}

So maybe I can --

A - Pat Ottensmeyer {BIO 1394024 <GO>}

I'm sorry. I think.

A - Jean-Jacques Ruest {BIO 7027447 <GO>}

Go ahead. Go ahead, Pat.

A - Pat Ottensmeyer {BIO 1394024 <GO>}

I think from a perspective, I really like to just focus on the path forward and our excitement for this transaction. I will say that the Board -- our Board considered really all aspects of the transaction: value, risk across the board, not just at the front end, but across the

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integration and the future outlook of the combined networks and determined that this was a superior transaction.

The details of the process that the Board went through getting to that conclusion will be included in the proxy statement, which should be available in the next few weeks. But as we (technical difficulty) see just tremendous benefits for this combination.

FINAL

The markets that this will give access to, our customers' access to the single-line service as we were able to engage with CN here just recently and better understand their strategy with respect to integration, synergy outlook, revenue opportunities and also their strategy regarding the path for regulatory approval became very clear that this transaction offers just tremendous benefits to not only shareholders, but customers, employees, the communities that we serve, and again will create one of a kind North American rail network that just doesn't exist anywhere else.

A - Scott Group {BIO 15308951 <GO>}

I asked this to JJ earlier, but Pat, just want to get your take here is there a path forward in the event that the voting trust is not approved to take a higher price, but with a longer time period? How do you think about that?

A - Pat Ottensmeyer {BIO 1394024 <GO>}

Well I think JJ described it accurately. We would just have to consider the conditions, what additional information is behind the STB's decision and make a judgment at that point whether -- what the proper -- appropriate path forward might be.

A - Scott Group {BIO 15308951 <GO>}

Okay. So let's move on from some of the regulatory stuff and talk about what the combined company is going to look like in the future, so maybe just -- there's some simple things we just haven't heard yet, like, what's the name of the company? Where are the headquarters? Have you guys given any thoughts to the management team?

Certainly, I think Pat and the KCS team have just done a great job implementing PSR? Are there -- do we think that some of the new management team has Pat, Samy, some of the guys that have just been instrumental in implementing PSR? How you think about all that?

A - Jean-Jacques Ruest {BIO 7027447 <GO>}

Thank you. So the name of the company will be Canadian National Railway post combination. Montreal will remain the global headquarter of the combined company. As we said, Kansas City will be the U.S. headquarter of all of our combined U.S. operations. Mexico, which is a very important part of this combination, Mexico City will remain a headquarter in Montreal. We will have 4 of the Board members of PCs joining the Board of CN, which is very important for us.

As you mentioned, the management of KCS is very solid. They've done huge progress on PSR. When we buy a company or when we merge a company like KCS, we don't only just

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EXHIBIT 12

**CN BERNSTEIN STRATEGIC DECISIONS CONFERENCE
TRANSCRIPT EXCERPTS
(JUNE 3, 2021)**

03-Jun-2021

Canadian National Railway Co. (CNI)

Bernstein Strategic Decisions Conference

CORPORATE PARTICIPANTS

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

Patrick J. Ottensmeyer

President, Chief Executive Officer & Director, Kansas City Southern

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

OTHER PARTICIPANTS

David Vernon

Analyst, Sanford C. Bernstein & Co. LLC

MANAGEMENT DISCUSSION SECTION

David Vernon

Analyst, Sanford C. Bernstein & Co. LLC

Good morning, everyone, and welcome to Bernstein's 37th Annual Strategic Decisions Conference. We are joined today by Canadian National Railway and Kansas City Southern, who are on the cusp of a historic rail merger that has been taking up a lot of time, a lot of investor conversation and focus. We are pleased to have them both joining us today. We are going to start with some disclosures, I think, from Paul Butcher at CN. Then we will turn over the mic to Pat and JJ to walk through some prepared remarks.

If you have some questions as we're working through the conversation, you should see a button on your screen that says ask a question. That will get into our queue, and we'll see if – and we'll do our best to try to get that in, if you wanted to go ahead and participate in that way. Thank you both, JJ and Pat, for joining us. Paul, I'll turn it over to you to do a quick introduction, and then we will look forward to the Q&A.

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

Well, thank you, Dave, and before we begin, I'd like to draw your attention to the forward-looking statements and additional legal information which are available at the beginning of the presentation. As a reminder, today's conference call contains certain projections and other forward-looking statements within the meaning of the US and Canadian securities law. These statements are subject to risk and uncertainties that may cause actual results to differ materially from those expressed or implied in these statements and are more fully described in our cautionary statement regarding forward-looking statements in our presentation.

I will now turn it over to JJ Ruest, CN's President and CEO.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

Well, thank you, David, for allowing us to do this together, Pat and myself, and we're very pleased to join together and team up. Very excited about the future of what's ahead for us as a potential joint company. So maybe we start on – you have on page 4 our end-to-end merger and what – the list of enhanced choice and competition. Before we go too deep into that, I thought, David, we could attempt to clarify some confusion or potentially misleading issues that were being put out.

I want to take a moment to just refocus on some of the basic facts. CN and KCS [ph] will benefit a (02:24) significant value and benefit, and there's no doubt to that. I think when you read our joint statement, you see a lot of these different things being clarified specifically. Customers will see value, employee will see value, the shareholders of both company, the port operator and port stakeholders will see value, as well as the communities who [ph] are longer (02:45) in that joint network.

We're committed also to preserve connectivities by keeping current gateway open. Gateway will be open and there should be no doubt on that as well. We will enhance competition, which is what the new role is all about, by adding new choices, choices that don't exist today. Some of these choices are the creation of new carload and new intermodal single-line service from Mexico – from the heart of Mexico from way south in the continent, to the US Midwest, as well as Central Canada, things that don't exist today. We're committed to divest a 70-mile of overlap. And just to be clear, that divestment eliminate the sole area of overlap between CN and KCS network, making it a combination that is a true end-to-end merger. Also note that we identified from day one that overlap, when we first made the announcement back in April 20 that we wanted to convince KCS to partner with CN.

And since then, we've made that commitment that we're willing to divest of the two for one and basically have somebody else stepping in the shoes of the KCS today for that part of the network. I also want to make clear [ph] the other claims or (03:57) competitive overlap arising from a combination of the famous two north-south line, which are also, in our view, [ph] not right (04:07). They are very separate. They're separated by hundreds of miles. They're well surrounded by intense competition from especially the two big Class 1 railroad of the West. The Mississippi River is also an intense competition [ph] for both (04:21), and there's two interstate long-haul north-south highway that really also compete with the network very, very strongly. So, they serve – these two lines serve different market. They serve different customers, and they have different and useful purpose and both are needed.

Lastly, I'd just like to highlight that we have now received over 1,400, 1,400 letters from supporters, customers, stakeholders, port operators, letters from all three countries, and those voice support of the use of the boarding trust and our combination. And I think in the weeks to come, we will continue to garner support on those who are using the freight network in North America. Pat?

Patrick J. Ottensmeyer

President, Chief Executive Officer & Director, Kansas City Southern

Okay. Thanks. I just want to echo that very excited to be here with JJ to talk about this proposed transaction. JJ has covered a lot of the highlights, but I think this slide really has a lot of powerful statements and the visuals here, I think, are equally powerful. If you look at the main corridors that exist today, serving what we know is a very large market opportunity, we'll talk more about this in a few minutes. For cross-border growth, look at the blue lines here that cross the US-Mexico border at Laredo move across the – what we refer to as the Meridian Speedway from Shreveport to Jackson, that is a very well-established premium service route that we have on our network, connecting Jackson up on the red line to Chicago and beyond.

Most of the other lines here are existing service options for that cross-border traffic. That market between Mexico and the Upper Midwest and into the East – and into Eastern Canada is a huge truck market. The I-35 corridor,

very low level of intermodal market penetration today and huge opportunity. Again, we'll talk more about that in a few minutes. And I think as JJ captured in his comments, this is truly – you deal with and exclude the one area where we have clear overlap, which JJ has already talked about, New Orleans to Baton Rouge, an end-to-end network that will provide new single-line service to go after that I-35 corridor freight traffic and the market opportunity that exists there that I think clearly will be of interest to a lot of shippers, as demonstrated by the support we've seen already, and create new competitive options that simply don't exist today.

So back to you, JJ.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

Thank you. And, Dave, we could [ph] maybe go (07:34) to page 5. We could just do a quick recap of the estimated synergies, which is an important slide for people who are investors and – of CN and/or KCS. So we're even more confident today than when we started with only based on public data that we do have north of a \$1 billion of EBITDA synergies. Most of that is growth related. Most of that is revenue, new revenue. It's truly a growth story. It's a story, it's a bet on the solid future of the economy in United States, of the economy in North America. It's also a bet on trade between the North American continent and other continent, because we would have a network that really would be the best of anybody to reach [ph] any trade costs and trade (08:26). It's also a bet on USMCA, which was just renewed last year, which is also good news, and a bet on Mexico, which is a market that Pat and his team knows extremely well much better than us. And he will come back to that later.

We also have some meaningful cost savings. But I want to be sure that people relate to the fact that these – most of these cost savings are not people reduction-driven. As the business grows, this is how we will get people productivities up. So it'll be a growth story, and our productivity is going to be driven by the increase in revenue ton mile and carloads over time. Pat?

Patrick J. Ottensmeyer

President, Chief Executive Officer & Director, Kansas City Southern

Okay. Just to reiterate a couple of points, the – as I mentioned on the previous slide with the map, we know there is a huge opportunity for growth in new rail service going after that I-35 freight corridor to and from Mexico. In addition to the market share opportunity, there will be growth, we believe in the future as a result of some of the factors that JJ touched on, USMCA, and just the trends in the supply chain world. I'll talk more about that in a couple of slides, but I think that's an important consideration as well.

JJ has already mentioned the strategy of preserving access to all existing gateways. And I touched on – a little bit on the previous slide the complementary nature of our two networks, the fact that we are combining two important segments that are already recognized as premium service segments, the – our stretch of the Meridian Speedway to Jackson, and then the CN route from Jackson to Chicago and on into the Detroit, Toronto, Eastern markets in North America. So those route segments are already recognized as premium service options. And the connection here will make it possible for us to really offer something immediately upon merger approval that is ready to go after these markets as soon as we can and start diverting some of that traffic very quickly. So I think we're ready to move on to the next slide.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

David, go on to slide 6, where just especially today wanted to highlight one of the synergies of combining the two companies together to our larger rail network, which is to deploy the technology that both of us are working on.

different opportunities to manufacture or produce those products closer to home. And all of that is going to require new single-line options.

So you've got lots of existing rail options. I think that's what this map really highlights. There are lots of existing rail options that are currently well-established and have demonstrated the opportunity to grow. But I think the market is just so large here, the benefits of rail and the benefits of single-line rail. And I hope everybody understands that it is much easier to produce – to provide a service option that's going to be attractive to all of these potential shippers.

If you have a rail network that is under common control, common philosophy, common capital, investment strategy in terminals and track capacity and equipment and all of that for a single-line haul on a single network versus the alternative, which is working with interchange partners that may not share all of that because, as you know, these capital investments are large, they're multi-year. And to go after this opportunity, that's going to – that I think is going to continue to be out there for many years to come is going to require a lot of that common philosophy on resource and capital management.

So in addition, that ties mostly to the truck conversion market and the growth but as JJ mentioned, there is just – Mexico is one of the largest grain importers in the world. So there's opportunities for additional market share there. For our existing customers who are looking for new sources of origin and for other producers that are looking to have new service options to get into those markets, I think there's a lot of opportunity there as well.

David Vernon

Analyst, Sanford C. Bernstein & Co. LLC

Q

And then I guess as you think about this single-line service advantage that you're going to be creating, how would that look different from a customer's perspective, let's say, [ph] an intermodal ship (34:09) came to you, Pat, in Mexico, San Luis Potosi, I want to get up to Detroit, how'd that service product look today versus what it's going to look like in the future assuming we can get this transaction?

Patrick J. Ottensmeyer

President, Chief Executive Officer & Director, Kansas City Southern

A

Again, I think the key is that that's going to require better coordination of things like long-term capital investments, terminal capacity, equipment, yard capacity, all of those things that are just going to be much more controllable under a single philosophy and strategy than two independent companies that are truly synced up to provide that kind of service consistency, reliability for a long period of time.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

So maybe, David, it may have some similarity of what we've done, for example, from the Port of Vancouver to Port of Rupert, so you have very long distance. The distance in mile here are huge, right, San Luis Potosi to Detroit. And so you create a destination train or you create train with large block but not too many block on the same train. You may not run them every day but when you run them, you want to run them with minimum number of stop, minimum number of things.

First of all, you eliminate the interchange over Kansas City, over Jackson. You also eliminate the [ph] handoff (35:35) Laredo or [indiscernible] (35:36) railroad. Create a block of cars, maybe there's only two block on that train; one is Detroit, one is Chicago or one is Detroit, one is Toronto. So that train has already limited reason to stop at different places or to be doing switching or whatnot. And also, because we're running as one network, the

operating center of the joint company, we want to be sure that the premium – sort of the premium train has provided the premium service.

As Pat mentioned, the line that KCS own between what they call the Meridian Speedway is already in great shape. It connects with the CN network in Jackson and our Jackson line to Chicago east of Detroit is also in great shape. It's also our main line. So, we already have a capital network, an asset which is in great shape to do that.

Over time, we will also want to have the line that goes from Shreveport to Kansas City, and then east to Springfield and Chicago to also be upgraded to become a redundancy line even though that line might use more [ph] for (36:38) like Canadian crude coming from Alberta to the Gulf or petrochemical from KCS' current franchise going to Western Canada because that route has also less miles. So we will want to make the best use of the asset that there is today but doing that from a point of view of one operator, thinking of how do I create a customer's experience that flows through to what they need, and can we make that better from any other experience that we offer that they get today.

Another example would be connecting Kansas City to the Port of Montréal. So today, Kansas City does not really have access to an East Coast port. By our combination, we can put them in the market, the Port of Montréal and meet at some point over Québec City or some other port in the East Coast.

And also, today, when you [ph] move finished (37:30) vehicle into Kansas City, the only single-line service we have is with the Norfolk Southern. They run a great service from Detroit through Kansas City. The combination that we would have would also run a single-line service between Detroit and Kansas City for automotive service, for example.

So, these are the things that today are very difficult to do together because you have to integrate your capital plan, you have to integrate your operating plan. But as you become one, you will want to do that because now there's all the reason under a single management and single view to how we create benefit to our customers, to make that possible because of the network, but actually make it possible [ph] to answer that's (38:14) a question of – it's a question of operating plan, and it's a question of strategy and some capital in some cases as well.

David Vernon

Analyst, Sanford C. Bernstein & Co. LLC

Q

Okay. So, I'm hearing Mexico into the Detroit basin, Kansas City up into Montreal, anything like [indiscernible] (38:32) any other – what would be like the third or fourth biggest sort of market corridor that you can kind of – that we should be looking at or at least trying to get our heads around as we try to evaluate this deal?

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

So broadly speaking, there's the port storage, so leveraging the port [indiscernible] (38:49) network, we try to give them longer, deeper access into markets. So, we'll give it a shot to help Lazaro Cardenas [indiscernible] (38:56) [ph] through terminal operator (39:00) to see if we can increase their reach. Ideally, at some point, we'll give it a shot to see if we can get into the Texas market coming from China. I think Patrick already mentioned the large number of containers still coming from China and that this is a big market.

In other – two other ports that we've also worked closely together over the years are Mobile and New Orleans, both also would like to have access to bigger catchment area, bigger [indiscernible] (39:30) market. So can we put these two ports into the market of Dallas, can we put these two ports in the market of Kansas City, and maybe at some point reopening the ramp, the [ph] ethanol ramp (39:41) that we used to have in East St. Louis.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

So these are – and Pat can add onto it because he's very familiar with them. But these are really parallel line. But they are still quite a bit of distant from one another, 400 miles away. They're really the railroad highway that get you to places. We talked about how we want to use them. They're not really competing. They're serving different markets. So we talked about earlier about grain coming from the Midwest, or grain coming from the KCS franchise that goes to Mexico, it takes the more western of these two lines. When we talk about the [ph] intermodal (44:12) between Mexico and Detroit for example, we might be using the more eastern line because [ph] of the basin, it has a capital program that has (44:17) the fastest line of the two.

When you come from Western Canada with a carload, you probably want to use the Western line, because that's the shortest mile. So each of these line today already have different existing purpose. And both of them are very much required, and we will make sure we keep those two in good shape and make the maximum use of them. But I don't know if, Pat, you want to add on to [indiscernible] (44:43).

Patrick J. Ottensmeyer

President, Chief Executive Officer & Director, Kansas City Southern

A

No. I think that is absolutely correct. We see them as kind of different markets, different commodities, different regions. But the one thing that it also does is create some optionality and improved resiliency for some of the traffic that we're planning to go after. If you look at, for example, on the map on slide 4, you'll see the green line and the yellow line have multiple routes that could be used alternatively, particularly in the case of national disasters, other things that just create optionality and resiliency that are important for some of these markets longer term that we would like to go after.

So, JJ mentioned the Kansas City to Springfield. That's probably a less attractive route than the one that exists here with the Kansas City Southern Meridian Speedway to Jackson, and then up to Chicago, Detroit, and beyond. But certainly, that route has an option creating better resiliency and recoverability, because as we all know, natural disasters happen, and that optionality comes in very handy from time to time.

David Vernon

Analyst, Sanford C. Bernstein & Co. LLC

Q

And then we're kind of running out of time unfortunately, but I wanted to get some high-level expectations for how this might impact the growth and margin trajectory of the two companies, right? You guys have both been executing very well from a margin standpoint, growing mid-single digits. How should investors be expecting this transaction to change that, or are we just expecting it to be bigger [ph] and be similar level it were, like (46:30) how should we be thinking about that?

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

I think maybe I can start. Generally speaking, it provides access to new market. We talked about especially we're very focused on the truck market. We've identified roughly the total accessible market of \$8 billion. Most of it, [ph] a large amount is of (46:51) truck. Some of it is rail, carload. And it just gives us a new tool, a new service, single-line service, a new tool, a new market that today we would struggle to capitalize on those if we stay separately becoming one. It gives us more ways to capitalize on USMCA, on nearshoring [ph] of the takeoff for (47:18) the economy.

EXHIBIT 13

**CANADIAN NATIONAL UBS GLOBAL INDUSTRIALS AND
TRANSPORTATION VIRTUAL CONFERENCE
TRANSCRIPT EXCERPTS
(JUNE 8, 2021)**

08-Jun-2021

Canadian National Railway Co. (CNI)

UBS Global Industrials and Transportation Virtual Conference

CORPORATE PARTICIPANTS

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

OTHER PARTICIPANTS

Thomas Wadewitz

Analyst, UBS Securities LLC

MANAGEMENT DISCUSSION SECTION

Thomas Wadewitz

Analyst, UBS Securities LLC

Welcome everybody to the First Day of the UBS Industrials and Transports Conference. I will – My name is Tom Wadewitz, I'm the Free Transports analyst at UBS. I will be hosting panels and fireside chats through the day, focused on transports. It's a real pleasure for me this morning to kick things off with Canadian National. I think they've got a lot of interesting things to talk about. Obviously, we've got JJ Ruest, the CEO; Sean Finn, the Chief Legal Officer; and Paul Butcher, the Vice President of Investor Relations. I'm going to hand it over to Paul and we're going to get into the fireside chat fairly quickly. But JJ, Sean, Paul, thank you for joining us.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

Thank you, Tom.

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

Yeah. So, thank you, Tom.

Thomas Wadewitz

Analyst, UBS Securities LLC

Yeah.

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

So, before we begin, I'd like to draw your attention to the forward looking statements and additional legal information which are available at the beginning of the presentation. As a reminder, today's conference call

contains certain projections and other forward looking statements within the meeting of the US and Canadian Securities Law. These statements are subject to risk and uncertainty that may cause actual results to defer materially from those expressed or implied in these statements and are more fully described in our cautionary statement regarding forward-looking statements in our presentation.

So, I'll now turn it over to JJ Ruest, our President and CEO.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

Good morning, Tom. And it's a pleasure for Sean and I to be your opening act today for your conference. We will start – I will start with some prepared comments and after that we'll do the Q&A, Sean and I will do the Q&A with you. So, we'll go on Page 4, which is what's on the screen. And we'll start by talking about leveraging the economy and the recovery underway. So two months into the quarter, we wanted to provide an update on the ongoing business. Volume is strong and RTM is up 13% quarter-to-date. We have strong same-store pricing ahead of rail inflation. The North American economy is driving consumable, manufacturing and construction. Our propane export is ramping up with our second terminal in Prince Rupert. We have inventory restocking and strong consumer demand, which drives [ph] that model at the forefront (00:02:28) domestically. The lumber and panel pricing is driving strong carload demand from construction and renovation, and the USMCA manufacturing is driving our steel and aluminum carloads, where we do have two transitory headwind coming into play in our second quarter result. First, the exchange rate. The Canadian dollars is leveraging about \$0.82 versus about \$0.72 in the second quarter of last year. And you'll recall that each CAD 0.01 of appreciation in Canadian dollars will negatively impact our EPS by CAD 0.04 on an annualized basis or in the case of the second quarter, approximately CAD 0.10 of a headwind on the earning. The second headwind is diesel price. We have seen a significant increase on the diesel price with the on-highway diesel price currently at about [ph] CAD 3.26 (00:03:19), up about 20% from the beginning of the year, creating a fuel lag negative headwind on the operating ratio for this quarter.

Our operating metrics are strong. We have improvement in train length, train weight and terminal dwell. We lead the industry in fuel efficiency, and we've improved another 3% fuel efficiency year-to-date from an already industry-leading starting point. Another important ESG project is our FRA injury rates and our FRA accident rates are down about a full one-third from last year and our employee engagement survey is also showing important people progress.

We'll go on page 5 and talk about the outlook. We are encouraged by the economic recovery and the vaccine rollout, which is giving us confidence heading into 2021 and 2022. We have [ph] strong locomotives and are (00:04:15) hiring and training train crews for the economy ahead. The increase in industrial production will drive our carload segment, such as in chemicals, in forest products, steel, aluminum, fuel and plastics. We are also preparing for the consumer and back to school fall peak, the return to a strong [indiscernible] (00:04:36) market and the next crop year.

Our financial outlook for 2021 is targeting double-digit adjusted diluted EPS growth. To be clear, this is the same guidance we provided in our Q1 earnings release. Our outlook is underpinned by high single-digit volume growth in revenue ton miles. We expect to deliver free cash flow in the range of CAD 3 billion to CAD 3.3 billion, which will drive further improvement in free cash flow conversion. All of that [ph] would occur (00:05:12) in headwind of a strong Canadian dollar.

We'll go to page 6 and start to talk about our end-to-end merger. This is a historical moment for CN and we're very excited about the future. And I want to take a few moments to revisit some basic facts. The CN and KCS will

deliver a significant value and benefit to customers, to our employees of both companies, the shareholders of both companies, the port operators who are connected to our network and the railroad communities [indiscernible] (00:05:42). We will enhance competition by pricing current gateway with transparency. We will enhance competition by adding new choice without taking away any existing choice. There will be new carload and intermodal single-line service, like single-line intermodal from Mexico City to Detroit and Toronto or direct carload service from Detroit to Kansas City.

We are committed to divest a 70-mile overlap, making our combination a true end-to-end merger. In our very first announcement back in April of our proposal, we committed to address the Baton Rouge to New Orleans overlap. This divestiture is the execution of that commitment. I also want to make it clear that other claim of overlap arising from the fact that CN-KCS will have two parallel north-south line are false. It is true these lines are parallel, but just in the same way that the Interstate 5 on the West Coast and the Interstate 95 up in East Coast are also parallel. They are separated by hundreds of miles. They're surrounded by intense competition from big Class I, by competition for the Mississippi barge river system and by competition from interstate long-haul traffic. The lines serve different markets and different customers.

Lastly, I'd like to highlight that we now received over 1,400 letters of support for our transaction and more are coming, letters from all three countries, letters from payers of freight, letters from supply chain partners, letters that voice a support for our use of the voting trust, the support for enhanced competition under the existing rule and for our end-to-end combination. We're very excited about the CN's future with KCS. This will be a transformative combination, creating jobs, better jobs, and creating a cleaner supply chain with a lower carbon footprint, and gateway will be open and will have transparent pricing.

This is the right time and the right partner combination. This will result in meaningful new products choice, new cost synergies for user, new ESG-driven highway conversion and new ways to compete in the future pro growth. The premier Canada-US-Mexico network for the 21st Century is what the continental economy and trade need at this point. Having said all that, as we pursue the combination, the team will remain very focused on our CN core operation, serving our customers day-to-day, ensuring that we prepare capacity for 2022 and ensuring that we deliver results under our guidance for 2021.

So, Tom, I think we – from this point on if we can go to questions to myself and Sean on either on the business or on the combination.

QUESTION AND ANSWER SECTION

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Great. That sounds good. Thank you, JJ. Thank you, Sean, for joining as well, and Paul. Why don't we start off with a question on mitigation? You made a proactive step for the line between Baton Rouge and [ph] New Orleans (00:08:55), the KCS line. What would your response be if – to potential further mitigation measures through the process if that was helpful and addressing concerns, do you think there's potential for that, would there be willingness on CN's part to consider further mitigation measures?

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Sean, you want to maybe touch...

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Yeah. Sure.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

...on that one?

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Yeah. Sure, Tom. Thank you very much. And we've done this process before. IC is a good example where clearly when you have a control application at the STB post the voting trust, post the shareholders voted by KCS, [ph] will close into the trust in October, then will (00:09:36) be on this for a year as people submit comments, views on the combination, be it the customers – customer associations, communities. And as you know well, STB's expectation is that the applicant will deal with these comments as they come in and attempt to settle them. So, that's your question. [ph] CN is always (00:09:59) willing to sit down with any stakeholder involved in making a submission or comments [ph] with STB (00:10:05) to try and work out a settlement. And if we can't, then obviously the STB will – could impose conditions or mitigation.

But we're comfortable that besides having undertaken, if the STB so desires, to dispose of the assets between Baton Rouge and New Orleans that we can, to your point, to engage with stakeholders, customer associations and find ways to address any concerns they may have and ultimately call it mitigation if there is mitigation required, the STB will raise it. But we're very confident that with our experience in the past examples of a Class I merger being IC and even on the EJ&E were very successful, entering into agreements with stakeholders to address the concerns, and it'll be no different in this CN-KCS combination.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

I guess, when you mentioned the Baton Rouge to New Orleans line, I think there was a commentary about maintaining access, I guess, trackage rights. And also – so, I'm wondering is that something, which like why you

would choose to do that or if you think that could be a sticking point? And also, how good is the connectivity at the other end, is it pretty easy to find a connecting carrier that you could sell that line to, whether it's a Eastern Railroad in New Orleans or Union Pacific in Baton Rouge, how would you think about the kind of ease of making that transaction take place?

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Yeah. So, we committed this in our joint KCS-CN voting trust application. Obviously, it's subject to the STB's view on this, and it's a bit premature. I mean, obviously, this will not happen for possibly two years or most likely be [indiscernible] (00:11:47) point of condition of the approval of the combination. And obviously, we've lots of time to engage with various parties who wish [indiscernible] (00:11:56). When we asked – we talked about running rights, it was just to make sure that – or trackage rights – excuse me – was that we recognize the STB welcome [indiscernible] (00:12:04) first of all if we decide to dispose of it in the context of the combination. They want to approve most likely who will be the acquirer. And secondly, how we ensure [ph] is ultimately a test (00:12:14). The customers on the line will continue to have several choices when it comes to getting their goods to market. And there is good connectivity to ensure that a short line or another railway could access this.

So, premature [indiscernible] (00:12:27) to get the details of the conditions. But obviously, we want just to make sure that this very little overlap is 70 miles, which now makes this transaction a end-to-end combination, [ph] though (00:12:39) different than the other bid that was made. And to say that it's not the end, it's untrue and it's inaccurate. My view is that clearly there are no two-to-one points. And if there are any issues, keeping the gateways open and addressing this issue is a good way for us to proactively address any concerns about this transaction not being pro-competitive. It is pro-competitive. It provides more choices, not less, at the customers and shippers, and it'll be no different. We talked about how the line is disposed and we'll ensure with the STB as they go through the approval of the ultimate control decision how is the best way to dispose of the asset to ensure that customers on the line continue to have several choices to move their product to market.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

And Tom, it's JJ. There's already a significant interest from other potential buyers, either Class I railroad, short line, or infrastructure investors. So, definitely, we will have another owner to step in the shoes of KCS and our merger will be end-to-end. And those customers who have two choices [indiscernible] (00:13:38) will have two choices post merger.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Great. Thank you. So, I've heard a perspective that it's hard to know how much some of the perspectives are theoretical versus how broadly impact would be. But I've heard a shipper perspective they would say, well, while the these two north-south lines are separated by 400, 500 miles, if you're a shipper in the middle, then you're 200, 300 miles away from either line. And if you're transload shipper, then you might previously have a choice of both lines and then you would lose the choice. I don't know how much that's kind of a theoretical comment versus a how broadly that would apply. But what would your response be in terms of some shippers that might be between the two lines that actually could have access that would be reduced?

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Yeah. So, if you go on page 6, where we saw that map of all the ways to go from north to south and actually we're going to create even a better way by starting a single line railroad service that starts in Mexico and terminates in Canada Midwest. But it is very theoretical. That it's very – it's not real. And this is – so, ultimately, what customer in general, they all care about service, the quality and cost of that service, and they want to have option. And at CN, here we're going to create option. We're going to maintain gateway open, which is quite critical to our own growth. We need growth from the carload sector and keeping the gateway open will allow us to grow these – the carload from this interchange. But we will do that by offering Rule 11 rates pricing.

If you're familiar with Rule 11 pricing or what we call sometimes at CN gateway pricing, it's something we've practiced now for probably 15 years, where you actually priced to a gateway, more than one gateway, you put that in your customers' contract, and after that, you let the customers go and negotiate with connecting carriers at different gateways, terminate this combination, terminate this negotiation or price escalation for each component. And after that, we publish the remaining or price escalation for each component. And after that, we published the remaining price as a combination and/or the customers has different contract with more than one railroad and he would pay the two invoices separately.

So, Rule 11 pricing is really something that is not necessarily practiced widely, but under the commitment of keeping the gateway open and making sure there's no bottleneck, we will offer those choices. And frankly, I think from our own point of view having gateway open and Rule 11 pricing at these gateway let the customers pick the best price, best option after he's done [ph] his shopping the (00:16:23) service, will also allow us to actually get business back on the railroad from the highway or get business back on the CN-KCS competing with some other choices. So, this whole thing about the two line north-south is really a stretch.

And then, as we mentioned a number of times, we will use [ph] both line (00:16:46) sometimes as a redundancy for the [indiscernible] (00:16:50) network that we want to put together from Mexico to Toronto, but also sometimes to move grain down to Mexico via Kansas City and/or more moving petrochemical or crude from Alberta over the Kansas City gateway and allowing the payer freight to have a Rule 11 pricing from the combination company and determine what's best for them in terms of routing. So, I think really, really we are creating a new way to compete with this proposed merger, which is end-to-end, and I think that's what customers and association should focus on is the new ways of competing that we are about to create here.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

JJ, I think when shippers think about railroads and they think about large railroads, railroads with strong origination franchises, I think railroads getting bigger sometimes causes concern. CN obviously is bigger than CP. And so, I think there's probably a little natural inclination from some shippers to say, hey, that, CN-KSU causes – or KCS causes more concern. How do you address the kind of broader market power concerns from shippers?

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Yeah. Go back to basics. It's not about big, small or medium. And when you talk about size, CN in United States – and I'm talking CN and KCS combined in United States – will still be the fifth largest railroad. We're still going to be smaller than CSX and NS and much smaller than UP and BN. And because we're going to be more on western side, we're going to compete with two big guys, and then, we – and we're fine with that. I think that's what it creates competition. It brings in another choice to compete with existing choice from very strong and big railroad, much bigger than us. We're the only number 5.

going to do so. But I can tell you, we selected to go under the current/new rules. We didn't ask to be exempt from those rules. So, we did so with a clear understanding what that contemplated for us going forward, with us being able to make our case by which we understand very much both railways CN and KCS.

And we're confident that in the context of the STB application, the control application, which we'll file probably in October – September or October, we'll address those issues, and we're looking at them in great detail. But obviously, what we decided to proceed under the so-called current rules, because they're no longer new, they're now 25 years old, we did so with a clear understanding of what the downstream effects might be and how we'd address them in the overall application.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Okay. What – how do you think about the [indiscernible] (00:28:02) – I guess, [indiscernible] (00:28:05) of the public interest analysis that STB could do. Do you think that it's possible that they do kind of a mini-merger analysis and look at things, the five criteria in some detail and potentially take comment periods as building a record, recognizing there's [ph] less ability (00:28:26) to build a record with a short comment period versus a full review? And then also how do you think about the potential for them to consider a comparative analysis? CP has continued to move forward with their applications, even though they no longer have an agreement with KCS. So, how do you think about the kind of the [indiscernible] (00:28:45) of what STB may look at in voting trust and also about, is it even possible that they end up doing kind of a comparative analysis as part of a voting trust or a merger review?

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Well, obviously, the agencies are very, very competent and has expertise on a lot of areas that are addressed in the overall voting trust applications. So, we're very confident that they'll do the work that could be done to get satisfied [ph] that it's in the (00:29:12) public interest if that's the KCS shareholders have access to a voting trust. And obviously, the ultimate test here is we should allow the KCS [ph] shareholders (00:29:25) to decide who is the best partner for them with respect to the sale of their interests in the KCS and the company itself. Obviously, we've submitted a very detailed joint petition. So obviously, we felt compelled to make sure that we had all the facts and all the law in front of the STB.

So, we think we've done pretty detailed [indiscernible] (00:29:45) submission. And I think that it's recognized that in some cases comments we made in the overall voting trust submission is almost as strong as [ph] some comments you'd (00:29:55) have seen in our overall control application, but notwithstanding that [ph] want (00:29:57) to make sure [indiscernible] (00:29:58) of the STB. As you know, we've asked them to adopt a procedural schedule. We had proposed a 10 day comment period. We're still waiting that decision from STB on what – what would be the procedural schedule for the voting trust. Obviously, they've already approved one voting trust, this one is identical. We think we have addressed the comments that were set out in the decision of May 17.

So, we'll wait to see how the STB proceeds when it comes to the procedural schedule. But we're comfortable with the 10-day period, 20-day period of comments. But obviously, that will be determined by the STB in the coming days and there'll be a period for comment and that's – under the current rules that was provided for. With respect to having a parallel [ph] control (00:30:40) application, as you probably saw on last night the STB issued a decision providing the full 20 days for KCS to comment on the request by the other bidder to continue to have access to all the information that KCS we're sharing with them prior to them terminating the merger agreement and signing up with CN.

So, [ph] we'll obviously review (00:31:03) and we'll have a chance to review this for KCS, that is not in the best interest of the [ph] party to (00:31:09) have two parallel applications and we think the STB will decide that in due course. But we'll be looking forward to see KCS' response to the application by CP to continue to be exchanging information with the KCS notwithstanding the fact that their merger agreement has been terminated. And obviously, I think, the STB by ruling yesterday that they would give the full 20 days to KCS, they want to make sure that KCS has the time and the reflection to provide appropriate comments [ph] where that would not (00:31:42) be a good idea.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Right. Okay. I've had a couple of questions that have come in that I'll try to work in here. I think one you were talking about the procedural schedule. Do you have a specific date in mind that is a timeframe they're required to give you a response on procedural schedule and are there any other kind of, I guess, decisions or elements [ph] of (00:32:09) feedback you're looking for from STB in the near term?

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Yeah. There's no deadline [ph] per se (00:32:15). Normally, it would have been 20 days. And it's important to realize we filed our procedural schedule on May 18. And then obviously our petition for voting trust on May 26, so if it's 20 days or 10 days depending on this deadline [indiscernible] (00:32:34), but we expect in the coming days, the STB is quite busy, they have a lot in their plates [ph] obviously (00:32:39). So, we're very, very understanding that they have to do this in an organizing structured fashion. And we're looking forward to see a procedural schedule as soon as possible under the circumstances. So, we're not going to push – [indiscernible] (00:32:57) to ensure that this is done right and if they're comfortable that the [indiscernible] (00:33:01) select when it comes to comments will allow the parties to make comments in a organized and structured fashion.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Well so you – I mean you mentioned a 20-day rule, but you're saying you're not sure if that 20-day rule applies or not?

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Yeah. Well, STB has a certain [ph] amount of discussion (00:33:22) obviously. But we [ph] would (00:33:24) expect in the coming days to have a decision on the procedural schedule based on one of the two dates either May 18 or May 20.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Okay. Let's see, what about appeal, I think there's some debate about how would an appeal work, how do you do – I forgot the term, an appeal within STB, I forgot the technical term for that or you go straight to an appeals...

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Reconsideration – a reconsideration – yeah, reconsideration is the term you're looking for, Tom?

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Yeah, right, right. Reconsideration – petition for reconsideration or if that's the right term or you go straight to an appeals court. So, I guess, the first question is just – is your understanding that the decision on voting trust would be viewed as a final decision that could be appealed? And then second, what's your understanding of what the appeals' choices and process would be?

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Yeah. So – so Tom, we're confident based on the fact that the STB has already approved the voting trust, which is identical that – first of all. And secondly, we have addressed the issues of independence of the trust and then the trustee versus KCS, the independent run [indiscernible] (00:34:36) during the control period. Obviously, we have addressed the issue of financial integrity of both entities. And finally, we addressed all the comments that were contained in the STB decision of May 17.

So, we remain very confident that the STB will come to the conclusion that is in the public interest under the current circumstances to provide both KCS and CN with the right to use or the right to use the voting trust under these circumstances and that doing so will allow the KCS shareholders to dispose their shares in a way that they feel is in the best interest of both the KCS and the company. And we think we are obviously a very good partner for KCS, the better bidder, the better partner, and we're confident that we'll get a voting trust.

I'm not going to speculate. It will depend very much on what the decision says. But obviously, we remain confident we're going to get a voting trust [indiscernible] (00:35:28). So in the context of what we submitted to the STB on May 26 and we think we've addressed all the concerns they may have on this. If that's the case, then we can't really see a reason why voting trust would not be granted under the current circumstances.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

So, I understand that you made a strong case to address the issues that they raised but it's still possible that they were to choose to reject the voting trust, it – just, I guess, procedurally is your understanding that there is an avenue for appeal or is that dependent on what the decision looks like?

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Well let's see what the decision looks like. We'll have a conversation when that happens if it were to happen and the unlikely situation with KCS. But again, there's always an open right to reconsider to appeal. It depends on what the decision would say. But again, that's highly speculative and based on how we've looked [indiscernible] (00:36:30) test, we have a voting trust approved in an end-to-end merger, we have another end-to-end merger [indiscernible] (00:36:36) address the issue of the very little overlap and we're very confident that based on the same criteria, the STB will have a chance to well first of all to approve the voting trust and then we can close the deal and ultimately [indiscernible] (00:36:48) understand very well Tom to look at the overall transaction. So, I don't want to prejudge the outcome and there are five [ph] commissions (00:36:55). I respect their views enormously. But I think it's premature to start discussing what would be a right to appeal reconsideration. Let's get the voting trust approved, then we'll have a conversation [indiscernible] (00:37:07).

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Right. Okay. JJ, I wanted to get your kind of high level thoughts. What's the game plan if you end up with a voting trust that's rejected and you've got – you could appeal, you could go forward without a voting trust, you could kind of walk away from things. So, how do you think about the various choices and kind of the reasons why maybe you would move forward even if that initial – if that ruling went against you?

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Yeah. So, let's start with the basic. We're [ph] working the (00:37:46) voting trust and we're confident of all the effort we're putting together will get us there. If ever it does not then both the board of CN and the board of KCS would consider at that time based on the fact of the time. So, we can't speculate ahead of time what that might be. But CN has had a great past and will have a great future based on organic growth. We have a great network. We make things out of the marketplace. When we look at this combination, we find lots of different ways to grow and be [ph] accretive (00:38:23). But we could do that also in other scenarios. This is a scenario that we really like. We've been looking at KCS for the last 25 years ever since Paul Tellier was the CEO of CN. At the IPO, we had a marketing alliance with KCS which was only for United States, not for Mexico. And we admire what they've done putting together in the last 25 years.

So, we like – we really want to combine with them for that reason that we mentioned earlier. But on a standalone basis, CN has really grown from our market cap of what we had [ph] at the IPO (00:38:54). We did a series of acquisition big and small with [indiscernible] (00:38:58) and Central. We bought WC. We bought BC Rail. We couldn't quite get the merger with BN. In the meantime, we created a very strong [ph] port (00:39:08) strategy which by the way we were deployed on Lázaro Cárdenas, on Veracruz, on Mobile, on New Orleans. As part of this combination, we would want to get the transatlantic trade via Port of Montreal to connect directly with Kansas City.

So, there's a lot to be just to be shared about the value of rail franchise and a franchise like CN. And no matter what happened, we will be in good shape. You look at operating metrics for this year, quarter to date people may feel that we're busy to focus on the merger. But at the same time, we run a very good railroad right now, [indiscernible] (00:39:45) customer sentiment. We have – we run customer sentiment index with – from a third party and we have good results right now.

So, these things, I think, are all conducive to; a, get customers and shippers report; b, get more of their business. And by this combination, we think that we can provide a unique way to compete stronger and a unique way also to provide products that don't exist today which is mainly [ph] an intermodal (00:40:16) service that starts right in Mexico and terminates in Michigan and Ontario or [ph] an intermodal service that starts state of (00:40:24) Port of Montreal or Port of Quebec City and go all the way to the [indiscernible] (00:40:28).

So short term as I mentioned, as Sean mentioned in lots of detail, we're focused on voting trust. The STB is quite busy. And they'll look at all the fighting that we've done, us and others. And in time hopefully soon they will come back with their first opinion on what we filed almost two weeks ago.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Right. Okay. I've got [ph] a short (00:40:56) just a quick question and then maybe two more that are probably suited for a little longer response potentially. But the quick question is just, is there a scenario where the KCS

EXHIBIT 14

**CN F-4 REGISTRATION STATEMENT EXCERPTS
(JUNE 22, 2021)**

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM F-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

Canadian National Railway Company

(Exact name of registrant as specified in its charter)

Canada
(State or other jurisdiction of
incorporation or organization)

4011
(Primary Standard Industrial
Classification Code Number)

98-0018609
(IRS Employer
Identification Number)

935 de La Gauchetière Street West
Montreal, Quebec
Canada H3B 2M9
1-514-399-8100

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

With copies to:

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Approximate date of commencement of proposed sale of the securities to the public:

As soon as practicable after the effectiveness of this registration statement and upon completion of the transaction described in the enclosed proxy statement/prospectus.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, as amended, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

U.S. Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer) ☐

U.S. Exchange Act Rule 14d-1(d) (Cross-Border Third Party Tender Offer) ☐

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933.

Emerging growth company ☐

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards[†] provided pursuant to Section 7(a)(2)(B) of the Securities Act ☐

[†] The term "new or revised financial accounting standard" refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act, or until this registration statement shall become effective on such date as the U.S. Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to Be Registered	Amount to Be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Canadian National Railway Company common shares	103,727,430(1)	N/A	\$8,158,543,654.97(2)	\$890,097.11(3)
(1) Represents the estimated maximum number of common shares of Canadian National Railway Company ("CN") to be issued in connection with the merger described in the enclosed proxy statement/prospectus (the "merger") and is based on (i) 91,875,491.61 (the "estimated number"), which is the estimated maximum number of shares of common stock, par value \$0.01 per share ("KCS common stock"), of Kansas City Southern ("KCS") that could be outstanding immediately prior to the completion of the merger, including restricted shares and shares that may be issued in respect of KCS director deferred share awards, KCS stock options and other KCS stock-based awards outstanding as of June 17, 2021, multiplied by (ii) 1.129, which is the exchange ratio to be used in connection with the merger. (2) Estimated solely for the purpose of calculating the registration fee required by the Securities Act and computed pursuant to Rules 457(c), 457(f)(1) and 457(f)(3) under the Securities Act, the proposed maximum aggregate offering price is equal to (i) the product of (a) the estimated number and (b) \$288.80 (the average of the high and low prices per share of KCS common stock, as quoted on the New York Stock Exchange on June 17, 2021), minus (ii) \$8,158,543,654.97, the estimated aggregate amount of cash to be paid by CN to the holders of KCS common stock in connection with the merger. (3) Computed in accordance with Rule 457(f) under the Securities Act to be \$890,097.11, which is equal to 0.0001091 multiplied by the proposed maximum aggregate offering price of \$8,158,543,654.97.				

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Based on the closing price of CN common shares on the NYSE on May 20, 2021, the last full trading day prior to the public announcement of the signing of the merger agreement, the per share value of KCS common stock implied by the merger consideration was \$320.11. Based on the closing price of CN common shares on the NYSE on [—], 2021, the most recent practicable date prior to the date of this proxy statement/prospectus, the per share value of KCS common stock implied by the merger consideration was \$[—]. The implied value of the merger consideration will fluctuate, however, as the market price of CN common shares fluctuates, because the merger consideration that is payable per share of KCS common stock is a fixed fraction of a CN common share. As a result, the value of the merger consideration that KCS common stockholders will receive upon the completion of the transaction could be greater than, less than or the same as the value of the merger consideration on the date of this proxy statement/prospectus or at the time of the KCS special meeting. Accordingly, you are encouraged to obtain current share price quotations for KCS common stock and CN common shares before deciding how to vote with respect to the approval of the merger agreement. KCS common stock trades on the NYSE under the symbol “KSU” and CN common shares trade on the NYSE and the TSX under the symbols “CNI” and “CNR,” respectively. The price of CN common shares on the NYSE is reported in U.S. dollars, while the price of CN common shares on the TSX is reported in Canadian dollars.

Background of the Transaction

The KCS board and senior management team periodically review and evaluate KCS’s long-term strategy and the range of strategic opportunities that might be available to it to strengthen KCS’s business and to enhance stockholder value. As part of this ongoing evaluation, management maintains a long-range plan (the “KCS Long-Range Plan”), which is periodically updated and reviewed with the KCS board, that reflects management’s financial and business outlook for KCS over a ten-year period. In addition, the KCS board and management team have, from time to time in the past, discussed and considered the possibility of entering into strategic transactions with other parties.

Beginning on July 31, 2020, several financial media outlets reported that an investor consortium was considering making a takeover proposal for KCS. Following these reports, the KCS board and senior management reached out to its financial advisor, Morgan Stanley, and its outside counsel, Wachtell, Lipton, Rosen & Katz (“Wachtell Lipton”), to discuss the reports and the question of how KCS should respond if a proposal were made. On August 11, 2020, the KCS board met, together with members of senior management and representatives of Morgan Stanley and Wachtell Lipton, to discuss the financial media reports and the possibility of a proposal, including the KCS board’s fiduciary duties under Delaware law and preliminary perspectives on valuation for KCS based on the KCS Long-Range Plan and Wall Street research analyst forecasts. Thereafter, KCS reached out to BofA Securities to join Morgan Stanley as KCS’s and the KCS board’s financial advisor.

On August 17, 2020, Robert Druten, the Chairman of the KCS board, and Patrick Ottensmeyer, President and Chief Executive Officer of KCS, received an unsolicited written proposal from an investor consortium (“Party A”) to acquire KCS for \$195.00 per share in cash. The proposal indicated that Party A intended to finance the acquisition through a combination of equity financing and \$6.5 billion in debt financing, and that Party A anticipated obtaining all regulatory approvals within four to six months of signing a definitive agreement. Messrs. Druten and Ottensmeyer notified the KCS board of the receipt of Party A’s proposal and, later that day, Mr. Ottensmeyer and Michael Upchurch, the Executive Vice President and Chief Financial Officer of KCS, participated in a conversation with representatives of Party A to discuss the terms of the proposal.

A special meeting of the KCS board was convened on August 18, 2020, with members of senior management, and representatives of Morgan Stanley and Wachtell Lipton, to discuss Party A’s proposal and potential next steps. Representatives of Morgan Stanley shared their perspectives on the financial terms of Party A’s proposal. Members of management also reviewed the KCS Long-Range Plan and the opportunities and risks associated with executing on KCS’s long-term strategy. The KCS board discussed these considerations and perspectives and concluded that KCS should remain focused on its long-term strategic plans and should not pursue Party A’s proposal. Messrs. Ottensmeyer and Upchurch subsequently conveyed the KCS board’s conclusion to representatives of Party A.

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On August 21, 2020, Keith Creel, President and Chief Executive Officer of CPRL, called Mr. Ottensmeyer to propose that CPRL and KCS consider entering into a merger-of-equals transaction in which KCS stockholders would receive consideration consisting solely of new shares of CPRL common stock, in an at-market transaction. Mr. Creel expressed his view that, relative to the other Class I railroad companies, a transaction involving CPRL and KCS would likely face the least amount of regulatory uncertainty given the companies' status as the two smallest Class I railroad companies in North America and their lack of geographic overlap. During the same week, a representative of Party A contacted Mr. Ottensmeyer to request a meeting to further discuss the possibility of a transaction.

During the following week, Jean-Jacques Ruest, President and Chief Executive Officer of CN, contacted Mr. Ottensmeyer telephonically to note the financial media reports regarding a possible takeover proposal. Mr. Ruest said that, if KCS was interested in a sale, CN would be interested in discussing such a transaction. No further actions were taken by the KCS management team or board to engage with CN at the time.

On August 28, 2020, the KCS board met with members of senior management and a representative of Wachtell Lipton. The KCS board discussed Party A's request for a meeting and instructed Mr. Ottensmeyer to accept the request. Representatives of KCS management then reviewed possible exchange ratios implied by the historical trading prices of KCS and CPRL common stock, as well as possible exchange ratios implied by the relative contributions of various financial metrics of KCS and CPRL. The KCS board discussed potential responses and determined not to take action with respect to CPRL's proposal at the time, pending Mr. Ottensmeyer's discussion with Party A and Party A's response. Mr. Ottensmeyer also described his conversation with Mr. Ruest of CN. In the days following the KCS board meeting, Messrs. Ottensmeyer and Upchurch had a discussion with representatives of Party A with respect to Party A's interest in a possible transaction.

On August 31, 2020, Party A submitted an updated, unsolicited written proposal to acquire KCS for \$208.00 per share in cash, subject otherwise to the same terms and conditions set forth in Party A's August 17th proposal. The next day, Messrs. Ottensmeyer and Upchurch participated in a conversation with representatives of Party A to discuss the updated proposal.

A meeting of the KCS board was held on September 2, 2020, with members of senior management and representatives of Morgan Stanley, BofA Securities and Wachtell Lipton. Representatives of Morgan Stanley and BofA Securities discussed the terms of Party A's proposal and CPRL's proposal and presented preliminary perspectives on valuation for KCS based on the KCS Long-Range Plan. After consideration of these and other factors, the KCS board again concluded that KCS should remain focused on its long-term strategic plans and determined that KCS should not pursue either Party A's proposal or CPRL's proposal. Thereafter, Mr. Ottensmeyer communicated the KCS board's conclusions to representatives of Party A and to Mr. Creel.

From September to November 2020, the KCS board continued to discuss and review KCS's long-term strategic plan and strategic opportunities in consultation with senior management and KCS's external advisors.

On September 23, 2020, the KCS board met with members of management to further analyze and consider KCS's financial and business outlook and strategic options, including KCS's outlook as an independent company and an analysis of combinations with various other railroads. The KCS board also discussed the investor feedback received by KCS management following the publication of a September 9th financial media report that KCS had rejected a takeover proposal for \$208.00 per share in cash.

On October 20, 2020, the KCS board convened a meeting for informational purposes with members of management and representatives of Morgan Stanley, BofA Securities and Wachtell Lipton to discuss various strategic alternatives that might be available to the company. This included a presentation from representatives of Morgan Stanley and BofA Securities containing illustrative buyout and ability-to-pay analyses with respect to Party A and various railroads who could be potential buyers.

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On November 17, 2020, Mr. Ottensmeyer received a call from a representative of another Class I railroad company expressing interest in a potential acquisition of a portion of KCS's assets. Mr. Ottensmeyer reported this conversation to the KCS board, but no further actions were taken by the KCS management team or KCS board to engage with such railroad company.

On November 23, 2020, representatives of Party A contacted Mr. Ottensmeyer to inform him that Party A intended to submit a revised proposal to acquire KCS for \$230.00 per share in cash, which Party A submitted later that day. The revised proposal noted that Party A had high confidence that it would be able to obtain firm commitments from its equity partners and lenders once the parameters of a transaction had been agreed upon.

The KCS board met on December 2, 2020, together with members of senior management and representatives of Morgan Stanley, BofA Securities and KCS's legal advisors, to discuss Party A's revised proposal and potential next steps. Mr. Upchurch discussed the KCS Long-Range Plan and KCS's general strategic positioning. Representatives of Morgan Stanley and BofA Securities presented preliminary perspectives on valuation for KCS based on the KCS Long-Range Plan. The KCS board discussed the terms of Party A's proposal and the possibility of contacting CPRL, and potentially other Class I railroads, to determine their interest in submitting a proposal to acquire KCS. The KCS board reviewed potential synergy estimates and the possible merger consideration such parties could offer to KCS stockholders. The KCS board also discussed the timing and certainty of consummating a transaction with a Class I railroad company in light of the regulatory framework for such a transaction. Among other things, the KCS board and management team discussed the possibility of addressing potential uncertainties by employing a voting trust structure in which an acquiring Class I railroad would close the acquisition and immediately deposit the shares of KCS into an independent voting trust, with KCS stockholders receiving their merger consideration at that time and prior to the acquiror's receipt of final control approval from the STB.

After deliberation, the KCS board determined that Party A's proposal was not at a value that the KCS board was prepared to accept, but authorized management to begin providing Party A with due diligence materials, subject to the execution of a mutually acceptable confidentiality agreement, so that Party A could have an opportunity to submit an improved proposal. The KCS board also directed Mr. Ottensmeyer to notify Mr. Creel that KCS was now considering a potential transaction and would be willing to consider an acquisition proposal from CPRL that contemplated a significant control premium and a voting trust structure to address timing and regulatory issues. After consideration of the risks associated with a broader outreach effort, the KCS board determined not to contact other parties at the time and to revisit the question of reaching out to additional parties at a later date. After the KCS board meeting, Mr. Ottensmeyer reached out to Party A and to Mr. Creel with the messages determined by the KCS board.

On December 4, 2020, KCS entered into a confidentiality agreement with Party A, which contained customary standstill restrictions on Party A (which restrictions would terminate in the event KCS were to, among other specified circumstances, enter into a transaction agreement with another party).

On December 8, 2020, KCS entered into formal engagement letters with Morgan Stanley and with BofA Securities to provide advice to KCS and the KCS board with respect to KCS's strategic alternatives.

On December 9, 2020, CPRL submitted a written proposal to acquire KCS for 0.469 shares of CPRL common stock and \$77.00 in cash per share of KCS common stock (equal to approximately \$235.00 per share of KCS common stock based on the market price of CPRL's common stock at the time). The proposal also contemplated that a transaction would be effectuated using a voting trust structure, which CPRL anticipated consummating within four months of signing a definitive agreement, with CPRL taking control of KCS following full STB approval within eight to twelve months thereafter. Mr. Ottensmeyer and other members of management subsequently participated in a call with Mr. Creel and other members of CPRL management to discuss the terms of CPRL's proposal. On December 9, 2020, KCS entered into a mutual confidentiality agreement with CPRL, which contained customary standstill restrictions on CPRL (which restrictions would terminate in the event KCS were to, among other specified circumstances, enter into a transaction agreement with another party).

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The KCS board held a meeting on December 14, 2020 at which it discussed CPRL's proposal and the substance of the management team's conversation with CPRL. The KCS board then determined that CPRL's proposal was not at a value that the KCS board was prepared to accept, but authorized management to begin providing CPRL with due diligence materials under the mutual confidentiality agreement, so that CPRL could have an opportunity to submit an improved proposal.

Through December 2020, KCS provided Party A and CPRL with access to a virtual data room and various business and legal due diligence materials, including a copy of the KCS Long-Range Plan and hosted management presentations and diligence sessions for the benefit of Party A and CPRL. CPRL also provided KCS with access to a virtual data room and various reverse diligence materials.

On December 22, 2020, the KCS board held a special meeting, together with members of senior management and representatives of Morgan Stanley, BofA Securities and KCS's legal advisors. Mr. Upchurch presented an update to the KCS Long-Range Plan, which had been adjusted upwards to reflect management's more optimistic financial and operational outlook for KCS as a result of the expected recovery from the COVID-19 pandemic and a lower cost structure resulting from an acceleration of Precision Scheduled Railroading initiatives. Members of management then provided an update regarding the status of Party A's and CPRL's ongoing diligence efforts, as well as internal discussions regarding the regulatory process and potential issues associated with a strategic transaction. Representatives of Morgan Stanley and BofA Securities also shared their perspectives on the financial terms of Party A's and CPRL's latest proposals and refreshed their perspectives on valuation for KCS to reflect the new financial terms of those proposals and the updated KCS Long-Range Plan.

On December 28, 2020, Party A sent an updated written proposal to Messrs. Ottensmeyer and Upchurch to acquire KCS for \$235.00 per share in cash. The proposal noted that, pursuant to the restrictions in its confidentiality agreement with KCS, Party A had not informed its equity partners or lenders of its recent conversations with KCS, but that Party A remained highly confident of the availability of financing for a transaction.

On December 31, 2020, CPRL submitted an updated written proposal to acquire KCS for 0.489 shares of CPRL common stock and \$78.00 in cash per share of KCS common stock (equal to approximately \$248.00 per share of KCS common stock based on the market price of CPRL's common stock at the time).

The KCS board met on January 7, 2021, together with members of senior management and representatives of Morgan Stanley, BofA Securities and KCS's legal advisors. Mr. Ottensmeyer provided an update on the status of KCS's discussions with Party A and with CPRL and outlined potential next steps. Mr. Ottensmeyer offered his perspective that a potential combination with CPRL would be attractive for KCS and its stockholders and his expectation that CPRL could further increase its purchase price given potential synergies. Members of the KCS board and management also entered into a discussion regarding the updated KCS Long-Range Plan and a range of potential synergies for a combination with CPRL. Representatives of Morgan Stanley and BofA Securities presented their perspectives on the latest proposals received from Party A and from CPRL. The Company's Chief Legal Officer then described the expected regulatory approval process and potential timeline in the event KCS pursued a transaction with a Class I railroad company. After discussion, the KCS board determined not to accept either of the proposals that had been most recently submitted by Party A and by CPRL. The KCS board directed Mr. Ottensmeyer to communicate to representatives of each party that the KCS board was not prepared to proceed with a transaction at its proposed purchase price, but that the KCS board was willing to allow each party to complete its confirmatory due diligence (and, in the case of Party A, to reengage with its financing partners) with the expectation that the parties would complete diligence efforts by early-to-mid February and revert with their best and final offers. In addition, the KCS board again discussed the possibility of reaching out to other parties to ascertain their potential interest in a transaction, but, for the same reasons considered at its previous meeting on December 2, 2020, determined not to do so at the time and to revisit the question again in the future.

In the days following the meeting, Mr. Ottensmeyer communicated the KCS board's decisions to representatives of Party A and CPRL. Through the course of January and February 2021, members of KCS management,

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together with representatives of KCS's legal and financial advisors, continued to engage with and to address due diligence requests from Party A and from CPRL. Members of the KCS board also periodically met and consulted with members of management regarding the status of the process and to discuss transaction-related issues. On January 22 and 23, 2021, representatives of KCS, including Messrs. Druten and Ottensmeyer, met with representatives of CPRL to discuss CPRL's views on regulatory considerations and other issues relating to a potential combination with CPRL.

On January 26, 2021, the KCS board held a meeting with members of management and its legal advisors to specifically discuss potential regulatory considerations and issues relating to a strategic combination, including an assessment of the process for a voting trust transaction and obtaining final regulatory approval for the potential merger. The KCS board also convened meetings on February 4, 2021 and February 15, 2021, at which the KCS board reviewed the status of KCS's discussions with Party A and CPRL and discussed potential next steps.

On March 3, 2021, KCS received updated acquisition proposals from Party A and from CPRL. Party A's proposal contemplated an all-cash purchase price of \$245.00 per share. The proposal indicated that Party A had re-engaged with its equity partners and that it was highly confident that the equity partners would be able to secure final internal approvals upon confirmation of the key transaction terms over a two- to three-week period. The proposal also noted that Party A believed the credit committee approvals that its lenders had received in August 2020 remained valid, although it had not engaged in any recent discussions with its lenders in light of the restrictions in its confidentiality agreement with KCS. CPRL's proposal contemplated a purchase price of 0.489 shares of CPRL common stock and \$81.00 in cash per share of KCS common stock (equal to approximately \$260.00 per share of KCS common stock based on the market price of CPRL's common stock at the time). The proposal indicated that CPRL anticipated consummating the voting trust transaction within four to six months after the signing of the merger agreement, with the acquisition of control within eight to twelve months thereafter. CPRL's proposal also contemplated a \$400 million reverse termination fee payable to KCS in the event the merger agreement was terminated due to the inability to complete the voting trust transaction as a result of STB regulatory issues. Furthermore, CPRL's proposal contemplated the renaming of the combined company to "Canadian Pacific Kansas City", with the U.S. headquarters of the company to be located in Kansas City, and indicated that CPRL would be open to considering KCS director representation on its board following consummation of the voting trust transaction.

In the subsequent days, with the authorization of the KCS board, members of KCS management circulated a draft merger agreement to representatives of CPRL. The draft included, among other terms, a customary "fiduciary out" provision that would permit the KCS board to terminate its existing agreement with an acquirer in order to accept an alternative acquisition proposal under certain circumstances. In addition, the draft merger agreement provided to CPRL contemplated a reverse termination fee representing 7.0% of the transaction consideration (or approximately \$1.7 billion based on CPRL's then proposed purchase price) and a one-way exchange ratio collar in which KCS stockholders would receive a fixed dollar amount of stock consideration in the event the acquirer's stock price fell below a specified threshold, up to a maximum number of shares.

On March 6, 2021, the KCS board convened a meeting to discuss the updated proposals submitted by CPRL and Party A. Mr. Ottensmeyer reviewed the terms of each proposal and again expressed his views on the strategic options available to the company. Representatives of Morgan Stanley and BofA Securities also shared their perspectives on the financial terms of the proposals. The directors discussed with members of management and representatives of the financial advisors the potential synergies from a transaction involving CPRL and the possible benefits and risks associated with accepting merger consideration that included an acquirer's common stock. Among other things, the KCS board discussed various mechanisms to protect against a potential decline in an acquirer's stock price, including the one-way exchange ratio collar proposed in the draft merger agreement provided to CPRL. The KCS board discussed again with the company's legal advisors the regulatory uncertainties and timeline for a strategic combination. The KCS board then directed management and the financial advisors to ask Party A and CPRL to submit final proposals and merger agreement markups by no later

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than March 15, and to inform Party A that it could reach out to its lending sources to confirm financing. The KCS board also again considered whether or not to reach out to other parties. After considering, among other factors, the various risks associated with further opening up the process, and the “fiduciary out” provisions included in the proposed merger agreement, the KCS board determined to focus its efforts on negotiating a transaction with either Party A or CPRL and not to reach out to other potential counterparties at the time.

Following the KCS board meeting, representatives of KCS and their advisors sent a letter to representatives of each of Party A and CPRL outlining the process and request for final proposals. In addition, representatives of KCS sent a draft merger agreement to representatives of Party A. Similar to the draft merger agreement provided to CPRL, the draft merger agreement contemplated a customary “fiduciary out” provision that would permit the KCS board to terminate its existing agreement with an acquirer in order to accept an alternative acquisition proposal under certain circumstances. It also included a reverse termination fee representing 7.0% of the transaction consideration (or approximately \$1.6 billion based on Party A’s then proposed purchase price) in the event the transaction did not close due to the failure to obtain financing.

On March 15, 2021, Party A and CPRL submitted revised acquisition proposals, including markups of the forms of merger agreement previously provided by KCS. Party A’s proposal contemplated an all-cash purchase price of \$250.00 per share, which it noted was its “final proposal.” The proposal indicated that Party A’s lenders had received full credit committee approvals to increase the overall debt financing to \$10.3 billion and that all but one of Party A’s equity partners had received the required internal approvals to fund the transaction (Party A informed KCS subsequently that this final approval had been obtained). CPRL’s proposal contemplated merger consideration of 0.489 shares of CPRL common stock (without any provision for a collar) and \$86.00 in cash per share of KCS common stock (equal to approximately \$268.00 per share of KCS common stock based on the market price of CPRL’s common stock at the time). CPRL’s proposal also contemplated, among other things, an increased \$800 million reverse termination fee and the elimination of the right of the KCS board to terminate the merger agreement in order to accept a superior proposal in certain circumstances.

On March 16, 2021, the KCS board met, together with members of senior management and representatives of Morgan Stanley, BofA Securities and KCS’s legal advisors, to review the proposals received from Party A and CPRL. Representatives of Morgan Stanley and BofA Securities reviewed the history of KCS’s discussions with Party A and with CPRL, including the financial terms of the proposals that each party had submitted since August 2020. Representatives of Wachtell Lipton also provided an overview of the merger agreement markups delivered by Party A and CPRL. The KCS board entered into a discussion with members of management and representatives of the company’s financial advisors regarding Party A’s proposed financing structure and its potential capacity to further increase its purchase price. It was the view of the KCS board based on this discussion, as well as Party A’s statement that it had made its “final proposal”, that Party A would have minimal room to further increase its offer. The KCS board considered these facts and perspectives, as well as the facts and perspectives previously discussed and reviewed at prior meetings, and determined to focus its efforts on negotiating a transaction with CPRL, subject to CPRL agreeing to specific improvements to the terms of its proposal. To that end, the KCS board directed Mr. Ottensmeyer to communicate to Mr. Creel that the KCS board would be willing to proceed with a transaction if CPRL were to improve its proposal by, among other things, increasing its contemplated exchange ratio from 0.489 to 0.5 shares of CPRL common stock, increasing the amount of the reverse termination fee from \$800 million to \$1.3 billion, and accepting the KCS board’s right to terminate the merger agreement in order to accept a superior proposal in certain circumstances. A member of management and representatives of KCS’s outside compensation advisor also reviewed the terms of a proposed retention program and severance arrangements proposed to be submitted for approval by the KCS board were it to approve a transaction with CPRL. The KCS board discussed the terms of and reasons for the proposed retention program and severance arrangements.

Later that day, Mr. Ottensmeyer called Mr. Creel to communicate the KCS board’s requests. Mr. Creel said that he would need to consult with members of the CPRL board. Mr. Creel subsequently responded by stating that CPRL was prepared to offer an increased merger consideration of \$90 in cash and 0.489 shares of CPRL

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common stock for each share of KCS common stock (equal to approximately \$272 per share of KCS common stock based on the market price of CPRL's common stock at the time), to increase the reverse termination fee to \$1 billion, and to agree to the right of the KCS board to terminate the merger agreement to accept a superior proposal in certain circumstances. The following day, CPRL submitted a revised written proposal reflecting these terms. Mr. Ottensmeyer informed the KCS board of the terms of CPRL's proposal, and at the direction of the KCS board and management, representatives of Wachtell Lipton proceeded to negotiate final terms of the transaction documents with representatives of Sullivan & Cromwell LLP, CPRL's outside counsel ("Sullivan & Cromwell"), with the goal of announcing a signed merger agreement no later than the morning of March 21, 2021. From March 17 through March 20, 2021, representatives of Wachtell Lipton and Sullivan & Cromwell exchanged further revised drafts of the merger agreement and participated in calls to resolve the remaining open issues.

On March 20, 2021, the KCS board held a meeting, together with members of senior management and representatives of Morgan Stanley, BofA Securities and KCS's legal advisors. A representative of Wachtell Lipton again discussed with the board its fiduciary duties under Delaware law. Thereafter, representatives of each of the financial advisors presented to the KCS board their respective financial analyses and each financial advisor rendered to the KCS board its oral opinion, which was subsequently confirmed in writing on the same date, to the effect that, as of such date and based upon and subject to the matters considered, the procedures followed, the assumptions made and various limitations of and qualifications to the review undertaken, as set forth in each financial advisor's respective written opinion, the consideration to be received in the transaction by holders of KCS common stock (other than certain excluded shares as described in the merger agreement) was fair, from a financial point of view, to such holders. The Wachtell Lipton representative then summarized the terms of the merger agreement compared to the terms previously reviewed. After further discussion and deliberation, the KCS board unanimously approved the merger agreement and resolved to recommend that the stockholders of KCS adopt the merger agreement. The KCS board also approved the proposed retention and severance arrangements previously discussed.

Following the completion of the KCS board meeting, representatives of Wachtell Lipton and Sullivan Cromwell finalized the merger agreement, and in the early morning of March 21, 2021, KCS and CPRL executed the CPRL merger agreement. KCS and CPRL issued a joint press release announcing the transaction in the morning of March 21, 2021.

On March 22, 2021, representatives of CPRL submitted an application to STB requesting approval of CPRL's proposed voting trust agreement, pursuant to 49 C.F.R. § 1013.3(a).

On April 20, 2021, KCS received an unsolicited written proposal from CN (the "CN Proposal") to acquire KCS for 1.059 CN common shares and \$200.00 in cash per share of KCS common stock (valued at \$325.00 per share of KCS common stock based on the market price of CN common shares at the time). The proposal contemplated that CN and KCS would enter into a merger agreement with substantially similar terms to those of the CPRL merger agreement, including the use of a voting trust arrangement and a commitment to obtain regulatory approvals on the same terms as in the CPRL merger agreement.

The KCS board met on April 20, 2021, together with members of senior management and representatives of Morgan Stanley, BofA Securities and KCS's legal advisors, for a preliminary review of the CN Proposal. Representatives of Morgan Stanley and BofA Securities reviewed and presented preliminary perspectives on the financial terms of the CN Proposal in comparison to the financial terms of the CPRL merger agreement. The KCS board also reviewed potential synergy estimates for a combination with CN relative to the synergies estimated for the transaction with CPRL.

On April 23, 2021, the STB announced a decision that the waiver provision under 49 C.F.R. § 1180.0(b) applied to the proposed transaction between CPRL and KCS and stated that the agency's review of the transaction would be governed by the regulations set forth at 49 C.F.R. part 1180 (2000).

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On April 24, 2021, the KCS board held a meeting, together with members of senior management and representatives of Morgan Stanley, BofA Securities and KCS's legal advisors. Representatives of Morgan Stanley and BofA Securities again shared their perspectives on the financial terms of the CN Proposal in comparison to the financial terms of the CPRL merger agreement. The KCS board reviewed the potential synergies for a combination with each of CPRL and CN and discussed with the advisors the likely capacity of each party to further increase its purchase price and other enhancements that could be requested of CPRL and CN with respect to the terms of a transaction. The KCS board also discussed the regulatory considerations and issues relating to a combination with CN relative to CPRL, including an assessment of the process for approval of the proposed voting trust and for obtaining final regulatory approval for the potential combination. After consideration of these facts and perspectives, as well as the facts and perspectives previously discussed and reviewed at the KCS board's April 20th meeting, the KCS board determined that the CN Proposal could reasonably be expected to lead to a "Company Superior Proposal", as defined in the CPRL merger agreement (which we refer to as a "company superior proposal"). Accordingly, the KCS board determined that KCS should provide information to CN, and engage in discussions and negotiations with CN, with respect to the CN Proposal. KCS management subsequently notified representatives of CN and CPRL of the KCS board's determination, after which KCS issued a press release announcing its decision and intent to engage in discussions with CN. On the evening of April 24, 2021, representatives of Cravath, Swaine & Moore LLP (which we refer to as "Cravath"), CN's outside counsel, sent to Wachtell Lipton proposed forms of a merger agreement and a voting trust agreement reflecting the terms described in the CN Proposal.

On April 26, 2021, representatives of CN submitted an application to the STB requesting approval of CN's proposed voting trust agreement, pursuant to 49 C.F.R. § 1180.4(b)(4)(iv). Also on April 26, 2021, KCS entered into a confidentiality agreement with CN, which contained no standstill provisions. Through the subsequent weeks, KCS provided CN with access to a virtual data room and various business and legal due diligence materials, including a copy of the KCS Long-Range Plan. Representatives of CN participated in management presentations and diligence sessions hosted by KCS. Members of KCS management also responded, directly and through KCS's advisors, to diligence requests and questions from CN. In addition, CN provided KCS with access to a virtual data room and various reverse diligence materials, including a copy of the CN Five-Year Plan.

On May 6, 2021, the STB announced a decision finding that the voting trust agreement proposed by CPRL was acceptable, subject to certain modifications.

On May 8, 2021, the KCS board convened a meeting with members of senior management and representatives of Morgan Stanley, BofA Securities and KCS's legal advisors to discuss KCS's ongoing engagement with CN and potential next steps. Members of management and representatives of Wachtell Lipton reviewed the terms of CN's draft merger agreement and presented a proposed list of enhancements to request from CN with respect to the CN Proposal, including (1) increasing the exchange ratio from 1.059 shares so that the transaction could qualify as a "reorganization" within the meaning of Section 368(a) of the Code, (2) increasing the reverse termination fee payable to KCS in the event the merger agreement was terminated due to the inability of the parties to complete the voting trust transaction as a result of STB regulatory issues from \$1.0 billion to \$2.0 billion, (3) requiring CN to reimburse KCS upon payment of the \$700 million termination fee by KCS to CPRL in the event KCS terminated the CPRL merger agreement to enter into a merger agreement with CN and (4) enhancing the flexibility of KCS to undertake certain actions following the execution of a merger agreement with CN without CN's prior written consent, including with respect to the terms of KCS's retention program and severance arrangements. The KCS board also reviewed a proposed timeline for soliciting a revised proposal from CN. The KCS board then directed management, together with KCS's legal advisors, to seek the enhancements to the CN Proposal discussed with the KCS board and to request that CN submit a revised binding proposal so that the KCS board could be in a position to make a determination as to whether such revised proposal constituted a company superior proposal at a meeting scheduled for May 13, 2021. The KCS board also directed management to notify CPRL of the KCS board's intention to make a determination with respect to the CN Proposal at its next meeting and to suggest that CPRL submit any revisions with respect to the CPRL merger agreement before such time.

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Following the meeting, Mr. Ottensmeyer communicated the KCS board's requests to Mr. Ruest and to Mr. Creel. Representatives of Wachtell Lipton also reached out to Cravath to review the requested enhancements with respect to the CN Proposal.

On May 11, 2021, representatives of Cravath contacted Wachtell Lipton to convey CN's responses to KCS's requested enhancements. The representatives of Cravath expressed that CN was prepared to accept several of KCS's requests for enhanced flexibility during the pendency of the transaction, including with respect to the terms of KCS's retention program and severance arrangements. The representatives of Cravath also expressed that CN was prepared to accept KCS's proposal that CN (or an affiliate of CN) reimburse KCS for the \$700 million termination fee that would be payable by KCS to CPRL in connection with the termination of the CPRL merger agreement, subject to KCS refunding such reimbursement in the event (i) KCS terminated the merger agreement with CN in order to accept a superior proposal, (ii) CN terminated the merger agreement upon a change of recommendation by the KCS board, (iii) CN terminated the merger agreement on the basis of a breach by KCS of its representations, warranties or covenants in a manner that would entitle CN not to consummate the merger or (iv) CN terminated the merger agreement on the basis of the occurrence of a material adverse effect on the business and operations of KCS. The Cravath representatives indicated that CN was unwilling to increase the exchange ratio or the reverse termination fee.

On May 12, 2021, Mr. Ottensmeyer called Mr. Ruest to request that CN increase its exchange ratio so as to restore the \$325.00 per share valuation of CN's proposal based on the current market price of CN's common stock. Mr. Ottensmeyer further requested that CN consider increasing the amount of the reverse termination fee payable to KCS in the event the merger agreement was terminated due to the inability of the parties to complete the voting trust transaction as a result of STB regulatory issues. Mr. Ottensmeyer also spoke with Mr. Creel and encouraged CPRL to submit any proposed revisions to the CPRL merger agreement before KCS board's next meeting.

On the morning of May 13, 2021, representatives of Cravath sent to representatives of Wachtell Lipton a proposed form of offer letter and revised drafts of the merger agreement and other transaction documents. CN's revised proposal contemplated an increase in the exchange ratio to 1.129 shares of CN common shares while maintaining the \$200.00 per share cash component of the proposed consideration (restoring the \$325.00 per share valuation of CN's proposal based on the closing price of CN's common stock on May 12, 2021), an obligation by holder to reimburse KCS for the \$700 million termination fee payable to CPRL (subject to KCS refunding such reimbursement in the event (i) KCS terminated the merger agreement with CN in order to accept a superior proposal, (ii) CN terminated the merger agreement upon a change of recommendation by the KCS board or (iii) CN terminated the merger agreement on the basis of a breach by KCS of its representations, warranties or covenants in a manner that would entitle CN not to consummate the merger), and enhanced flexibility on the part of KCS to undertake certain actions without CN's prior written consent during the pendency of the transaction, including with respect to the terms of KCS's retention program and severance arrangements. Through the morning and early afternoon, representatives of Wachtell Lipton and Cravath discussed various minor revisions to the transaction documents. Representatives of Cravath then submitted a binding offer letter on behalf of CN, together with proposed final and binding forms of merger agreement and schedules (collectively, the "Revised CN Proposal"). The offer letter indicated that the Revised CN Proposal could be accepted by KCS at any time prior to 5:00 pm Eastern Time on May 21, 2021.

On the afternoon of May 13, 2021, the KCS board met, together with members of senior management and representatives of Morgan Stanley, BofA Securities and KCS's legal advisors, to discuss the Revised CN Proposal. The KCS board reviewed the terms of the Revised CN Proposal relative to the terms of the CPRL merger agreement and discussed various regulatory considerations relating to a combination with CN and with CPRL, including the STB's decisions applying the waiver provision under 49 C.F.R. § 1180.0(b) to the potential CPRL transaction and approving CPRL's proposed voting trust agreement. The KCS board discussed potential next steps and the requirements of the CPRL merger agreement with respect to any further engagement with CN. Among other things, the KCS board considered the fact that, in the event the KCS board determined that the

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Revised CN Proposal constituted a company superior proposal, KCS would be required to provide CPRL the opportunity for at least five business days to attempt to match the terms of the Revised CN Proposal prior to terminating the CPRL merger agreement and entering into a definitive agreement with CN. Representatives of Morgan Stanley and BofA Securities also presented to the KCS board their respective financial analyses. The representatives stated that they had each reviewed the terms of the Revised CN Proposal with their respective fairness committees and that, absent any material developments following the conclusion of the meeting, the financial advisors stood ready to deliver customary fairness opinions with respect to the Revised CN Proposal at such time as the KCS board were to consider terminating the CPRL merger agreement and entering into the Revised CN Proposal. The KCS board determined that the Revised CN Proposal constituted a company superior proposal and directed management to notify CPRL of the KCS board's intention to terminate the CPRL merger agreement and to enter into a definitive agreement with respect to the Revised CN Proposal unless, at the end of the five business day period following the notice, the KCS board determined that the Revised CN Proposal no longer constituted a company superior proposal. Members of KCS management communicated the KCS board's determination to representatives of CN and CPRL after the end of the meeting, and later on the evening of May 13, 2021, KCS issued a press release announcing the KCS board's determination.

On May 17, 2021, the STB announced a decision finding that application of the waiver provision under 49 C.F.R. § 1180.0(b) to a potential transaction between CN and KCS was not warranted and stated that the agency's review of the transaction would be governed by the regulations set forth at 49 C.F.R. part 1180, as adopted in Major Rail Consolidation Procedures, 5 S.T.B. 539 (2001). The STB also denied CN's motion to approve its proposed voting trust agreement as incomplete, without prejudice to filing a new motion.

On the morning of May 20, 2021, Mr. Creel contacted Mr. Ottensmeyer to notify him that CPRL did not intend to propose revisions to the CPRL merger agreement. Shortly thereafter, Mr. Creel publicly announced CPRL's intention not to increase its offer. Later that afternoon, the KCS board convened a meeting to discuss next steps with respect to the Revised CN Proposal. The KCS board reviewed again with KCS's financial and legal advisors the financial terms of the Revised CN Proposal in comparison to the financial terms of the CPRL merger agreement. The KCS board also discussed the regulatory considerations associated with pursuing a transaction with CN and CPRL, including the STB's determinations with respect to CN's and CPRL's proposed voting trust agreements, and considered the possibility of seeking additional enhancements to CN's proposal. The KCS board then directed management to reach out to CN to request a further increase in the exchange ratio so as to restore the \$325.00 per share valuation of CN's proposal based on the current market price of CN's common stock and a revised "escalating" reverse termination fee that would increase by \$100 million per month in the event CN were unable to obtain voting trust approval from the STB within three months of the execution of a merger agreement with KCS.

Following the meeting, Mr. Ottensmeyer contacted Mr. Ruest to convey the requests from the KCS board. Later that evening, Mr. Ruest reached out to Mr. Ottensmeyer to indicate that CN was not willing to make any further changes to the Revised CN Proposal.

On the morning of May 21, 2021, the KCS board met again. Mr. Ottensmeyer updated the KCS board as to his conversations with Mr. Ruest, after which a discussion followed among the directors as to potential next steps. A representative of Wachtell Lipton discussed with the board its fiduciary duties under Delaware law. Thereafter, representatives of each of the financial advisors presented to the KCS board their respective financial analyses and each financial advisor rendered to the KCS board its oral opinion, which was subsequently confirmed in writing on the same date, to the effect that, as of such date and based upon and subject to the matters considered, the procedures followed, the assumptions made and various limitations of and qualifications to the review undertaken, as set forth in each financial advisor's respective written opinion, the consideration to be received in the transaction with CN by holders of KCS common stock (other than certain excluded shares as described in the merger agreement) was fair, from a financial point of view, to such holders. The full text of the written opinion of each of Morgan Stanley and BofA Securities is attached to this proxy statement as Annexes B and C and is incorporated by reference in this proxy statement in its entirety. See also the sections entitled "*The KCS Merger*"

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Proposal—Opinion of Morgan Stanley” and “*The KCS Merger Proposal—Opinion of BofA Securities*” on pages 58 and 69, respectively. After further discussion and deliberation, the KCS board unanimously determined that the Revised CN Proposal continued to constitute a company superior proposal and approved the termination of the CPRL merger agreement, KCS’s payment of the \$700 million termination fee to CPRL under the terms of the CPRL merger agreement and KCS’s entry into the merger agreement with CN. The KCS board also approved the updated retention and severance arrangements set forth in the Revised CN Proposal.

Following the completion of the KCS board meeting, KCS management notified CPRL of the KCS board’s determination, after which KCS terminated the CPRL merger agreement and paid the \$700 million termination fee to CPRL. Shortly thereafter, KCS delivered an executed signature page to the merger agreement with CN, which had already been executed by CN, and KCS and CN issued a joint press release announcing the transaction. Following execution of the merger agreement, holdco reimbursed KCS for the \$700 million termination fee paid to CPRL.

Recommendation of the KCS Board; KCS’s Reasons for the Transaction

At a special meeting held on May 21, 2021, the KCS board unanimously: (1) determined that it was in the best interests of KCS and its stockholders, and declared it advisable, to enter into the merger agreement; (2) approved the execution, delivery and performance of the merger agreement and the transactions contemplated by the merger agreement (including the merger); (3) recommended that the stockholders of KCS adopt the merger agreement; and (4) directed that the merger agreement be submitted to a vote at a meeting of KCS’s stockholders. **The KCS board unanimously recommends that KCS stockholders vote “FOR” the merger proposal.**

In evaluating the transaction and in reaching its determinations and making its recommendations with respect to the merger agreement, the KCS board consulted with KCS senior management and outside legal and financial advisors over the course of several meetings, and considered a number of factors, including the following material factors that weighed in favor of the transaction.

Strategic Considerations and Synergies:

- The KCS board believes the transaction will create an express route connecting the U.S., Mexico and Canada, with a seamless single-owner, single-operator service that provides new options for shippers and customers and new revenue for the combined company, preserve access to all existing gateways to enhance route choices and ensure robust price competition, and yield demonstrable benefits for the environment by converting significant volumes of truck traffic onto rails and delivering better fuel efficiency at lower costs;
- The KCS board considered that the combination of CN and KCS was expected to generate earnings before interest, taxes, depreciation and amortization (“EBITDA”) synergies for the combined company of approximately \$1,000 million over three years, as well as a more conservative synergy analysis showing EBITDA synergies of approximately \$415 million over three years, and assessed both synergy analyses in making its decision;
- The KCS board believes that the combined company will have the scale, balance sheet strength, financial flexibility, and free cash flow to fund future growth, and improved ability to access the capital markets on more favorable terms than available to KCS as an independent company, which would allow the combined company to be more competitive in capturing strategic opportunities;
- The KCS board received information from and had discussions with KCS’s management, in consultation with outside financial advisors, regarding CN’s business, results of operations, financial and market position, KCS management’s expectations concerning the combined company’s business and financial prospects, and historical and current trading prices of CN common shares;

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Opinion of Morgan Stanley

The KCS board retained Morgan Stanley to act as its financial advisor and to provide it with a financial opinion in connection with the merger. KCS selected Morgan Stanley to act as its financial advisor based on Morgan Stanley's qualifications, expertise and reputation and its knowledge of the industry, business and affairs of KCS. At the meeting of the KCS board on May 21, 2021, Morgan Stanley rendered its oral opinion, which was subsequently confirmed in writing on the same date, to the KCS board to the effect that, as of such date, and based upon and subject to the assumptions made, procedures followed, matters considered and qualifications and limitations on the scope of the review undertaken by Morgan Stanley as set forth in its written opinion, the merger consideration to be received by the holders of shares of KCS common stock (other than excluded shares) pursuant to the merger agreement was fair from a financial point of view to such holders of KCS common stock.

The full text of Morgan Stanley's written opinion to the KCS board, dated May 21, 2021, which sets forth, among other things, the assumptions made, procedures followed, matters considered and qualifications and limitations on the scope of the review undertaken by Morgan Stanley in rendering its opinion, is attached to this proxy statement/prospectus as Annex B and is incorporated by reference herein in its entirety. The foregoing summary of Morgan Stanley's opinion is qualified in its entirety by reference to the full text of the opinion. You are encouraged to read Morgan Stanley's opinion and the summary of Morgan Stanley's opinion below carefully and in their entirety. Morgan Stanley's opinion was for the benefit of the KCS board, in its capacity as such, and addressed only the fairness from a financial point of view of the merger consideration to be received by the holders of shares of KCS common stock (other than excluded shares) pursuant to the merger agreement as of the date of the opinion and did not address any other aspects or implications of the merger. Morgan Stanley's opinion was not intended to, and does not, constitute advice or a recommendation as to how the shareholders of KCS should vote at the shareholder meeting to be held in connection with the merger.

In connection with rendering its opinion, Morgan Stanley, among other things:

- (a) reviewed certain publicly available financial statements and other business and financial information of KCS and CN, respectively;
- (b) reviewed certain internal financial statements and other financial and operating data concerning KCS and CN, respectively;
- (c) reviewed the KCS management unaudited KCS projections, the KCS management assumed synergies and the KCS management unaudited CN projections (each as defined and described in the below section entitled "*KCS Unaudited Prospective Financial Information*"), in each case prepared by the management of KCS;
- (d) reviewed information relating to certain strategic, financial and operational benefits anticipated from the merger, prepared by the managements of KCS and CN, respectively;
- (e) discussed the past and current operations and financial condition and the prospects of KCS, including information relating to certain strategic, financial and operational benefits anticipated from the merger, with senior executives of KCS;
- (f) discussed the past and current operations and financial condition and the prospects of CN, including information relating to certain strategic, financial and operational benefits anticipated from the merger, with senior executives of CN;
- (g) reviewed the reported prices and trading activity for KCS common stock and CN common shares;
- (h) compared the financial performance of KCS and CN and the prices and trading activity of KCS common stock and CN common shares with that of certain other publicly-traded companies comparable with KCS and CN, respectively, and their securities;
- (i) reviewed the financial terms, to the extent publicly available, of certain comparable acquisition transactions;

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- (j) participated in certain discussions and negotiations among representatives of KCS and CN and certain parties and their financial and legal advisors;
- (k) reviewed the Draft Merger Agreement, the Commitment Letter, the Draft Voting Trust Agreement, and certain related documents; and
- (l) performed such other analyses, reviewed such other information and considered such other factors as Morgan Stanley deemed appropriate.

In arriving at its opinion, Morgan Stanley assumed and relied upon, without independent verification, the accuracy and completeness of the information that was publicly available or supplied or otherwise made available to Morgan Stanley by KCS and CN, respectively, and formed a substantial basis for its opinion. With respect to the KCS management unaudited KCS projections, Morgan Stanley assumed that they were reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of KCS of the future financial performance of KCS. With respect to the KCS management unaudited CN projections and the KCS management assumed synergies, Morgan Stanley assumed that they were reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of KCS of the future financial performance of CN, including following consummation of the merger. In addition, Morgan Stanley assumed that the merger will be consummated in accordance with the terms set forth in the merger agreement without any waiver, amendment or delay of any terms or conditions, including, among other things, (i) that CN will obtain financing in accordance with the terms set forth in the Commitment Letter, (ii) that the STB will permit the merger to close into the voting trust in accordance with the terms of the Draft Voting Trust Agreement and (iii) that the definitive merger agreement would not differ in any material respect from the Draft Merger Agreement. Morgan Stanley assumed that in connection with the receipt of all the necessary governmental, regulatory or other approvals and consents required for the merger, no delays, limitations, conditions or restrictions will be imposed that would have a material adverse effect on the contemplated benefits expected to be derived in the merger. Morgan Stanley relied upon, without independent verification, the assessment by the managements of KCS and CN of: (i) the strategic, financial and other benefits expected to result from the merger; (ii) the timing and risks associated with the integration of KCS and CN; (iii) their ability to retain key employees of KCS and CN, respectively, and (iv) the validity of, and risks associated with, KCS and CN's existing and future technologies, intellectual property, products, services and business models. Morgan Stanley is not a legal, tax or regulatory advisor. Morgan Stanley is a financial advisor only and relied upon, without independent verification, the assessment of CN and KCS and their legal, tax or regulatory advisors with respect to legal, tax or regulatory matters. Morgan Stanley expressed no opinion with respect to the fairness of the amount or nature of the compensation to any of KCS's officers, directors or employees, or any class of such persons, relative to the merger consideration to be received by the holders of shares of KCS common stock in the merger. Morgan Stanley's opinion does not address the relative merits of the transactions contemplated by the merger agreement as compared to other business or financial strategies that might be available to KCS, nor does it address the underlying business decision of KCS to enter into the merger agreement or proceed with any other transaction contemplated by the merger agreement. Morgan Stanley expressed no opinion with respect to the treatment of the KCS preferred stock in the merger. Morgan Stanley did not make any independent valuation or appraisal of the assets or liabilities of KCS or CN, nor was it furnished with any such valuations or appraisals. Morgan Stanley's opinion was necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to Morgan Stanley as of, the date of its opinion. Events occurring after such date may affect Morgan Stanley's opinion and the assumptions used in preparing it, and Morgan Stanley did not assume any obligation to update, revise or reaffirm its opinion.

The following is a summary of the material financial analyses performed by Morgan Stanley in connection with the preparation of its opinion to the KCS board. The following summary is not a complete description of Morgan Stanley's opinion or the financial analyses performed and factors considered by Morgan Stanley in connection with its opinion, nor does the order of analyses described represent the relative importance or weight given to those analyses. The financial analyses summarized below include information presented in tabular format. In order to fully understand the financial analyses used by Morgan Stanley, the tables must be read together with the

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text of each summary. The tables alone do not constitute a complete description of the financial analyses. The analyses listed in the tables and described below must be considered as a whole; considering any portion of such analyses and of the factors considered, without considering all analyses and factors, could create a misleading or incomplete view of the process underlying Morgan Stanley's opinion. Morgan Stanley considered a number of factors in analyzing the merger consideration. The fact that points in the ranges of implied equity value per share of KCS common stock derived below were less than or greater than the merger consideration is not necessarily dispositive in connection with Morgan Stanley's analysis of the merger consideration, but is one of many factors Morgan Stanley considered. Except as otherwise noted, the following quantitative information, to the extent that it is based on market data, is based on market data as it existed on or before May 20, 2021, which was the last trading day prior to the date on which the KCS board approved the merger, and is not necessarily indicative of current market conditions.

In performing the financial analyses summarized below and in arriving at its opinion, Morgan Stanley, at the direction of the KCS board, used and relied upon the KCS management unaudited KCS projections, the KCS management assumed synergies and the KCS management unaudited CN projections. For more information, please see the section of this proxy statement captioned "*The KCS Merger Proposal—KCS Unaudited Prospective Financial Information*" on page 80.

Analyses Related to KCS

Discounted Cash Flow Analysis

Morgan Stanley performed a discounted cash flow analysis, which is designed to provide an implied value of a company by calculating the present value of the estimated future unlevered free cash flows and terminal value of such company. Morgan Stanley calculated a range of implied equity values per share of KCS common stock as of March 31, 2021, based on estimates of future unlevered free cash flows for the nine months ending December 31, 2021 and fiscal years 2022 through 2029 contained in the KCS management unaudited KCS projections, including net debt of KCS as of March 31, 2021 of \$3,842 million. Morgan Stanley also calculated a range of terminal values for KCS based on next twelve months ("NTM") EBITDA exit multiple range of 10.75x to 12.25x, which was selected based on Morgan Stanley's professional judgment and experience. The estimated unlevered free cash flows and the range of terminal values were then discounted to March 31, 2021 by applying a discount rate range of 6.4% to 7.6%, which was selected based on Morgan Stanley's professional judgment and experience, to reflect KCS's estimated weighted average cost of capital.

This analysis indicated a range of implied equity values per share of KCS common stock of \$219.00 to \$272.00, in each case rounded to the nearest \$1.00.

Morgan Stanley compared the foregoing range of implied equity values per share of KCS common stock to the closing trading price of KCS common stock as of March 19, 2021 (which was the last trading day prior to the announcement of the proposed acquisition of KCS by CPRL) of \$224.16 and the implied value of the merger consideration to be received by holders of shares of KCS common stock in the merger as of May 20, 2021 of \$320.11.

Comparable Public Company Analysis

Morgan Stanley performed a comparable public company analysis, which attempts to provide an implied value of a company by comparing it to similar companies that are publicly traded. Morgan Stanley reviewed and compared certain financial information of KCS with corresponding publicly available financial information for other Class 1 Rail companies that shared certain similar characteristics to KCS to derive an implied valuation range for KCS. The companies used in this comparison were the following:

- CPRL
- CN

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- Union Pacific Corporation
- Norfolk Southern Corporation
- CSX Corporation

The above companies were chosen based on Morgan Stanley's knowledge of the industry and because they have businesses that may be considered similar to KCS's. Although none of such companies are identical or directly comparable to KCS, these companies are publicly traded companies with operations and/or other criteria, such as lines of business, markets, business risks, growth prospects, maturity of business and size and scale of business, that for purposes of its analysis Morgan Stanley considered similar to KCS.

For purposes of this analysis, Morgan Stanley analyzed the following statistics of each of these companies, based on public filings, publicly available research estimates and publicly available financial information published by Capital IQ as of March 19, 2021 (which was the last trading day prior to the announcement of the proposed acquisition of KCS by CPRL) for KCS and CPRL, as of April 19, 2021 (which was the last trading day prior to the announcement of the CN Proposal) for CN and as of May 20, 2021 for Union Pacific Corporation, Norfolk Southern Corporation and CSX Corporation:

- the ratio of aggregate value ("AV"), calculated as the market value of equity plus short-term debt, long-term debt, preferred equity and non-controlling interests, net of cash, cash equivalents and investments to estimated fiscal year 2021 EBITDA, which is referred to below as the 2021E AV/EBITDA Ratio; and
- the ratio of stock price to estimated fiscal year 2021 earnings per share, which is referred to below as the 2021E P/E Ratio.

The results of Morgan Stanley's analysis were presented for the comparable companies, as indicated in the following table:

	2021E AV/EBITDA Ratio	2021E P/E Ratio
KCS	14.9x	24.9x
CPRL	16.2x	23.3x
CN	15.6x	25.1x
Union Pacific Corporation	15.2x	23.2x
Norfolk Southern Corporation	14.9x	24.0x
CSX Corporation	13.8x	22.6x
Mean	15.1x	23.8x
Median	15.1x	23.7x

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Based on its analysis of the relevant metrics for each of the comparable companies and upon the application of its professional judgment and experience, Morgan Stanley selected representative ranges of 2021E AV/EBITDA Ratio and 2021E P/E Ratio and applied these ranges to KCS's estimated fiscal year 2021 EBITDA of \$1,655 million based on consensus analyst estimates and of \$1,690 million based on the KCS management unaudited KCS projections, and to KCS's estimated fiscal year 2021 earnings per share of \$9.00 based on consensus analyst estimates and of \$9.34 based on the KCS management unaudited KCS projections. For purposes of this analysis, Morgan Stanley utilized the KCS management unaudited KCS projections and consensus analyst estimates. Morgan Stanley then calculated a range of implied equity values per share of KCS common stock as follows, in each case rounded to the nearest \$1.00:

	Selected Representative Range	Implied Equity Value Per Share of KCS Common Stock
2021E AV/EBITDA Ratio (KCS management unaudited KCS projections)	14.0x – 16.0x	\$217.00-\$254.00
2021E P/E Ratio (KCS management unaudited KCS projections)	23.0x – 25.0x	\$215.00-\$234.00
2021E AV/EBITDA Ratio (Consensus)	14.0x – 16.0x	\$212.00-\$248.00
2021E P/E Ratio (Consensus)	23.0x – 25.0x	\$207.00-\$225.00

Morgan Stanley compared the foregoing ranges of implied equity values per share of KCS common stock to the closing trading price of KCS common stock as of March 19, 2021 (which was the last trading day prior to the announcement of the proposed acquisition of KCS by CPRL) of \$224.16 per share and the implied value of the merger consideration to be received by holders of shares of KCS common stock in the merger as of May 20, 2021 of \$320.11 per share.

No company included in the comparable public company analysis is identical to KCS. In evaluating comparable companies, Morgan Stanley made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, which are beyond the control of KCS. These include, among other things, the impact of competition on the business of KCS and the industry generally, industry growth, and the absence of any adverse material change in the financial condition and prospects of KCS and the industry, and in the financial markets in general. Mathematical analysis is not in itself a meaningful method of using comparable company data.

Precedent Transactions and Premia Paid Analysis

Morgan Stanley performed a precedent transactions analysis, which attempts to imply a value of a company based on publicly available financial terms and premia of selected transactions. Morgan Stanley reviewed the publicly available financial information for certain transactions in the railroad industry since June 1994.

For purposes of this analysis, based on publicly available financial information, Morgan Stanley analyzed the ratio of the implied AV to last twelve months EBITDA, referred to as the AV/LTM EBITDA Ratio, for each of the target companies in the selected transactions. The transactions reviewed, the date that each transaction was announced and the corresponding AV/LTM EBITDA Ratios were as follows:

Date Announced	Acquiror	Target	AV/LTM EBITDA Ratio
July 2019	Brookfield Infrastructure Partners L.P. / GIC Pte Ltd.	Genesee & Wyoming Inc.	13.4x
March 2017	GMexico Transportes S.A. de C.V.	Florida East Coast Railway Holdings Corp	13.6x
October 2016	Genesee & Wyoming Australia Pty Ltd	Glencore Rail (NSW) Pty Limited	11.4x(1)

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Date Announced	Acquiror	Target	AV/LTM EBITDA Ratio
October 2016	Macquarie Infrastructure and Real Assets	Genesee & Wyoming Australia Pty Ltd (49%)	11.2x ⁽¹⁾
March 2016	Rail Consortium(2)	Pacific National Holdings Pty Ltd	10.3x
February 2015	Genesee & Wyoming Inc.	Freightliner Group Limited (95%)	9.5x
July 2012	Genesee & Wyoming Inc.	RailAmerica, Inc.	10.3x
November 2009	Berkshire Hathaway Inc.	Burlington Northern Santa Fe Corp.	8.8x
September 2007	Canadian Pacific Railway Limited	Dakota, Minnesota & Eastern Railroad Corporation	15.2x
November 2006	Fortress Investment Group LLC	RailAmerica, Inc.	11.7x
August 2005	Toll Holding Ltd.	Patrick Corporation	15.0x
December 2004	Kansas City Southern	Transportacion Ferroviaria Mexicana, S.A. de C.V. (51%)	6.1x
November 2003	Canadian National Railway Company	BC Rail Ltd.	14.4x
January 2001	Canadian National Railway Company	Wisconsin Central Ltd.	9.8x
February 1998	Canadian National Railway Company	Illinois Central Corp	11.4x
April 1997	CSX Corp. / Norfolk Southern Corporation	Conrail Inc.	12.1x
August 1995	Union Pacific Corp.	Southern Pacific Rail Corp.	12.3x
March 1995	Union Pacific Corp.	Chicago and North Western Holdings Corporation	8.4x
June 1994	Burlington Northern Inc.	Santa Fe Pacific Corporation	7.2x
Median			11.4x

- (1) G&W Australia transaction multiple was based on NTM projections since LTM were unavailable. All other transactions reflect AV/LTM EBITDA Ratios.
- (2) Rail Consortium consists of CPP Investments Limited (33%), Global Infrastructure Partners Inc. (27%), China Investment Corporation (16%), GIC Pte. Ltd. (12%), and British Columbia Investment Management Corporation (12%).

The selected precedent transactions varied significantly based upon company scale, business risks, growth prospects and geography, as well as prevailing market trends. Based on its analysis of the relevant metrics for each of the precedent transactions and upon the application of its professional judgment and experience, Morgan Stanley selected a representative range of AV/LTM EBITDA Ratio and applied this range to KCS's last 12 months ("LTM") COVID-Adjusted EBITDA as of March 31, 2021 of \$1,629 million as provided by KCS management, which reflects an add-back of \$257 million, as provided by KCS management, for the estimated impact of COVID-19 for the second quarter through the fourth quarter of 2020.

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Based on this analysis, Morgan Stanley calculated a range of implied equity values per share of KCS common stock as follows, in each case rounded to the nearest \$1.00:

	Selected Representative Range	Implied Equity Value Per Share of KCS Common Stock
AV/LTM EBITDA Ratio	11.0x – 15.0x	\$154.00 – \$225.00

Morgan Stanley also reviewed the premia paid for transactions announced between January 1, 2007 and December 31, 2020 with a publicly announced transaction value of more than \$1,000 million, as published by Thomson Reuters. The premia paid were calculated based on each of (i) the target company's closing stock price and (ii) the 52-week high of the target company's stock price, in each case on the last trading day prior to the public announcement of the transactions. Based on its analysis of the relevant metrics and upon the application of its professional judgment and experience, Morgan Stanley (A) selected a representative range of premia of 15% to 35% with respect to the target companies' closing stock prices and applied this range of premia to the closing trading price of KCS common stock as of March 19, 2021 (which was the last trading day prior to the announcement of the proposed acquisition of KCS by CPRL) of \$224.16 and (B) selected a representative range of premia of (5%) to 20% with respect to the 52-week highs of such target companies' stock prices and applied this range of premia to the 52-week high price per share of KCS common stock as of March 19, 2021 (which was the last trading day prior to the announcement of the proposed acquisition of KCS by CPRL) of \$224.16.

These analyses indicated ranges of implied equity values per share of KCS common stock of (i) \$258.00 to \$303.00 and (ii) \$213.00 to \$269.00, respectively, in each case rounded to the nearest \$1.00.

Morgan Stanley compared the foregoing ranges of implied equity values per share of KCS common stock to the closing trading price of KCS common stock as of March 19, 2021 (which was the last trading day prior to the announcement of the proposed acquisition of KCS by CPRL) of \$224.16, and the implied value of the merger consideration to be received by holders of shares of KCS common stock in the merger as of May 20, 2021 of \$320.11.

No company or transaction used in the precedent transactions or premia paid analysis is identical to KCS or the merger. In evaluating the precedent transactions, Morgan Stanley made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, which are beyond the control of KCS. These include, among other things, the impact of competition on the business of KCS or the industry generally, industry growth, and the absence of any adverse material change in the financial condition and prospects of KCS or the industry, and in the financial markets in general. Mathematical analysis is not in itself a meaningful method of using precedent transactions data.

Other Factors

Morgan Stanley observed certain additional factors that were not considered part of its financial analyses with respect to its opinion but were referenced for informational purposes, including, among other things, the following:

- *Historical Trading Range.* For reference only and not as a component of its fairness analysis, Morgan Stanley reviewed the low and high per share trading range of shares of KCS common stock for the 12-month period ending March 19, 2021 (which was the last trading day prior to the announcement of the proposed acquisition of KCS by CPRL). Morgan Stanley observed that during such period the trading range was \$101.00 to \$224.00 per share of KCS common stock, rounded to the nearest \$1.00.
- *Equity Research Analysts' Price Targets.* For reference only and not as a component of its fairness analysis, Morgan Stanley reviewed the undiscounted price targets for shares of KCS common stock prepared and published by 20 equity research analysts as of March 19, 2021 (which was the last trading day prior to the announcement of the proposed acquisition of KCS by CPRL). These targets generally

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reflect each analyst's estimate of the future public market trading price of shares of KCS common stock. In order to better compare the equity analysts' stock price targets with the merger consideration, Morgan Stanley discounted each analyst's price target to present value by applying, for a one year discount period, a discount rate of 7.8%, selected by Morgan Stanley based on the application of its professional judgment and experience to reflect KCS's cost of equity. This analysis resulted in a discounted analyst price target range for shares of KCS common stock of \$186.00 to \$238.00 per share, rounded to the nearest \$1.00.

- **Discounted Equity Value Analysis.** For reference only and not as a component of its fairness analysis, Morgan Stanley performed a discounted equity value analysis, which is designed to provide insight into a theoretical estimate of the future implied value of a company's common equity as a function of such company's estimated future earnings and a theoretical range of trading multiples. The resulting estimated future implied value of equity is subsequently discounted back to the present day at the company's cost of equity in order to arrive at an illustrative estimate of the present value for the company's theoretical future implied stock price.

In arriving at the estimated equity values per share of KCS common stock, Morgan Stanley selected a representative range of ratio of stock price to future earnings per share ("P/E Multiple") utilizing the next 12 months ("NTM") estimated earnings per share and applied this range of multiples to an estimate of fiscal year 2029 earnings per share from the KCS management unaudited KCS projections. Morgan Stanley then discounted the resulting equity values per share to March 31, 2021 at a discount rate of 7.8%, selected by Morgan Stanley based on the application of its professional judgment and experience to reflect KCS's cost of equity. Based on this analysis, Morgan Stanley derived a range of implied equity values per share of KCS common stock as follows, each rounded to the nearest \$1.00:

	Representative Range	Implied Equity Value Per Share of KCS common stock
P/E Multiple	17.0x – 21.0x	\$267.00 – \$326.00

Analyses Related to CN

Discounted Cash Flow Analysis

Morgan Stanley performed a discounted cash flow analysis, which is designed to provide an implied value of a company by calculating the present value of the estimated future unlevered free cash flows and terminal value of such company. Morgan Stanley calculated a range of implied equity values per CN common share as of March 31, 2021, based on estimates of future unlevered free cash flows for the nine months ending December 31, 2021 and fiscal years 2022 through 2029 contained in the KCS management unaudited CN projections, including net debt of CN as of March 31, 2021 of \$9,771 million. Morgan Stanley also calculated a range of terminal values for CN based on NTM EBITDA exit multiple range of 11.75x to 13.25x, which was selected based on Morgan Stanley's professional judgment and experience. The estimated unlevered free cash flows and the range of terminal values were then discounted to March 31, 2021 by applying a discount rate range of 5.5% to 6.8%, which was selected based on Morgan Stanley's professional judgment and experience, to reflect CN's estimated weighted average cost of capital.

This analysis indicated a range of implied equity values per CN common share of \$121.00 to \$149.00, in each case rounded to the nearest \$1.00.

Morgan Stanley compared the foregoing range of implied equity values per CN common share to the closing trading price of CN common shares on May 20, 2021 of \$106.39 and to the closing trading price per CN common share on April 19, 2021 (which was the last trading day prior to the announcement of the CN Proposal) of \$118.13.

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Comparable Public Company Analysis

Morgan Stanley performed a comparable public company analysis, which attempts to provide an implied value of a company by comparing it to similar companies that are publicly traded. Morgan Stanley reviewed and compared certain financial information of CN with corresponding publicly available financial information for other Class 1 Rail companies that shared certain similar characteristics to CN to derive an implied valuation range for CN. The companies used in this comparison were the following:

- KCS
- CPRL
- Union Pacific Corporation
- Norfolk Southern Corporation
- CSX Corporation

The above companies were chosen based on Morgan Stanley's knowledge of the industry and because they have businesses that may be considered similar to CN's. Although none of such companies are identical or directly comparable to CN, these companies are publicly traded companies with operations and/or other criteria, such as lines of business, markets, business risks, growth prospects, maturity of business and size and scale of business, that for purposes of its analysis Morgan Stanley considered similar to CN.

For purposes of this analysis, Morgan Stanley analyzed the following statistics of each of these companies, based on public filings, publicly available research estimates and publicly available financial information published by Capital IQ as of March 19, 2021 (which was the last trading day prior to the announcement of the proposed acquisition of KCS by CPRL) for KCS and CPRL, as of April 19, 2021 (which was the last trading day prior to the announcement of the CN Proposal) for CN and as of May 20, 2021 for Union Pacific Corporation, Norfolk Southern Corporation and CSX Corporation:

- the 2021E AV/EBITDA Ratio; and
- the 2021E P/E Ratio.

The results of Morgan Stanley's analysis were presented for the comparable companies, as indicated in the following table:

	2021E AV/EBITDA Ratio	2021 E P/E Ratio
KCS	14.9x	24.9x
CP	16.2x	23.3x
CN	15.6x	25.1x
Union Pacific Corporation	15.2x	23.2x
Norfolk Southern Corporation	14.9x	24.0x
CSX Corporation	13.8x	22.6x
Mean	15.1x	23.8x
Median	15.1x	23.7x

Based on its analysis of the relevant metrics for each of the comparable companies and upon the application of its professional judgment and experience, Morgan Stanley selected representative ranges of 2021E AV/EBITDA Ratio and 2021E P/E Ratio and applied these ranges to CN's estimated fiscal year 2021 EBITDA of \$6,063 million based on consensus analyst estimates and of \$5,949 million based on the KCS management unaudited CN projections, and to CN's estimated fiscal year 2021 earnings per share of \$4.76 based on consensus analyst estimates and of \$4.82 based on the KCS management unaudited CN projections. For purposes of this analysis, Morgan Stanley utilized the KCS management unaudited CN projections and consensus analyst estimates.

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Morgan Stanley then calculated a range of implied equity values per CN common share as follows, in each case rounded to the nearest \$1.00:

	Selected Representative Range	Implied Equity Value Per CN Common Share
2021E AV/EBITDA Ratio (KCS management unaudited CN projections)	14.0x – 16.0x	\$103.00-\$120.00
2021E P/E Ratio (KCS management unaudited CN projections)	23.0x – 25.0x	\$111.00-\$120.00
2021E AV/EBITDA Ratio (Consensus)	14.0x – 16.0x	\$106.00-\$123.00
2021E P/E Ratio (Consensus)	23.0x – 25.0x	\$109.00-\$119.00

Morgan Stanley compared the foregoing ranges of implied equity values per CN common share to the closing trading price of CN common shares on May 20, 2021 of \$106.39 and to the closing trading price on April 19, 2021 (which was the last trading day prior to the announcement of the CN Proposal) of \$118.13.

No company included in the comparable public company analysis is identical to CN. In evaluating comparable companies, Morgan Stanley made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, which are beyond the control of CN. These include, among other things, the impact of competition on the business of CN and the industry generally, industry growth, and the absence of any adverse material change in the financial condition and prospects of CN and the industry, and in the financial markets in general. Mathematical analysis is not in itself a meaningful method of using comparable company data.

Other Factors

Morgan Stanley observed certain additional factors that were not considered part of its financial analyses with respect to its opinion but were referenced for informational purposes, including, among other things, the following:

- *Historical Trading Range.* For reference only and not as a component of its fairness analysis, Morgan Stanley reviewed the low and high per share trading range of CN common shares for the 12-month period ending April 19, 2021 (which was the last trading day prior to the announcement of the CN Proposal). Morgan Stanley observed that during such period the trading range was \$76.00 to \$119.00 per CN common share, rounded to the nearest \$1.00.
- *Equity Research Analysts' Price Targets.* For reference only and not as a component of its fairness analysis, Morgan Stanley reviewed the undiscounted price targets for CN common shares prepared and published by 27 equity research analysts as of April 19, 2021 (which was the last trading day prior to the announcement of the CN Proposal). These targets generally reflect each analyst's estimate of the future public market trading price of CN common shares. In order to better compare the equity analysts' stock price targets with the trading price of CN common shares on May 20, 2021 of \$106.39 and to the closing trading price of \$118.13 on April 19, 2021 (which was the last trading day prior to the announcement of the CN Proposal), Morgan Stanley discounted each analyst's price target to present value by applying, for a one year discount period, a discount rate of 6.5%, selected by Morgan Stanley based on the application of its professional judgment and experience to reflect CN's cost of equity. This analysis resulted in a discounted analyst price target range for CN common shares of \$91.00 to \$123.00 per share, rounded to the nearest \$1.00.

Summary of Material Pro Forma Financial Analysis

Has/Gets Analysis

Morgan Stanley performed a Has/Gets Analysis to calculate the theoretical change in value for holders of KCS common stock resulting from the merger based on a comparison of (i) the pro forma ownership by holders of

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KCS common stock of CN giving effect to the merger and (ii) the 100% ownership by holders of KCS common stock of the KCS common stock on a standalone basis. For KCS common stock on a standalone basis, Morgan Stanley used the reference range obtained in the discounted cash flow analysis described above under “*Summary of Material Financial Analyses of KCS—Discounted Cash Flow Analysis*.” Morgan Stanley then performed the same analysis by calculating the range of implied per share equity values allocable to holders of KCS common stock on a pro forma basis, giving effect to the merger, by assuming approximately 13% pro forma ownership, based on the number of CN common shares estimated to be issued to holders of KCS common stock in the merger, utilizing the results of the standalone discounted cash flow analyses for KCS and CN described above under “*Summary of Material Financial Analyses of KCS—Discounted Cash Flow Analysis*” and under “*Summary of Material Financial Analyses of CN—Discounted Cash Flow Analysis*,” and taking into account the KCS management assumed synergies on the basis of (1) a projected \$1,000 million in synergies as provided by KCS management (referred to in this section as the “\$1,000 Million Synergy Case”) and (2) a projected \$415 million in synergies as provided by KCS management (referred to in this section as the “\$415 Million Synergy Case”). Morgan Stanley then compared these implied per share equity value ranges, which were further adjusted by an estimated additional net debt from the merger and \$200.00 per share cash merger consideration, to the implied per share equity value ranges derived for KCS common stock on a standalone basis utilizing the results of the standalone discounted cash flow analysis for KCS described above.

This analysis yielded the following implied per share equity value ranges for KCS common stock on a standalone and on a pro forma basis (rounded to the nearest \$1.00):

Implied Equity Value Per Share of KCS common stock		
Standalone	Pro Forma \$1,000 Million Synergy Case	Pro Forma \$415 Million Synergy Case
\$219.00 - \$272.00	\$334.00 - \$370.00	\$326.00 - \$361.00

Other Considerations

In connection with the review of the merger by the KCS board, Morgan Stanley performed a variety of financial and comparative analyses for purposes of rendering its opinion. The preparation of a financial opinion is a complex process and is not necessarily susceptible to a partial analysis or summary description. In arriving at its opinion, Morgan Stanley considered the results of all of its analyses as a whole and did not attribute any particular weight to any analysis or factor it considered. Morgan Stanley believes that selecting any portion of its analyses, without considering all analyses as a whole, would create an incomplete view of the process underlying its analyses and opinion. In addition, Morgan Stanley may have given various analyses and factors more or less weight than other analyses and factors, and may have deemed various assumptions more or less probable than other assumptions. As a result, the ranges of valuations resulting from any particular analysis described above should not be taken to be Morgan Stanley’s view of the actual value of KCS or CN.

In performing its analyses, Morgan Stanley made numerous assumptions with regard to industry performance, general business, regulatory, economic, market and financial conditions and other matters, which are beyond the control of KCS or CN. These include, among other things, the impact of competition on the businesses of KCS and CN or the industry generally, industry growth, and the absence of any adverse material change in the financial condition and prospects of KCS, CN or the industry, and in the financial markets in general. Any estimates contained in Morgan Stanley’s analyses are not necessarily indicative of future results or actual values, which may be significantly more or less favorable than those suggested by such estimates.

Morgan Stanley conducted the analyses described above solely as part of its analysis of the fairness, from a financial point of view, of the merger consideration to be received by the holders of shares of KCS common stock (other than excluded shares) pursuant to the merger agreement, and in connection with the delivery of its opinion to the KCS board. These analyses do not purport to be appraisals or to reflect the prices at which shares of KCS common stock or CN common shares might actually trade.

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The merger consideration to be received by the holders of shares of KCS common stock was determined through arm's-length negotiations between KCS and CN and was approved by the KCS board. Morgan Stanley acted as financial advisor to the KCS board during these negotiations but did not, however, recommend any specific merger consideration to KCS, nor opine that any specific merger consideration constituted the only appropriate merger consideration for the merger. In addition, Morgan Stanley's opinion does not in any manner address the prices at which CN common shares will trade following consummation of the merger or at any other time and Morgan Stanley expressed no opinion or recommendation as to how KCS's shareholders should vote at any shareholder meeting to be held in connection with the merger.

Morgan Stanley's opinion and its presentation to the KCS board was one of many factors taken into consideration by the KCS board in deciding to approve the merger agreement. Consequently, the analyses as described above should not be viewed as determinative of the recommendation of the KCS board with respect to the merger consideration or of whether the KCS board would have been willing to agree to different merger consideration. Morgan Stanley's opinion was approved by a committee of Morgan Stanley investment banking and other professionals in accordance with its customary practice.

KCS has agreed to pay Morgan Stanley for its services in connection with the merger an aggregate fee, which is currently estimated, based on the information available as of the date of announcement, to be approximately \$70 million, \$5 million of which was paid upon the execution of the merger agreement and delivery of its opinion in connection with the proposed acquisition of KCS by CP, \$2.5 million of which was paid upon delivery by Morgan Stanley of its opinion in connection with the merger and the remainder of which is due upon the closing of the merger. KCS has also agreed to reimburse Morgan Stanley for certain of its expenses incurred in performing its services, including fees and expenses of outside counsel to Morgan Stanley. In addition, KCS has agreed to indemnify Morgan Stanley and its affiliates, their respective directors, officers, agents and employees and each person, if any, controlling Morgan Stanley or any of its affiliates against certain liabilities and expenses, including certain liabilities under the federal securities laws, related to or arising out of Morgan Stanley's engagement.

In the two years prior to the date of its opinion, Morgan Stanley or its affiliates have (i) provided financial advisory and financing services to KCS and its affiliates and have received aggregate fees of approximately \$5 million to \$10 million in connection with such services (which includes the fee received upon delivery of its opinion in connection with the proposed acquisition of KCS by CP) and (ii) have not received any fees from CN in connection with financial advisory or financing services. Morgan Stanley may also seek to provide financial advisory and financing services to KCS, CN and their respective affiliates in the future and would expect to receive fees for the rendering of these services.

Morgan Stanley is a global financial services firm engaged in the securities, investment management and individual wealth management businesses. Its securities business is engaged in securities underwriting, trading and brokerage activities, foreign exchange, commodities and derivatives trading, prime brokerage, as well as providing investment banking, financing and financial advisory services. Morgan Stanley, its affiliates, directors and officers may at any time invest on a principal basis or manage funds that invest, hold long or short positions, finance positions, and may trade or otherwise structure and effect transactions, for their own account or the accounts of its customers, in debt or equity securities or loans of CN, KCS, their respective affiliates or any other company, or any currency or commodity, that may be involved in the merger, or any related derivative instrument.

Opinion of BofA Securities

KCS retained BofA Securities to act as its financial advisor in connection with the merger. BofA Securities is an internationally recognized investment banking firm which is regularly engaged in the valuation of businesses and securities in connection with mergers and acquisitions, negotiated underwritings, secondary distributions of listed and unlisted securities, private placements and valuations for corporate and other purposes. KCS selected BofA

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Securities to act as KCS's financial advisor in connection with the merger on the basis of BofA Securities' experience in transactions similar to the merger, its reputation in the investment community and its familiarity with KCS and its business.

On May 21, 2021, at a meeting of the KCS board held to evaluate the merger, BofA Securities delivered to the KCS board an oral opinion, which was confirmed by delivery of a written opinion dated May 21, 2021, to the effect that, as of the date of the opinion and based on and subject to various assumptions and limitations described in BofA Securities' written opinion, the merger consideration to be received in the merger by holders of KCS common stock (other than "excluded shares") was fair, from a financial point of view, to such holders.

The full text of BofA Securities' written opinion to the KCS board, which describes, among other things, the assumptions made, procedures followed, factors considered and limitations on the review undertaken, is attached as Annex C to this proxy statement/prospectus and is incorporated by reference herein in its entirety. The following summary of BofA Securities' opinion is qualified in its entirety by reference to the full text of BofA Securities' written opinion. BofA Securities delivered its opinion to the KCS board for the benefit and use of the KCS board (in its capacity as such) in connection with and for purposes of its evaluation of the merger. BofA Securities' opinion does not address any other terms or other aspects or implications of the merger and no opinion or view was expressed as to the relative merits of the merger in comparison to other strategies or transactions that might be available to KCS or in which KCS might engage or as to the underlying business decision of KCS to proceed with or effect the merger. BofA Securities' opinion does not address any other aspect of the merger and does not express any opinion or recommendation as to how any stockholder should vote or act in connection with the merger or any related matter.

In connection with rendering its opinion, BofA Securities, among other things:

- (1) reviewed certain publicly available business and financial information relating to KCS and CN;
- (2) reviewed certain internal financial and operating information with respect to the business, operations and prospects of KCS furnished to or discussed with BofA Securities by the management of KCS, including the KCS management unaudited KCS projections (as defined and described in the below section entitled "*KCS Unaudited Prospective Financial Information*") relating to KCS prepared by the management of KCS;
- (3) reviewed certain internal financial and operating information with respect to the business, operations and prospects of CN furnished to or discussed with BofA Securities by the management of KCS, including the KCS management unaudited CN projections (as defined and described in the below section entitled "*KCS Unaudited Prospective Financial Information*,"") relating to CN prepared by the management of KCS;
- (4) reviewed the KCS management assumed synergies (as defined and described in the below section entitled "*KCS Unaudited Prospective Financial Information*") anticipated by the managements of KCS and CN to result from the merger;
- (5) discussed the past and current business, operations, financial condition and prospects of KCS with members of senior managements of KCS and CN, and discussed the past and current business, operations, financial condition and prospects of CN with members of senior managements of KCS and CN;
- (6) reviewed the trading histories for KCS common stock and CN common shares and a comparison of such trading histories with the trading histories of other companies BofA Securities deemed relevant;
- (7) compared certain financial and stock market information of KCS and CN with similar information of other companies BofA Securities deemed relevant;
- (8) compared certain financial terms of the merger to financial terms, to the extent publicly available, of other transactions BofA Securities deemed relevant;

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- (9) reviewed a draft dated May 13, 2021 of the merger agreement (the “Draft Merger Agreement”), a draft dated May 13, 2021 of the commitment letter from certain lenders (the “Commitment Letter”), and a draft dated May 13, 2021 of the voting trust agreement among CN, holdco and the trustee (the “Draft Voting Trust Agreement”), and certain related documents; and
- (10) performed such other analyses and studies and considered such other information and factors as BofA Securities deemed appropriate.

In arriving at its opinion, BofA Securities assumed and relied upon, without independent verification, the accuracy and completeness of the financial and other information and data publicly available or provided to or otherwise reviewed by or discussed with BofA Securities and has relied upon the assurances of the managements of KCS and CN that they were not aware of any facts or circumstances that would make such information or data inaccurate or misleading in any material respect. With respect to the KCS management unaudited KCS projections, BofA Securities was advised by KCS, and assumed, that they were reasonably prepared on bases reflecting the best currently available estimates and good faith judgments of the management of KCS as to the future financial performance of KCS. With respect to the KCS management unaudited CN projections and the KCS management assumed synergies, in each case, BofA Securities was advised by KCS, and assumed, with the consent of KCS, that they were reasonably prepared on bases reflecting the best currently available estimates and good faith judgments of the management of KCS as to the future financial performance of CN and other matters covered thereby. BofA Securities also relied, at the direction of KCS, on the assessments of the managements of KCS and CN, respectively, as to CN’s ability to achieve the KCS management assumed synergies and was advised by KCS and CN, and assumed, with the consent of KCS, that the KCS management assumed synergies would be realized in the amounts and at the times projected. BofA Securities did not make and was not provided with any independent evaluation or appraisal of the assets or liabilities (contingent or otherwise) of KCS or CN, nor did BofA Securities make any physical inspection of the properties or assets of KCS or CN. BofA Securities did not evaluate the solvency or fair value of KCS or CN under any state, federal or other laws relating to bankruptcy, insolvency or similar matters. BofA Securities assumed, at the direction of KCS, that the merger would be consummated in accordance with the terms set forth in the merger agreement, without waiver, modification or amendment of any material term, condition or other agreement contemplated therein or thereby and that, in the course of obtaining the necessary governmental, regulatory and other approvals, consents, releases and waivers for the merger, no delay, limitation, restriction or condition, including any divestiture requirements or amendments or modifications, would be imposed that would have an adverse effect on KCS, CN or the contemplated benefits of the merger. BofA Securities also assumed, at the direction of KCS, that (i) CN would obtain financing in accordance with the terms set forth in the Commitment Letter, (ii) the STB would permit the merger to close into the voting trust in accordance with the terms of the Draft Voting Trust Agreement and (iii) the final executed merger agreement would not differ in any material respect from the Draft Merger Agreement reviewed by BofA Securities.

BofA Securities expressed no view or opinion as to any terms or other aspects of the merger (other than the merger consideration to the extent expressly specified in its opinion), including, without limitation, the form or structure of the merger. BofA Securities’ opinion was limited to the fairness, from a financial point of view, of the merger consideration to be received by the holders of shares of KCS common stock (other than excluded shares) in the merger and no opinion or view was expressed with respect to any consideration to be received by the holders of KCS preferred stock or any other class of securities, creditors or other constituencies of any party. In addition, no opinion or view was expressed with respect to the fairness (financial or otherwise) of the amount, nature or any other aspect of any compensation to any of the officers, directors or employees of any party to the merger, or class of such persons, relative to the merger consideration. Furthermore, no opinion or view was expressed as to the relative merits of the merger in comparison to other strategies or transactions that might be available to KCS or in which KCS might engage or as to the underlying business decision of KCS to proceed with or effect the merger. BofA Securities did not express any opinion as to what the value of CN common shares actually would be when issued or the prices at which KCS common stock or CN common shares would trade at any time, including following the announcement or consummation of the merger. In addition, BofA

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Securities expressed no opinion or recommendation as to how any stockholder should vote or act in connection with the merger or any related matter.

BofA Securities' opinion was necessarily based on financial, economic, monetary, market and other conditions and circumstances as in effect on, and the information made available to BofA Securities as of, the date of its opinion. While the credit, financial and stock markets have been experiencing unusual volatility, BofA Securities expressed no opinion or view as to any potential effects of such volatility on KCS, CN or the merger. It should be understood that subsequent developments may affect BofA Securities' opinion, and BofA Securities does not have any obligation to update, revise, or reaffirm its opinion. The issuance of BofA Securities' opinion was approved by a fairness opinion review committee of BofA Securities.

The discussion set forth below in the subsections entitled "*Summary of Material Financial Analyses of KCS*," "*Summary of Material Financial Analyses of CN*," and "*Summary of Material Pro Forma Financial Analysis*," beginning on pages 72, 76 and 78, respectively represents a brief summary of the material financial analyses presented by BofA Securities to the KCS board in connection with its opinion. **The financial analyses summarized below include information presented in tabular format. In order to fully understand the financial analyses performed by BofA Securities, the tables must be read together with the text of each summary. The tables alone do not constitute a complete description of the financial analyses performed by BofA Securities. Considering the data set forth in the tables below without considering the full narrative description of the financial analyses, including the methodologies and assumptions underlying the analyses, could create a misleading or incomplete view of the financial analyses performed by BofA Securities.**

Summary of Material Financial Analyses of KCS

Selected Publicly Traded Companies Analysis.

BofA Securities reviewed publicly available financial and stock market information of the following five selected publicly traded companies in the rail transportation industry:

- Union Pacific Corporation
- CN
- CSX Corporation
- Norfolk Southern Corporation
- CPRL

BofA Securities reviewed, among other things, the closing price per share as of May 20, 2021 for Union Pacific Corporation, CSX Corporation and Norfolk Southern, as of April 19, 2021 for CN (which was the last trading day prior to the announcement of the CN Proposal) and as of March 19, 2021 for CPRL (which was the last trading day prior to the announcement of the proposed acquisition of KCS by CPRL), as a multiple of Wall Street analyst consensus estimates of calendar year 2021 earnings per share ("EPS") for the applicable company (such multiples are referred to in this section as "2021E Price/EPS"). BofA Securities also reviewed the estimated enterprise value, calculated as the market value of equity plus short-term debt, long-term debt, preferred equity and minority interest, minus cash, marketable securities and investments, as applicable ("EV") for each selected company, as a multiple of Wall Street analyst consensus estimates of calendar year 2021 EBITDA (such multiples are referred to in this section as "2021E EV/EBITDA"). Financial data of the selected companies were derived from their public filings and publicly available Wall Street research analysts' estimates published by FactSet as of May 20, 2021.

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The results of BofA Securities' analysis were presented for the selected publicly traded companies, as indicated in the following table:

Company	Price/EPS	EV/EBITDA
	2021E	2021E
Union Pacific Corporation	23.3x	15.0x
CN	24.9x	15.6x
CSX Corporation	22.6x	13.8x
Norfolk Southern Corporation	24.1x	15.0x
CPRL	23.3x	16.1x

The overall low to high 2021E Price/EPS multiples observed for the selected companies were 22.6x to 24.9x (with a mean of 23.6x and median of 23.3x). Based on BofA Securities' review of the 2021E Price/EPS multiples for the selected companies and on its professional judgment and experience, BofA Securities applied a 2021E Price/EPS multiple reference range of 22.5x to 25.0x to KCS management's estimated calendar year 2021 EPS as reflected in the KCS management unaudited KCS projections to calculate an implied equity value reference range per share of KCS common stock (rounded to the nearest \$0.05).

The overall low to high 2021E EV/EBITDA multiples observed for the selected companies were 13.8x to 16.1x (with a mean of 15.1x and median of 15.0x). Based on BofA Securities' review of the 2021E EV/EBITDA multiples for the selected companies and on its professional judgment and experience, BofA Securities applied a 2021E EV/EBITDA multiple reference range of 14.0x to 16.0x to KCS management's estimated calendar year 2021 EBITDA as reflected in the KCS management unaudited KCS projections to calculate an implied equity value reference range per share of KCS common stock (rounded to the nearest \$0.05).

This analysis indicated the following approximate implied equity value reference ranges per share of KCS common stock, as compared to the implied value of the merger consideration, calculated by adding the \$200.00 in cash consideration to \$120, the implied value of the 1.129 of a share of CN common stock included in the merger consideration based on the \$106.39 closing price of the CN common stock on May 20, 2021 ("Implied Consideration Value"):

	Implied Equity Value Reference Range Per Share of KCS Common Stock	Implied Consideration Value
	2021E Price/EPS	2021E EV/EBITDA
	\$210.20 - \$233.55	\$320
	\$216.90 - \$253.75	

No selected publicly traded company used in this analysis is identical or directly comparable to KCS. Accordingly, an evaluation of the results of this analysis is not entirely mathematical. Rather, this analysis involves complex considerations and judgments concerning differences in financial and operating characteristics (reflected, among other things, in differences in historical trading levels of these companies) and other factors that could affect the public trading or other values of the companies to which KCS was compared.

Selected Precedent Transactions Analysis.

BofA Securities reviewed, to the extent publicly available, financial information relating to 21 selected transactions involving acquisitions of rail transportation companies since 1994. For each of these transactions, BofA Securities reviewed the merger values for each transaction based on the merger consideration paid to the shareholders of the target company in the selected transactions (with the full transaction value implied for transactions with less than 100% being acquired), as multiples of estimates of the target company's EBITDA, for the last twelve months for the year in which the applicable transaction was announced except with respect to the Glencore Rail/Genesee & Wyoming Australia and the Genesee & Wyoming Australia/Macquarie

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Infrastructure & Real Assets transactions, where, in each case, such multiple was based on the estimated EBITDA for the twelve months following the announcement made in October 2016, and based on publicly available information at that time (such multiples are referred to in this section as “TV/LTM EBITDA”).

<u>Date Announced</u>	<u>Target</u>	<u>Acquiror</u>	<u>TV/ LTM EBITDA</u>
07/19	Genesee & Wyoming Inc.	Brookfield Infrastructure Partners L.P. / GIC Pte Ltd.	13.4x
03/17	Florida East Coast Railway Holdings Corp	GMéxico Transportes S.A. de C.V.	13.6x
10/16	Glencore Rail (NSW) Pty Limited	Genesee & Wyoming Australia Pty Ltd	11.4x
10/16	Genesee & Wyoming Australia Pty Ltd (49%)	Macquarie Infrastructure and Real Assets	11.2x
03/16	Pacific National Holdings Pty Ltd	Rail Consortium ⁽¹⁾	10.3x
02/15	Freightliner Group Limited (95%)	Genesee & Wyoming Inc.	9.5x
07/12	RailAmerica, Inc.	Genesee & Wyoming Inc.	10.3x
11/09	Burlington Northern Santa Fe Corp.	Berkshire Hathaway Inc.	8.8x
09/07	Dakota, Minnesota & Eastern Railroad Corporation	Canadian Pacific Railway Limited	15.2x
05/07	Florida East Coast Industries Inc.	Fortress Investment Group LLC	N/A
11/06	RailAmerica, Inc.	Fortress Investment Group LLC	11.7x
12/05	Meridian Speedway, LLC	Kansas City Southern (70%) / Norfolk Southern Corporation (30%)	N/A
08/05	Patrick Corporation	Toll Holding Ltd.	15.0x
12/04	Transportacion Ferroviaria Mexicana, S.A. de C.V. (51%)	Kansas City Southern	6.1x
11/03	BC Rail Ltd.	Canadian National Railway Company	14.4x
01/01	Wisconsin Central Ltd.	Canadian National Railway Company	9.8x
02/98	Illinois Central Corp	Canadian National Railway Company	11.4x
04/97	Conrail Inc.	CSX Corp. / Norfolk Southern Corporation	12.1x
08/95	Southern Pacific Rail Corp.	Union Pacific Corp.	12.3x
03/95	Chicago and North Western Holdings Corporation	Union Pacific Corp.	8.4x
06/94	Santa Fe Pacific Corporation	Burlington Northern Inc.	7.2x

(1) CPP Investments Limited (33%), Global Infrastructure Partners Inc. (27%), China Investment Corporation (16%), GIC Pte Ltd. (12%) and British Columbia Investment Management Corporation (12%).

The overall low to high TV/LTM EBITDA multiples of the target companies in the selected transactions were 6.1x to 15.2x (with a mean of 11.2x and a median of 11.4x).

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Based on BofA Securities' review of the TV/LTM EBITDA multiples for the selected transactions and on its professional judgment and experience, BofA Securities applied a TV/LTM EBITDA multiple reference range of 11.5x to 14.0x to KCS's COVID-Adjusted EBITDA for the twelve month period ended March 31, 2021 of \$1,629 million as provided by KCS management, which reflects an add-back of \$257 million, as provided by KCS management, for the estimated impact of COVID-19 for the second quarter through the fourth quarter of 2020, to calculate a range of implied EV for KCS. BofA Securities then calculated an implied equity value reference range per share of KCS common stock (rounded to the nearest \$0.05). This analysis indicated the following approximate implied equity value reference ranges per share of KCS common stock (rounded to the nearest \$0.05), as compared to the Implied Consideration Value:

Implied Equity Value Reference Range Per Share of KCS Common Stock	Implied Consideration Value
\$163.10 - \$207.55	\$ 320

No selected precedent transaction used in this analysis or the applicable business or target company is identical or directly comparable to KCS or the merger. Accordingly, an evaluation of the results of this analysis is not entirely mathematical. Rather, this analysis involves complex considerations and judgments concerning differences in financial and operating characteristics, market conditions and other factors that could affect the acquisition or other values of the companies or transactions to which KCS and the merger were compared.

Discounted Cash Flow Analysis

BofA Securities performed a discounted cash flow analysis of KCS to calculate a range of implied present values per share of KCS common stock utilizing estimates of the standalone, unlevered, after-tax free cash flows that KCS was expected to generate during the nine-month period ending December 31, 2021 and for the fiscal years 2022 through 2029 based on the KCS management unaudited KCS projections. BofA Securities calculated terminal values for KCS by applying a selected range of perpetuity growth rates of 2.25% to 2.75% to KCS's normalized free cash flows in the terminal year. BofA Securities then calculated implied equity value reference ranges per share of KCS common stock (rounded to the nearest \$0.05) by deducting from this range of present values (i) KCS's net debt as of March 31, 2021, as provided by KCS management, and (ii) KCS's preferred equity and minority interest as of March 31, 2021, as reflected in KCS's public filings, at the direction of KCS management, and dividing the result by the number of fully-diluted shares of KCS common stock outstanding (calculated on a treasury stock method basis, based on information provided by the management of KCS). The cash flows were discounted to present value as of March 31, 2021, utilizing mid-year discounting convention, and using a discount rate range of 6.0% to 7.5%, which was based on an estimate of KCS's weighted average cost of capital. This analysis indicated the following approximate implied equity value reference range per share of KCS common stock (rounded to the nearest \$0.05), as compared to the Implied Consideration Value:

Implied Equity Value Reference Range Per Share of KCS Common Stock	Implied Consideration Value
\$204.90 - \$349.60	\$ 320

Other Factors

BofA Securities also noted certain additional factors that were not considered part of BofA Securities' financial analyses with respect to its opinion but were referenced for informational purposes, including, among other things, the following:

- **52-Week Trading Range.** BofA Securities reviewed the trading range of the shares of KCS common stock for the 52-week period ended March 19, 2021 (which was the last trading day prior to the announcement of the proposed acquisition of KCS by CPRL), which was \$100.54 to \$224.16.

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- *Wall Street Analysts Price Targets.* BofA Securities reviewed certain publicly available equity research analyst price targets for the shares of KCS common stock available as of March 19, 2021 (which was the last trading day prior to the announcement of the proposed acquisition of KCS by CPRL), and noted that the range of such price targets (discounted by one year at KCS's estimated mid-point cost of equity of 7.7% and rounded to the nearest \$0.05) was \$185.75 to \$238.70.
- *Present Value of Future Stock Price.* BofA Securities calculated a range of present values of KCS future stock prices discounted back to March 31, 2021 by using KCS's estimated calendar year 2029 EPS based on the KCS management unaudited KCS projections, a range of price to next twelve months EPS multiples of 16.0x to 22.0x and KCS's estimated mid-point cost of equity of 7.7%, as well as the expected future dividend payments as provided by KCS management, which indicated a range of implied present values of future stock prices of KCS common stock of \$254.60 per share to \$343.90 per share, in each case rounded to the nearest \$0.05 per share.

Summary of Material Financial Analyses of CN

Selected Publicly Traded Companies Analysis.

BofA Securities reviewed publicly available financial and stock market information of the following five selected publicly traded companies in the rail transportation industry:

- Union Pacific Corporation
- CSX Corporation
- Norfolk Southern Corporation
- CPRL
- KCS

BofA Securities reviewed, among other things, the closing price per share as of May 20, 2021 for Union Pacific Corporation, CSX Corporation and Norfolk Southern and as of March 19, 2021 for KCS and CPRL (which was the last trading day prior to the announcement of the proposed acquisition of KCS by CPRL), as a multiple of Wall Street analyst consensus estimates of calendar year 2021 "EPS" for the applicable company (such multiples are referred to in this section as "2021E Price/EPS"). BofA Securities also reviewed the estimated "EV" for each selected company, as a multiple of Wall Street analyst consensus estimates of calendar year 2021 "EBITDA" (such multiples are referred to in this section as "2021E EV/EBITDA"). Financial data of the selected companies were derived from their public filings and publicly available Wall Street research analysts' estimates published by FactSet as of May 20, 2021.

The results of BofA Securities's analysis were presented for the selected publicly traded companies, as indicated in the following table:

<u>Company</u>	<u>Price/EPS</u> <u>2021E</u>	<u>EV/EBITDA</u> <u>2021E</u>
Union Pacific Corporation	23.3x	15.0x
CSX Corporation	22.6x	13.8x
Norfolk Southern Corporation	24.1x	15.0x
CPRL	23.3x	16.1x
KCS	24.9x	15.0x

The overall low to high 2021E Price/EPS multiples observed for the selected companies were 22.6x to 24.9x (with a mean of 23.6x and median of 23.3x). Based on BofA Securities' review of the 2021E Price/EPS multiples for the selected companies and on its professional judgment and experience, BofA Securities applied a 2021E

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Price/EPS multiple reference range of 22.5x to 25.0x to KCS management's estimated calendar year 2021 EPS as reflected in the KCS management unaudited CN projections to calculate an implied equity value reference range per share of CN common shares (rounded to the nearest \$0.05).

The overall low to high 2021E EV/EBITDA multiples observed for the selected companies were 13.8x to 16.1x (with a mean of 15.0x and median of 15.0x). Based on BofA Securities' review of the 2021E EV/EBITDA multiples for the selected companies and on its professional judgment and experience, BofA Securities applied a 2021E EV/EBITDA multiple reference range of 14.0x to 16.0x to KCS management's estimated calendar year 2021 EBITDA as reflected in the KCS management unaudited CN projections to calculate an implied equity value reference range per share of CN common shares (rounded to the nearest \$0.05).

This analysis indicated the following approximate implied equity value reference ranges per share of CN common shares, as compared to the closing price of the CN common shares on May 20, 2021 of \$106.39 and the closing price of CN common shares on April 19, 2021 (which was the last trading day prior to the announcement of the CN Proposal) of \$118.13:

	Implied Equity Value Reference Range Per Share of CN Common Stock
2021E Price/EPS	\$108.35 - \$120.40
2021E EV/EBITDA	\$103.40 - \$120.10

No selected publicly traded company used in this analysis is identical or directly comparable to CN. Accordingly, an evaluation of the results of this analysis is not entirely mathematical. Rather, this analysis involves complex considerations and judgments concerning differences in financial and operating characteristics (reflected, among other things, in differences in historical trading levels of these companies) and other factors that could affect the public trading or other values of the companies to which CN was compared.

Discounted Cash Flow Analysis

BofA Securities performed a discounted cash flow analysis of CN to calculate a range of implied present values per share of CN common shares utilizing estimates of the standalone, unlevered, after-tax free cash flows that CN was expected to generate during the nine-month period ending December 31, 2021 and for the fiscal years 2022 through 2029 based on the KCS management unaudited CN projections. BofA Securities calculated terminal values for CN by applying a selected range of perpetuity growth rates of 2.25% to 2.75% to CN's normalized free cash flows in the terminal year. BofA Securities then calculated implied equity value reference ranges per share of CN common shares (rounded to the nearest \$0.05) by deducting from this range of present values CN's net debt as of March 31, 2021, as provided by KCS management, and adding net pension assets as of March 31, 2021, as reflected in CN's public filings, at the direction of KCS management, and dividing the result by the number of fully-diluted shares of CN common shares outstanding (calculated on a treasury stock method basis, based on information provided by the management of KCS). The cash flows were discounted to present value as of March 31, 2021, utilizing mid-year discounting convention, and using a discount rate range of 5.5% to 7.0%, which was based on an estimate of CN's weighted average cost of capital. This analysis indicated the following approximate implied equity value reference range per share of CN common shares (rounded to the nearest \$0.05), as compared to the closing price of the CN common shares on May 20, 2021 of \$106.39 and the closing price of the CN common shares on April 19, 2021 (which was the last trading day prior to the announcement of the CN Proposal) of \$118.13:

Implied Equity Value Reference Range Per Share of CN Common Shares
\$105.55 - \$188.90

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Other Factors

BofA Securities also noted certain additional factors that were not considered part of BofA Securities' financial analyses with respect to its opinion but were referenced for informational purposes, including, among other things, the following:

- **52-Week Trading Range.** BofA Securities reviewed the trading range of the shares of CN common shares for the 52-week period ended April 19, 2021 (which was the last trading day prior to the announcement of the CN Proposal), which was \$75.97 to \$118.77.
- **Wall Street Analysts Price Targets.** BofA Securities reviewed certain publicly available equity research analyst price targets for the CN common shares available as of April 19, 2021 (which was the last trading day prior to the announcement of the CN Proposal), and noted that the range of such price targets (discounted by one year at CN's estimated mid-point cost of equity of 6.7% and rounded to the nearest \$0.05) was \$91.35 to \$122.45.

Summary of Material Pro Forma Financial Analysis

Has/Gets Analysis

BofA Securities performed a Has/Gets Analysis to calculate the theoretical change in value for holders of KCS common stock resulting from the merger based on a comparison of (i) the pro forma ownership by holders of KCS common stock of CN giving effect to the merger, and (ii) the 100% ownership by holders of KCS common stock of the KCS common stock on a stand-alone basis. For KCS common stock on a stand-alone basis, BofA Securities used the reference range obtained in its discounted cash flow analysis described above under "*Summary of Material Financial Analyses of KCS—Discounted Cash Flow Analysis*." BofA Securities then performed the same analysis by calculating the range of implied per share equity values allocable to holders of KCS common stock on a pro forma basis, giving effect to the merger, by assuming approximately 13% pro forma ownership, based on the number of shares of CN common shares estimated to be issued to holders of KCS common stock in the merger, utilizing the results of the standalone discounted cash flow analyses for KCS and CN described above under "*Summary of Material Financial Analyses of KCS—Discounted Cash Flow Analysis*" and under "*Summary of Material Financial Analyses of CN—Discounted Cash Flow Analysis*," and taking into account the KCS management assumed synergies on the basis of (i) a projected \$1,000 million in synergies as provided by KCS management (referred to in this section as the "\$1,000 Million Synergy Case") and (ii) a projected \$415 million in synergies as provided by KCS management (referred to in this section as the "\$415 Million Synergy Case"). BofA Securities calculated the present value of the synergies (including after-tax costs to achieve such synergies) as of March 31, 2021 by using a discount rate range of 6.0% to 7.5%. BofA Securities then compared these implied per share equity value reference ranges, which were further adjusted by an estimated additional net debt from the merger and \$200.00 per share cash consideration, to the implied per share equity value reference ranges derived for KCS on a standalone basis utilizing the results of the standalone discounted cash flow analysis for KCS described above.

This analysis yielded the following implied per share equity value reference ranges for KCS common stock on a stand-alone basis and on a pro forma basis (rounded to the nearest \$1.00):

<u>Range Per Share of KCS common stock</u>	<u>Implied Equity Value Reference</u>	
	<u>Stand-Alone</u>	<u>Pro Forma \$1,000 Million Synergy Case</u>
\$205 - \$350		\$318 - \$430
		<u>Pro Forma \$415 Million Synergy Case</u>
		\$308 - \$413

Miscellaneous

As noted above, the discussion set forth above in "*Summary of Material Financial Analyses of KCS*," "*Summary of Material Financial Analyses of CN*" and "*Summary of Material Pro Forma Financial Analysis*" represents a brief summary of the material financial analyses presented by BofA Securities to the KCS board in connection

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with its opinion, and is not a comprehensive description of all analyses undertaken or factors considered by BofA Securities in connection with its opinion. The preparation of a financial opinion is a complex analytical process involving various determinations as to the most appropriate and relevant methods of financial analysis and the application of those methods to the particular circumstances and, therefore, a financial opinion is not readily susceptible to partial analysis or summary description. BofA Securities believes that its analyses summarized above must be considered as a whole. BofA Securities further believes that selecting portions of its analyses and the factors considered or focusing on information presented in tabular format, without considering all analyses and factors or the narrative description of the analyses, could create a misleading or incomplete view of the processes underlying BofA Securities' analyses and opinion. The fact that any specific analysis has been referred to in the summary above is not meant to indicate that such analysis was given greater weight than any other analysis referred to in the summary.

In performing its analyses, BofA Securities considered industry performance, general business and economic conditions and other matters, many of which are beyond the control of KCS and CN. The estimates of the future performance of KCS and CN in or underlying BofA Securities' analyses are not necessarily indicative of actual values or actual future results, which may be significantly more or less favorable than those estimates or those suggested by BofA Securities' analyses. These analyses were prepared solely as part of BofA Securities' analysis of the fairness, from a financial point of view, to the holders of KCS common stock of the merger consideration, to be received by such holders in the merger and were provided to the KCS board in connection with the delivery of BofA Securities' opinion. The analyses do not purport to be appraisals or to reflect the prices at which a company might actually be sold or acquired or the prices at which any securities have traded or may trade at any time in the future. Accordingly, the estimates used in, and the ranges of valuations resulting from, any particular analysis described above are inherently subject to substantial uncertainty and should not be taken to be BofA Securities' view of the actual values of KCS or CN.

The type and amount of consideration payable in the merger was determined through negotiations between KCS and CN, rather than by any financial advisor, and was approved by the KCS board. The decision to enter into the merger agreement was solely that of the KCS board. As described above, BofA Securities' opinion and analyses were only one of many factors considered by the KCS board in its evaluation of the merger and should not be viewed as determinative of the views of the KCS board or management or any other party with respect to the merger or the merger consideration.

KCS has agreed to pay BofA Securities for its services in connection with the merger an aggregate fee, which is currently estimated, based on the information available as of the date of announcement, to be approximately \$70 million, \$5 million of which was paid upon delivery of its opinion in connection with the proposed acquisition of KCS by CP, \$2.5 million of which was paid upon delivery of its opinion in connection with the merger and the remainder of which is payable immediately prior to or upon the closing of the merger. KCS also has agreed to reimburse BofA Securities for its expenses incurred in connection with BofA Securities' engagement and to indemnify BofA Securities, any of its affiliates, its and their respective directors, officers, employees and agents and each other person controlling BofA Securities or any of its affiliates, against certain liabilities, including liabilities under the federal securities laws, arising out of BofA Securities' engagement.

BofA Securities and its affiliates comprise a full service securities firm and commercial bank engaged in securities, commodities and derivatives trading, foreign exchange and other brokerage activities, and principal investing as well as providing investment, corporate and private banking, asset and investment management, financing and financial advisory services and other commercial services and products to a wide range of companies, governments and individuals. In the ordinary course of BofA Securities' businesses, BofA Securities and its affiliates may invest on a principal basis or on behalf of customers or manage funds that invest, make or hold long or short positions, finance positions or trade or otherwise effect transactions in equity, debt or other securities or financial instruments (including derivatives, bank loans or other obligations) of KCS, CN and certain of their respective affiliates.

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BofA Securities and its affiliates in the past have provided, currently are providing, and in the future may provide, investment banking, commercial banking and other financial services to KCS and its affiliates and have received, or in the future may receive, compensation for the rendering of these services, including (i) having acted as a joint bookrunner on certain debt capital markets transactions for KCS, (ii) having acted as a dealer-manager on an accelerated share repurchase transaction for KCS and (iii) having acted or acting as administrative agent, co-lead arranger and joint bookrunner for, and as a lender (including a letter of credit lender) under, KCS's \$600 million senior unsecured revolving credit facility due March 8, 2024. From May 1, 2019, through April 30, 2021, BofA Securities and its affiliates derived aggregate revenues from KCS and its affiliates of approximately \$8 million for corporate and/or investment banking services, which includes the fee received upon delivery of its opinion in connection with the proposed acquisition of KCS by CPRL.

In addition, BofA Securities and its affiliates in the past have provided, currently are providing, and in the future may provide, investment banking, commercial banking and other financial services to CN and its affiliates and have received or in the future may receive compensation for the rendering of these services, including (i) having acted as a joint bookrunner on certain debt capital markets transactions for CN, (ii) having provided or providing certain commodity, derivatives and foreign exchange trading services to CN and (iii) having acted or acting as a participant lender under CN's C\$2.0 billion unsecured revolving credit facility, consisting of a C\$1.0 billion tranche maturing on March 31, 2024 and a C\$1.0 billion tranche maturing on March 31, 2026. From May 1, 2019, through April 30, 2021, BofA Securities and its affiliates derived aggregate revenues from CN of approximately \$6.1 million for corporate and/or investment banking services.

KCS Unaudited Prospective Financial Information

As described under the section of this proxy statement/prospectus entitled "*The KCS Merger Proposal—Background of the Transaction*," on page 42, KCS management maintains the KCS Long-Range Plan, which is periodically updated and reviewed with the KCS board, that reflects KCS management's financial and business outlook for KCS over a ten-year period. This KCS Long-Range Plan was reviewed by the KCS board in connection with its consideration of a transaction with CN, CPRL and other potential strategic alternatives throughout the latter half of 2020 continuing through its meeting on May 21, 2021. The KCS Long-Range Plan included certain unaudited prospective financial information concerning KCS on a standalone basis for the fiscal years ending December 31, 2021 through December 31, 2029. We refer to these unaudited projections as the "KCS management unaudited KCS projections". The KCS management unaudited KCS projections were provided to Morgan Stanley and BofA Securities, which were directed by KCS management to use and rely upon the KCS management unaudited KCS projections for purposes of their respective financial analyses and fairness opinions, as well as to CN.

In connection with the transaction, KCS management also prepared certain unaudited prospective financial information concerning CN on a standalone basis using (i) an internal five-year financial forecast prepared by CN management and provided to KCS management for the fiscal years ending December 31, 2021 through December 31, 2025 (which we refer to as the "CN Five-Year Plan") and (ii) extrapolations prepared by KCS management on the basis of the CN Five-Year Plan for the fiscal years ending December 31, 2026 through December 31, 2029. We refer to these unaudited projections as the "KCS management unaudited CN projections," and the KCS management unaudited KCS projections and the KCS management unaudited CN projections, collectively, as the "KCS management unaudited projections". The KCS management unaudited CN projections were provided to the KCS board in connection with its consideration of the transaction as well as to Morgan Stanley and BofA Securities, which were directed by KCS management to use and rely upon the KCS management unaudited CN projections for purposes of their respective financial analyses and fairness opinions.

The KCS management unaudited projections were prepared treating KCS and CN, respectively, on a standalone basis, without giving effect to the transaction, including any impact of the negotiation or execution of the transaction, the expenses that may be incurred in connection with the transaction or the consummation thereof, the potential synergies that may be achieved by the combined company as a result of the transaction, the effect of

LOGO

May 21, 2021

Board of Directors
Kansas City Southern
427 West 12th Street
Kansas City, Missouri

Members of the Board:

We understand that Kansas City Southern (“KCS” or the “Company”), Canadian National Railway Company (the “Buyer”) and Brooklyn Merger Sub, Inc., a wholly owned subsidiary of the Buyer (“Merger Sub”), propose to enter into an Agreement and Plan of Merger, substantially in the form of the draft dated May 13, 2021 (the “Merger Agreement”), which provides, among other things, for the merger of Merger Sub with and into the Company (the “Merger”), with the Company surviving the Merger as a wholly owned subsidiary of the Buyer. Pursuant to the Merger, each outstanding share of common stock, par value \$0.01 per share, of the Company (the “Company Common Stock”), other than shares held in treasury or held by the Buyer, Merger Sub or the Company (in each case, other than shares held on behalf of third parties) or shares with respect to which the holders thereof have not voted in favor of the adoption of the Merger Agreement or consented thereto in writing and who have properly exercised appraisal rights with respect thereto in accordance with, and who have complied with, Section 262 of the Delaware General Corporation Law (collectively, “Excluded Shares”), will be converted into the right to receive (i) \$200 per share in cash and (ii) 1.129 shares of common stock, without par value, of the Buyer (the “Buyer Common Stock”) as set forth in the Merger Agreement (together, the “Consideration”). The terms and conditions of the Merger are more fully set forth in the Merger Agreement.

You have asked for our opinion as to whether the Consideration to be received by the holders of shares of the Company Common Stock (other than Excluded Shares) pursuant to the Merger Agreement is fair from a financial point of view to such holders of shares of the Company Common Stock.

For purposes of the opinion set forth herein, we have:

- 1) Reviewed certain publicly available financial statements and other business and financial information of the Company and the Buyer, respectively;
- 2) Reviewed certain internal financial statements and other financial and operating data concerning the Company and the Buyer, respectively;
- 3) Reviewed certain financial projections with respect to the Company and the Buyer prepared by the management of the Company;
- 4) Reviewed information relating to certain strategic, financial and operational benefits anticipated from the Merger, prepared by the managements of the Company and the Buyer, respectively;
- 5) Discussed the past and current operations and financial condition and the prospects of the Company, including information relating to certain strategic, financial and operational benefits anticipated from the Merger, with senior executives of the Company;
- 6) Discussed the past and current operations and financial condition and the prospects of the Buyer, including information relating to certain strategic, financial and operational benefits anticipated from the Merger, with senior executives of the Buyer;
- 7) Reviewed the reported prices and trading activity for the Company Common Stock and the Buyer Common Stock;

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- 8) Compared the financial performance of the Company and the Buyer and the prices and trading activity of the Company Common Stock and the Buyer Common Stock with that of certain other publicly-traded companies comparable with the Company and the Buyer, respectively, and their securities;
- 9) Reviewed the financial terms, to the extent publicly available, of certain comparable acquisition transactions;
- 10) Participated in certain discussions and negotiations among representatives of the Company and the Buyer and certain parties and their financial and legal advisors;
- 11) Reviewed the Merger Agreement, the commitment letters from certain lenders substantially in the form of the drafts dated May 13, 2021 (collectively, the “Commitment Letters”), the voting trust agreement among the Buyer, Brooklyn US Holding, Inc., a wholly owned subsidiary of the Buyer, and the Trustee, substantially in the form of the draft dated May 13, 2021 (the “Voting Trust Agreement”), and certain related documents; and
- 12) Performed such other analyses, reviewed such other information and considered such other factors as we have deemed appropriate.

We have assumed and relied upon, without independent verification, the accuracy and completeness of the information that was publicly available or supplied or otherwise made available to us by the Company and the Buyer, respectively, and formed a substantial basis for this opinion. With respect to the financial projections of the Company, including information relating to certain strategic, financial and operational benefits anticipated from the Merger, we have assumed that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of the Company of the future financial performance of the Company. With respect to the financial projections of the Buyer, including information relating to certain strategic, financial and operational benefits anticipated from the Merger, we have assumed that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of the Company of the future financial performance of the Buyer, including following consummation of the Merger. In addition, we have assumed that the Merger will be consummated in accordance with the terms set forth in the Merger Agreement without any waiver, amendment or delay of any terms or conditions, including, among other things, (i) that the Buyer will obtain financing in accordance with the terms set forth in the Commitment Letters, (ii) that the Surface Transportation Board will permit the Merger to close into a Voting Trust in accordance with the terms of the Voting Trust Agreement and (iii) that the definitive Merger Agreement will not differ in any material respect from the draft thereof furnished to us. Morgan Stanley has assumed that in connection with the receipt of all the necessary governmental, regulatory or other approvals and consents required for the proposed Merger, no delays, limitations, conditions or restrictions will be imposed that would have a material adverse effect on the contemplated benefits expected to be derived in the proposed Merger. We have relied upon, without independent verification, the assessment by the managements of the Company and the Buyer of: (i) the strategic, financial and other benefits expected to result from the Merger; (ii) the timing and risks associated with the integration of the Company and the Buyer; (iii) their ability to retain key employees of the Company and the Buyer, respectively, and (iv) the validity of, and risks associated with, the Company and the Buyer’s existing and future technologies, intellectual property, products, services and business models. We are not legal, tax, or regulatory advisors. We are financial advisors only and have relied upon, without independent verification, the assessment of the Buyer and the Company and their legal, tax or regulatory advisors with respect to legal, tax, or regulatory matters. We express no opinion with respect to the fairness of the amount or nature of the compensation to any of the Company’s officers, directors or employees, or any class of such persons, relative to the Consideration to be received by the holders of shares of the Company Common Stock in the Merger. This opinion does not address the relative merits of the transactions contemplated by the Merger Agreement as compared to other business or financial strategies that might be available to the Company, nor does it address the underlying business decision of the Company to enter into the Merger Agreement or proceed with any other transaction contemplated by the Merger Agreement. We express no opinion with respect to the treatment of the preferred stock, par value \$25 per share, of the Company in the Merger. We have not made any independent valuation or appraisal of the assets or liabilities of the Company or the Buyer, nor have we been

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furnished with any such valuations or appraisals. Our opinion is necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to us as of, the date hereof. Events occurring after the date hereof may affect this opinion and the assumptions used in preparing it, and we do not assume any obligation to update, revise or reaffirm this opinion.

We have acted as financial advisor to the Board of Directors of the Company in connection with the Merger and will receive a fee for our services, a substantial portion of which is contingent upon the execution of the Merger Agreement, a substantial portion of which is contingent upon the rendering of this financial opinion and a significant portion of which is contingent upon the closing of the Merger. In the two years prior to the date hereof, we have provided financial advisory and/or financing services to the Company, the Buyer and certain of their respective affiliates, and have received fees in connection with such services. Morgan Stanley may also seek to provide financial advisory and financing services to the Company, the Buyer and their respective affiliates in the future and would expect to receive fees for the rendering of these services.

Please note that Morgan Stanley is a global financial services firm engaged in the securities, investment management and individual wealth management businesses. Our securities business is engaged in securities underwriting, trading and brokerage activities, foreign exchange, commodities and derivatives trading, prime brokerage, as well as providing investment banking, financing and financial advisory services. Morgan Stanley, its affiliates, directors and officers may at any time invest on a principal basis or manage funds that invest, hold long or short positions, finance positions, and may trade or otherwise structure and effect transactions, for their own account or the accounts of its customers, in debt or equity securities or loans of the Buyer, the Company, their respective affiliates or any other company, or any currency or commodity, that may be involved in the Merger, or any related derivative instrument.

This opinion has been approved by a committee of Morgan Stanley investment banking and other professionals in accordance with our customary practice. This opinion is for the information of the Board of Directors of the Company and may not be used for any other purpose or disclosed without our prior written consent, except that a copy of this opinion may be included in its entirety in any filing the Company is required to make with the Securities and Exchange Commission in connection with the Merger if such inclusion is required by applicable law. In addition, this opinion does not in any manner address the prices at which the Buyer Common Stock will trade following consummation of the Merger or at any time and Morgan Stanley expresses no opinion or recommendation as to how the shareholders of the Company should vote at the shareholder meeting to be held in connection with the Merger.

Based on and subject to the foregoing, we are of the opinion on the date hereof that the Consideration to be received by the holders of shares of the Company Common Stock (other than Excluded Shares) pursuant to the Merger Agreement is fair from a financial point of view to such holders of shares of the Company Common Stock.

Very truly yours,

MORGAN STANLEY & CO. LLC

By: /s/ Brian Healy

Brian Healy
Managing Director

BofA Securities, Inc.

May 21, 2021

The Board of Directors
Kansas City Southern
427 West 12th Street
Kansas City, Missouri

Members of the Board of Directors:

We understand that Kansas City Southern (“KCS”) proposes to enter into an Agreement and Plan of Merger (the “Merger Agreement”), among KCS, Canadian National Railway Company (“CN”), and Brooklyn Merger Sub, Inc., a wholly owned subsidiary of CN (“Merger Sub”), pursuant to which, among other things, Merger Sub will merge with and into KCS (the “Merger”), with KCS surviving the Merger as a wholly owned subsidiary of CN. Pursuant to the Merger, each outstanding share of common stock, par value \$0.01 per share, of KCS (the “KCS Common Stock”), other than shares held in treasury or held by CN, Merger Sub or KCS (in each case, other than shares held on behalf of third parties) or shares with respect to which the holders thereof have not voted in favor of the adoption of the Merger Agreement or consented thereto in writing and who have properly exercised appraisal rights with respect thereto in accordance with, and who have complied with, Section 262 of the Delaware General Corporation Law (collectively, “Excluded Shares”), will be converted into the right to receive (i) \$200 in cash (the “Cash Consideration”) and (ii) 1.129 shares (the “Stock Consideration” and, together with the Cash Consideration, the “Consideration”) of the common stock, without par value, of CN (the “CN Common Stock”) as set forth in the Merger Agreement. The terms and conditions of the Merger are more fully set forth in the Merger Agreement.

You have requested our opinion as to the fairness, from a financial point of view, to the holders of KCS Common Stock (other than Excluded Shares) of the Consideration to be received by such holders in the Merger.

In connection with this opinion, we have, among other things:

- (1) reviewed certain publicly available business and financial information relating to KCS and CN;
- (2) reviewed certain internal financial and operating information with respect to the business, operations and prospects of KCS furnished to or discussed with us by the management of KCS, including certain financial forecasts relating to KCS prepared by the management of KCS (such forecasts, the “KCS Forecasts”);
- (3) reviewed certain internal financial and operating information with respect to the business, operations and prospects of CN furnished to or discussed with us by the management of KCS, including certain financial forecasts relating to CN prepared by the management of KCS (such forecasts, the “CN Forecasts”);
- (4) reviewed certain estimates as to the amount and timing of cost savings and revenue enhancements (collectively, the “Synergies”) anticipated by the managements of KCS and CN to result from the Merger;

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- (5) discussed the past and current business, operations, financial condition and prospects of KCS with members of senior managements of KCS and CN, and discussed the past and current business, operations, financial condition and prospects of CN with members of senior managements of KCS and CN;
- (6) reviewed the trading histories for KCS Common Stock and CN Common Stock and a comparison of such trading histories with the trading histories of other companies we deemed relevant;
- (7) compared certain financial and stock market information of KCS and CN with similar information of other companies we deemed relevant;
- (8) compared certain financial terms of the Merger to financial terms, to the extent publicly available, of other transactions we deemed relevant;
- (9) reviewed a draft dated May 13, 2021 of the Merger Agreement (the “Draft Agreement”), drafts dated May 13, 2021 of the commitment letters from certain lenders (collectively, the “Commitment Letters”), and a draft dated May 13, 2021 of the voting trust agreement among CN, Brooklyn US Holding, Inc., a wholly owned subsidiary of CN, and the Trustee (the “Voting Trust Agreement”), and certain related documents; and
- (10) performed such other analyses and studies and considered such other information and factors as we deemed appropriate.

In arriving at our opinion, we have assumed and relied upon, without independent verification, the accuracy and completeness of the financial and other information and data publicly available or provided to or otherwise reviewed by or discussed with us and have relied upon the assurances of the managements of KCS and CN that they are not aware of any facts or circumstances that would make such information or data inaccurate or misleading in any material respect. With respect to the KCS Forecasts, we have been advised by KCS, and have assumed, that they have been reasonably prepared on bases reflecting the best currently available estimates and good faith judgments of the management of KCS as to the future financial performance of KCS. With respect to the CN Forecasts and Synergies, we have been advised by KCS, and have assumed, with the consent of KCS, that they have been reasonably prepared on bases reflecting the best currently available estimates and good faith judgments of the management of KCS as to the future financial performance of CN and other matters covered thereby. We have relied, at the direction of KCS, on the assessments of the managements of KCS and CN, respectively, as to CN’s ability to achieve the Synergies and have been advised by KCS and CN, and have assumed, with the consent of KCS, that the Synergies will be realized in the amounts and at the times projected. We have not made or been provided with any independent evaluation or appraisal of the assets or liabilities (contingent or otherwise) of KCS or CN, nor have we made any physical inspection of the properties or assets of KCS or CN. We have not evaluated the solvency or fair value of KCS or CN under any state, federal or other laws relating to bankruptcy, insolvency or similar matters. We have assumed, at the direction of KCS, that the Merger will be consummated in accordance with the terms set forth in the Merger Agreement, without waiver, modification or amendment of any material term, condition or other agreement contemplated therein or thereby and that, in the course of obtaining the necessary governmental, regulatory and other approvals, consents, releases and waivers for the Merger, no delay, limitation, restriction or condition, including any divestiture requirements or amendments or modifications, will be imposed that would have an adverse effect on KCS, CN or the contemplated benefits of the Merger. We have also assumed, at the direction of KCS, that (i) CN will obtain financing in accordance with the terms set forth in the Commitment

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Letters, (ii) the Surface Transportation Board will permit the Merger to close into a Voting Trust in accordance with the terms of the Voting Trust Agreement and (iii) the final executed Merger Agreement will not differ in any material respect from the Draft Agreement reviewed by us.

We express no view or opinion as to any terms or other aspects of the Merger (other than the Consideration to the extent expressly specified herein), including, without limitation, the form or structure of the Merger. Our opinion is limited to the fairness, from a financial point of view, of the Consideration to be received by the holders of shares of KCS Common Stock (other than Excluded Shares) in the Merger and no opinion or view is expressed with respect to any consideration to be received by the holders of the preferred stock, par value \$25 per share, of KCS or any other class of securities, creditors or other constituencies of any party. In addition, no opinion or view is expressed with respect to the fairness (financial or otherwise) of the amount, nature or any other aspect of any compensation to any of the officers, directors or employees of any party to the Merger, or class of such persons, relative to the Consideration. Furthermore, no opinion or view is expressed as to the relative merits of the Merger in comparison to other strategies or transactions that might be available to KCS or in which KCS might engage or as to the underlying business decision of KCS to proceed with or effect the Merger. We are not expressing any opinion as to what the value of CN Common Stock actually will be when issued or the prices at which KCS Common Stock or CN Common Stock will trade at any time, including following announcement or consummation of the Merger. In addition, we express no opinion or recommendation as to how any stockholder should vote or act in connection with the Merger or any related matter.

We have acted as financial advisor to KCS in connection with the Merger and will receive a fee for our services, a portion of which is payable upon the rendering of this opinion and a significant portion of which is contingent upon consummation of the Merger. In addition, KCS has agreed to reimburse our expenses and indemnify us against certain liabilities arising out of our engagement.

We and our affiliates comprise a full service securities firm and commercial bank engaged in securities, commodities and derivatives trading, foreign exchange and other brokerage activities, and principal investing as well as providing investment, corporate and private banking, asset and investment management, financing and financial advisory services and other commercial services and products to a wide range of companies, governments and individuals. In the ordinary course of our businesses, we and our affiliates may invest on a principal basis or on behalf of customers or manage funds that invest, make or hold long or short positions, finance positions or trade or otherwise effect transactions in equity, debt or other securities or financial instruments (including derivatives, bank loans or other obligations) of KCS, CN and certain of their respective affiliates.

We and our affiliates in the past have provided, currently are providing, and in the future may provide, investment banking, commercial banking and other financial services to KCS and have received, or in the future may receive, compensation for the rendering of these services, including (i) having acted as a joint bookrunner on certain debt capital markets transactions for KCS, (ii) having acted as a dealer-manager on an accelerated share repurchase transaction for KCS and (iii) having acted or acting as administrative agent, co-lead arranger and joint bookrunner for, and as a lender (including a letter of credit lender) under, KCS's \$600 million senior unsecured revolving credit facility due March 8, 2024.

In addition, we and our affiliates in the past have provided, currently are providing, and in the future may provide, investment banking, commercial banking and other financial services to CN and have received or in the future may receive compensation for the rendering of these services, including (i) having acted as a joint bookrunner on certain debt capital markets transactions for CN, (ii) having provided or providing certain

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commodity, derivatives and foreign exchange trading services to CN and (iii) having acted or acting as a participant lender under CN's C\$2.0 billion unsecured revolving credit facility, consisting of a C\$1.0 billion tranche maturing on March 31, 2024 and a C\$1.0 billion tranche maturing on March 31, 2026.

It is understood that this letter is for the benefit and use of the Board of Directors of KCS (in its capacity as such) in connection with and for purposes of its evaluation of the Merger.

Our opinion is necessarily based on financial, economic, monetary, market and other conditions and circumstances as in effect on, and the information made available to us as of, the date hereof. As you are aware, the credit, financial and stock markets have been experiencing unusual volatility and we express no opinion or view as to any potential effects of such volatility on KCS, CN or the Merger. It should be understood that subsequent developments may affect this opinion, and we do not have any obligation to update, revise, or reaffirm this opinion. The issuance of this opinion was approved by a fairness opinion review committee of BofA Securities, Inc.

Based upon and subject to the foregoing, including the various assumptions and limitations set forth herein, we are of the opinion on the date hereof that the Consideration to be received in the Merger by the holders of KCS Common Stock (other than Excluded Shares) is fair, from a financial point of view, to such holders.

Very truly yours,

/s/ BofA Securities, Inc.

BOFA SECURITIES, INC.

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Bennett Jones Welcomes Former Commissioner of Competition and Opens Washington,

■ **DC, Office**

Announcements / January 14, 2013

Bennett Jones is pleased to announce that Melanie Aitken, who most recently served as Canada's Competition Commissioner, has rejoined the firm. Ms. Aitken was a partner at Bennett Jones when she went to the Competition Bureau in 2005. Melanie will manage the Washington office and serve as co-chair of the Bennett Jones Antitrust and Competition practice, advising Canadian and foreign clients on issues arising for those carrying on business or investing in Canada.

■ **Melanie Aitken in the Globe and Mail**

In the News / January 14, 2013

In the Globe and Mail article, "Former Competition Bureau Head Melanie Aitken Joins Bennett Jones," Steve Ladurantaye discusses Melanie Aitken's new position with Bennett Jones in Washington, DC, as well as her accomplishments as Commissioner of Canada's Competition Bureau.

EXHIBIT 15

**LETTER FROM TCI TO CHAIR OF
CANADIAN NATIONAL'S BOARD OF DIRECTORS
(MAY 18, 2021)**



Mr Robert Pace
Chair of the Board
Canadian National Railway
935 de La Gauchetiere Street West
Montreal
Quebec
H3B 2M9, Canada

18 May 2021

Dear Mr Pace,

TCI, through entities it manages, has been a shareholder of Canadian National (CN) since 2018 and currently owns over 20 million shares of the company. TCI is also the largest shareholder of Canadian Pacific (CP). It does not own a position in Kansas City Southern (KCS).

In light of yesterday's Surface Transportation Board (STB) ruling, we think it is negligent and hugely irresponsible for the CN board to commit C\$2 billion* of shareholders' money on whether the STB will approve the voting trust for the CN-KCS transaction. It is now clear that CN should abandon its pursuit of KCS unless the merger agreement is amended such that it is not conditional on a voting trust being approved.

In its ruling, the STB states clearly that under the new rules it will take a much tougher stance on voting trusts. CN's previous assumption that the STB would look only at the voting trust's "independence" and "risk posed by divestiture" was "misplaced". The STB will, in fact, also consider the "five factors, at a minimum, that the agency is required to consider when determining whether a transaction is consistent with the public interest" and take a "much more cautious approach to future voting trusts". The STB also added that the "use of a voting trust is a privilege, not a right" and will be available only on "rare occasions".

The STB is sending a clear signal and the CN board has a duty to listen. The risk that the voting trust is not approved is too great to ignore.

In summary, the rules have changed. Therefore, there is no way the CN board can have any confidence in how these new rules will be interpreted because *they have never been used before*. Making what is essentially a C\$2 billion bet with company money on this one, unknowable, decision would be extremely reckless.

Furthermore, and much more significantly, even if the voting trust *is* granted, there can be no certainty on how the STB will evaluate the new rules when it comes to approving the deal. In this scenario CN could be faced with an even bigger C\$18 billion liability if ultimately the transaction is not approved and the trust has to dispose of KCS under potentially distressed conditions.

7 Clifford Street, London, W1S 2FT Telephone: +44 (0) 20 7440 2330

**TCI Fund Management Limited is a private limited company incorporated and existing under the laws of England and Wales with registered number 08898250
Authorised and regulated by the Financial Conduct Authority**

Six months ago, KCS had a market cap of US\$16bn. CN has offered to pay US\$30bn. If the deal is not approved by the STB, CN would be a forced seller of KCS so it is quite possible that CN could face a loss in excess of US\$15bn/C\$18bn. This would almost wipe out CN's entire shareholders' equity that it has taken over 100 years to accumulate. It could also seriously jeopardise the future of the company. CN already has a tremendous North American rail network; it does not need KCS to prosper in the future. It is time to end this ill-advised misadventure.

In the event that you and the board choose to ignore this recommendation and sign a merger agreement in its current form, but the voting trust is not approved resulting in a loss of C\$2 billion, we would expect the immediate resignation of you and the CEO.

Yours sincerely



Sir Chris Hohn



Ben Walker

*If the STB ultimately rejects the CN-KCS voting trust CN would have to pay a US\$1 billion reverse break-up fee to KCS, in addition to covering the US\$700 million break-up fee that KCS would owe to CP.

EXHIBIT 16

**CANADIAN NATIONAL COMMENTS IN
MAJOR RAIL CONSOLIDATION PROCEDURES,
EX PARTE NO. 582 (SUB-NO. 1) (NOV. 17, 2000)
(EXCERPTS)**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF CANADIAN NATIONAL RAILWAY COMPANY

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Attorneys for Canadian National Railway Company

November 17, 2000

**ENTERED
Office of the Secretary**

NOV 17 2000

**Part of
Public Record**

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES
COMMENTS OF CANADIAN NATIONAL RAILWAY COMPANY

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE NO. 582 (SUB-NO. 1)

**MAJOR RAIL CONSOLIDATION PROCEDURES
COMMENTS OF CANADIAN NATIONAL RAILWAY COMPANY**

Canadian National Railway Company, Grand Trunk Western Railroad Incorporated, and Illinois Central Railroad Company (collectively, "CN") hereby file comments in response to the Board's Notice of Proposed Rulemaking, Major Rail Consolidation Procedures, served October 3, 2000 ("NOPR").¹

In this rulemaking the Board is seeking to draw lessons from recent experience and to take into account future prospects in the railroad industry. These efforts are well directed. In both this rulemaking and in individual merger proceedings, the Board should draw lessons from recent experience and take cognizance of current circumstances. The Board has avowedly designed these rules to raise the bar to assure that future mergers are consistent with the public interest. CN agrees that the Board should do so.

For this regulatory initiative to accomplish its goal, the raised bar must be clearly in sight and no higher than necessary, and it must be the same for everyone. The merger rules should, in proper furtherance of the Act, avoid unnecessary or open-ended regulation; continue to facilitate private initiative; further the public interest in trade and investment flows as envisaged by Congress when it approved NAFTA²; and avoid advantaging one group of railroads over another.

¹In these comments CN uses the abbreviations and short-form citations listed in Appendices A and B in the NOPR.

²North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 289 (chs. 1-9); 32 I.L.M. 605 (chs. 10-22), *available at* <http://www.nafta-sec-alena.org/english/index.htm>. NAFTA was approved by both Houses of Congress in the North American Free Trade

(continued...)

I. INTRODUCTION AND OVERVIEW

Prior to this rulemaking, and proceeding on a case-by-case basis within broad guidelines, the ICC and then the Board had developed approaches to major mergers that generally worked well. As CN, AAR, and others discussed in their ANPR comments, the history of freight railroads since the Staggers Act is a success story, and mergers have unquestionably contributed to that success.³ In furtherance of the deregulatory mandate of the Staggers Act, the ICC and then the Board developed merger policy in light of business and economic concepts – competition, service, and efficiency – and not artificial regulatory constructs. Railroads contemplating multi-billion dollar transactions were able to value such transactions and reasonably assess and assign costs to likely regulatory outcomes. The ability to make these judgments within reasonable limits proved important in developing an efficient market for control, in which economic rather than regulatory calculations were the primary drivers of structural change. And there never was the slightest hint of bias against “transnational” transactions in the agency’s general policies or dispositions in particular cases.

To an important extent, this degree of predictability was the result of doctrines that put logical boundaries on the regulatory costs that merger applicants would have to pay in order to enable the agency to find that a transaction was consistent with the public interest. Most important, the agency would impose conditions only as a direct offset to demonstrable public harms – primarily reductions in competition – that would be caused by a merger, and then only proportionally, to the extent necessary to offset the harm. If, for example, a merger would deprive shippers of a build-out opportunity, the offsetting condition was not direct access to another railroad, which would leave the shipper better off than before the merger. Instead, the

³See Comments of CN, at 7-9 (filed May 16, 2000), *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1) (“CN ANPR Comments”); Reply Comments of CN (filed June 5, 2000), *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1) (“CN ANPR Reply Comments”); Comments of the Association of American Railroads, at 2-6 (filed May 16, 2000), *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1). CN incorporates by reference all of the CN ANPR Comments and CN ANPR Reply Comments.

condition would be tailored to preserve the build-out opportunity, for example, through trackage rights to the point of build-out.⁴ The administration of the conditioning powers by the ICC and the Board made clear that this was not an open-ended authority.

Elements in the Board's proposed "paradigm shift," by conferring massive discretion on the Board, would depart from the fundamental deregulatory tenets of the Act, and would impair the predictability that is essential to the continued evolution through private initiatives of efficient structures for North American railroads. As discussed below, these elements of the proposal would unnecessarily substitute regulatory requirements for the market. And the boundaries of these open-ended requirements could not reasonably be predicted -- and, in the end, applied -- through appropriate legal or economic reasoning.

While nominally leaving mergers to private initiatives, the Board would in fact greatly increase regulatory risk and the role of regulatory calculations in place of market calculations. The Board would assume the authority to reject proposals that did not fit with its preferred conception of an overall end-structure, and maximize rather than minimize federal regulatory controls under a statute whose purpose is the opposite.

The group of proposals that CN supports, if reasonably applied, would appropriately heighten the Board's scrutiny of the effects of merger on competition, efficiency, and service. These requirements would test the applicants' own reasons for proposing a merger or use of a voting trust. The group of requirements that CN opposes is very different. They would go beyond preserving competition or ensuring that applicants' own expectations of increased efficiency and improved service are solidly based. These requirements would assume that (1) even solidly based private initiatives designed to increase competition and improve service and

⁴See, e.g. *BN/SF*, Decision No. 38, slip op. at 68 (ICC served Aug. 23, 1995) (shipper with pre-merger build-out option entitled only to preservation of the option and not to direct access by another railroad; direct access would permit the shipper to "obtain the benefits of a second carrier . . . minus the trouble and expense of building out . . . conditioning power is used to *preserve* competitive options (not to *expand* them)") (emphasis in original); accord, *UP/SP*, Decision No. 58, slip op. at 3 (STB served Nov. 20, 1996).

efficiency are not consistent with the public interest; (2) the natural procompetitive market outcomes of a well-designed and solidly supported merger may still be legally insufficient in light of anticipated future mergers; and (3) in any event, these market outcomes will always require supplementation through conditions to enhance competition to some unspecified extent.

Each of the group of proposed requirements that C/N opposes would carry an unfortunate common denominator: tremendous administrative discretion and corresponding uncertainties in the private sector. The discretion and uncertainties relate to what evidence the Board would deem sufficient to establish a prima facie case, the nature and extent of conditions the Board might deem sufficient to enhance competition, the Board's approach to three-to-two reductions, how the Board would evaluate downstream transactions, how the Board would evaluate transnational transactions, what would constitute the public interest with respect to a voting trust, and how long it all would take.

The uncertainties would arise not simply because the proposed requirements are new. The uncertainties are inherent in the nature of the requirements themselves. The introduction of these uncertainties into the market for control would therefore be dysfunctional. As already noted, evaluation of possible transactions would become much more difficult for managements and investors. The degree of regulatory risk, the extent and cost of possible conditions, and the timing of a final Board decision would become much more uncertain. The consequence could be to deter mergers that would have yielded substantial net public benefits.

Where parties do nevertheless propose major mergers, the open-ended requirements and uncertainties would make it more difficult for parties to assess their bargaining strength in settlement negotiations, and would encourage more opportunism among merger opponents. The reduced likelihood of settlements would poorly serve the goals of the Act, heretofore shared by the Board, to encourage structural changes through private initiatives.

More fundamentally, the uncertainties increase the risk of regulatory miscalculation by parties who decide to seek Board approval for a major transaction. The Board might impose

conditions to enhance competition that the parties find unacceptable. It might make determinations based on hypothetical downstream transactions that result in disapproval or unacceptable conditions. The Board might find negatives in the transnational character of the transaction that the parties had no reason to anticipate, again resulting in disapproval or unacceptable conditions.

The failure of parties to consummate a proposed transaction, whether because the Board denies approval or because it imposes unacceptable conditions, can entail large wasted public and private costs. Direct dollar outlays by parties proposing and opposing an application are substantial. The announcement of a merger can depress the applicants' stock prices for the pendency of the proceeding. In addition, any major merger proposal entails substantial opportunity costs. The applicants forego other possible mergers and perhaps other strategic initiatives. Investments in facilities and equipment that would be economic for a stand-alone railroad may be deferred because they would not be undertaken, or would be done differently, as a merged railroad. There can be an attrition of senior management. In the exercise of their own business judgments, the applicants may be less willing to enter into long-term contracts with shippers. In short, the failure of parties to consummate after a Board proceeding is costly business, for both applicants and shippers.⁴ Uncertainty magnifies that risk, which the Board should seek to minimize wherever possible.

Finally, the uncertainty can only prolong merger proceedings. The Board, however, has enough familiarity with the rail system and enough experience with mergers that it should now seek to structure its regulations whenever possible to expedite merger proceedings. CN believes

⁴The *SF/SP* merger is the only example since the Staggers Act of a fundamental regulatory miscalculation by applicants to a major merger. That episode illustrates the public and private costs of such fundamental miscalculation. The proceeding took nearly three years. After the denial, SP languished in a voting trust for five years. Without strategic direction, SP's willingness and ability to make essential investments declined. The results came to full light only after implementation of the merger with UP, to the great detriment of shippers and others. The Board can raise the bar for future major mergers without unnecessarily increasing the risk of this type of unfortunate regulatory outcome.

that applicants in major mergers should ordinarily be able to obtain a Board decision within a year after filing their notice of intent. Thus, if applicants file their application after the minimum three-month period following their notice of intent, the Board should be able to complete the evidentiary phase and issue a decision within nine months thereafter. The proposals that CN opposes would be an unnecessary move in the opposite direction, virtually guaranteeing that the Board would be required to use the full statutory period.⁶

The Board should not adopt its proposals relating to conditions to enhance competition over and above the enhanced competition that flows from a merger itself. Nor should the Board adopt its proposals with respect to downstream transactions, voting trusts, and transnational mergers, or change its proven approach to three-to-two reductions.

II. THE PROPOSED RULES WOULD UNNECESSARILY SUBSTITUTE REGULATION FOR THE MARKET AND CONFER EXCESSIVE DISCRETION ON THE BOARD, WITH CORRESPONDING UNCERTAINTY IN THE PRIVATE SECTOR

The Board has proposed a new "paradigm" in which applicants would be required not only, as under the Board's present policies, to demonstrate public benefits flowing directly from the merger in the form of increased efficiencies, improved service, and the increased competition that flows from such improvements, and not only to remedy identified competitive harms or other public costs, but to enhance competition through separate conditions that are not direct offsets to the identified public costs, and to anticipate future mergers and demonstrate that the proposed merger would remain consistent with the public interest in light of those anticipated mergers. These requirements would not minimize federal regulatory controls or facilitate private initiatives. Instead, they would displace the market with regulation, and introduce tremendous uncertainty, even though such displacement and uncertainty are not necessary to ensure

⁶Further, under the open-ended provisions the Board could claim more latitude to reject an application as "incomplete" after 30 days, or short of a prima facie case in a summary disposition. Such rejection could trigger another round of time-consuming preparation and negotiation, if applicants chose to proceed at all.

D. Voting Trusts

The Board's proposal to apply a public interest test in addition to a no-control test to proposed voting trusts would move the Board into uncharted territory. For example, what would be the elements of the public interest apart from whether the voting trust sufficiently insulates from control?

Further, applying a public interest standard could involve the Board in second-guessing the applicants' allocation between them of regulatory risk during the pendency of the merger proceeding. This would be a very deep and unnecessary incursion into private initiatives and market outcomes, and could directly and without justification affect the valuation (the price, the stock exchange-ratios, the assumption of debt) agreed to by the applicants. It is even unclear whether applying the public interest standard might involve the Board in deciding whether it was in the public interest for the acquired railroad to remain in play during the pendency of the merger proceeding. This, too, would be a very deep regulatory incursion into the market for control.

The Board's authority is to apply the public interest standard in the context of a merger proceeding to decide whether a "transaction" that confers control is in the public interest. A voting trust is designed to avoid control, not achieve it. Use of a voting trust meeting the Board's guidelines has the effect of placing that transaction outside the Board's public interest jurisdiction. Thus, applicants that ask for staff review of a voting trust under existing regulations are asking for confirmation of that position, but there is no statutory requirement that they must seek that confirmation. Since the transaction in trust is outside the Board's purview and there has been no change in the status quo other than in the ultimate beneficial interest in stock, there is also no need and no statutory requirement that the Board review the public interest in the trust.

It is true that the Board's moratorium decision applied the public interest standard outside the context of a merger proceeding, but it did so in the unique circumstance where the agency believed that it could not any longer properly apply the standard in merger proceedings. The

court of appeals declined to second-guess the Board's view that the ancillary public interest determination was necessary to the proper fulfillment of the Board's statutory duty. That is not the case with respect to voting trusts, and the Board should not apply the public interest standard to voting trusts as it has proposed. The Board should apply the public interest test as Congress intended, to the merits of control transactions at the conclusion of a merger proceeding.

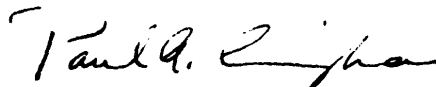
In addition to the proposal to apply a public interest standard, the Board proposes to require applicants to submit voting trusts for its approval, rather than leaving that choice to applicants, as is now the case. The Board's proposal would impose regulation in place of the market by not allowing merger applicants to determine if they prefer to assume the regulatory risk of unauthorized control during the pendency of their merger proceeding before the Board. The proposed requirement for prior approval even under the familiar no-control standard could be a substantial regulatory impediment in circumstances where managements agree to move quickly to secure shareholder approval and to consummate, using a voting trust. It could also impede hostile takeovers initiated through tender offers, which typically require use of a voting trust. The Board may or may not analyze the ultimate public interest merits of a hostile takeover differently from a friendly takeover, but there is no reason that its voting trust regulation should inhibit such mergers at the outset.

The Board can properly aid applicants and further the purposes of the Act with respect to avoiding unauthorized control by standing ready to evaluate voting trusts under the control criteria, if applicants request it to do so. The Board should allow applicants to decide whether to assume the regulatory risk of unauthorized control, and should not require applicants to obtain prior approval before employing a voting trust. Where applicants choose to seek Board approval, providing opportunity for comments and reply comments would be reasonable.

CONCLUSION

The Board has proposed a number of amendments to its merger rules that will enable it to take reasonable account of recent experience and future prospects in the rail industry. Through reasonable applications of those amended rules, the Board will be able to protect the public interest while remaining faithful to the deregulatory mandates of the Act, avoiding unnecessary displacement of the market by regulation, retaining a reasonable measure of predictability for parties considering mergers, and avoiding arbitrary discrimination against NAFTA applicants. Each of these limits would be exceeded if the Board were to adopt its proposals relating to conditions to enhance competition, downstream transactions, voting trusts, and transnational mergers. The Board need not and should not adopt them.

Respectfully submitted,



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Attorneys for Canadian National Railway Company

November 17, 2000

⁵¹(...continued)

under the Exon-Florio Amendment rather than being required to litigate before the Board, as it would be required to do if applicants bear the burden of coming forward on the issue. Since 1988, this legislation has given the President the power to suspend any foreign acquisition when national security could be threatened or impaired. See 50 App. U.S.C. § 2170.

EXHIBIT 17

**CANADIAN NATIONAL REBUTTAL COMMENTS IN
MAJOR RAIL CONSOLIDATION PROCEDURES,
EX PARTE NO. 582 (SUB-NO. 1) (JAN. 11, 2001)
(EXCERPTS)**

BEFORE THE
SURFACE TRANSPORTATION BOARD



EX PARTE NO. 582 (Sub-No. 1)

ENTERED
Office of the Secretary

JAN 11 2001

Part of
Public Record

MAJOR RAIL CONSOLIDATION PROCEDURES

REBUTTAL COMMENTS OF CANADIAN NATIONAL RAILWAY COMPANY

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January 11, 2001

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

REBUTTAL COMMENTS OF CANADIAN NATIONAL RAILWAY COMPANY

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE NO. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

REBUTTAL COMMENTS OF CANADIAN NATIONAL RAILWAY COMPANY

Canadian National Railway Company, Grand Trunk Western Railroad Incorporated, and Illinois Central Railroad Company (collectively, "CN") hereby file rebuttal comments in response to the reply comments filed on December 18, 2000 in this proceeding.¹

SUMMARY

CN urges the Board to avoid accepting the many arguments, both explicit and implicit, that the Board should no longer allow markets to work, or should impose special burdens on applicants seeking to merge in transnational markets. It remains to be seen whether Class I railroads will propose further mergers between them to enhance efficiency and whether any such proposals would warrant approval. But the Board should welcome progress toward more efficient railroads if it is possible. Only the following conclusions as to the matters that CN has addressed will avoid diminishing that possibility:

¹CN uses the abbreviations and short-form citations listed in Appendices A and B in the NOPR. CN cites the November 17, 2000 comments as "Opening Comments" and the December 18, 2000 comments as "Reply."

conduct a workshop on transcontinental mergers, bringing together the best of current thinking in an appropriate forum. If the Board subsequently were to be presented with a transcontinental proposal, its ability to manage the proceeding to ensure a fully developed record would have been increased.

Third, the Board should not presume that transnational mergers, simply because they are transnational, are contrary to the public interest. Accordingly, the Board should not impose special requirements for applications in such mergers, requiring applicants to disprove supposed problems when there is no basis for believing that the supposed problems exist. For domestic mergers, the Board assumes that applicants will cooperate with the Federal Railroad Administration, that ownership restrictions to which they might be subject do not call into question whether their merger is consistent with the public interest, that they are properly motivated by profit-seeking and not political or other non-economic goals, and that they will continue to meet defense needs. The Board should afford the same treatment to applicants in transnational mergers, while standing ready in both domestic and transnational mergers to hear evidence that these assumptions are not correct in the particular case. The Board will have the opportunity to examine the impacts of transnational mergers in the U.S. through its proposed requirement for a "full-system plan" and related provisions, which CN supports.

Fourth, the Board should not require applicants to obtain its prior approval of voting trusts, nor should the Board attempt to apply a public interest standard to voting trusts. Application of the Board's traditional tests for control, in a review initiated at the option of applicants, will continue to fulfill the proper function of aiding applicants seeking to avoid

unauthorized control. To apply a public interest standard would turn review of voting trusts into an inadequate merits determination, and would involve the Board in second-guessing applicants' decisions concerning the allocation of regulatory risk during the pendency of the merger proceeding

Fifth, the Board should focus its final efforts on its many positive proposals that would "raise the bar" to ensure that mergers otherwise consistent with the public interest do not diminish the public interest through harms such as service disruptions or reduced competition. Thus, CN has supported more rigorous examination by the Board of the effects of a proposed transaction on the financial ability of the merged carriers to maintain and improve service. CN has generally supported the Board's proposals relating to detailed market analyses, including route level reviews of service and more examination of geographic and product competition and of impacts on Class II and III railroads, service assurance plans, and safety integration plans. This focus on the Board's central regulatory role will ensure that, if a merger offers likely efficiency gains, shippers pursuing collateral agendas, railroads seeking protection against increased competition, and parties unwilling to accept NAFTA as the public policy of the U.S. or to face stronger competition in the most rapidly growing north-south corridors, will have no reasonable prospect of securing their goals by blocking otherwise qualified transactions.

The bottom line is that this proceeding has not generated a new intellectual base for evaluating transcontinental mergers, and downstream review, especially in a merger proceeding not involving a transcontinental merger, is not the occasion to try and develop one. In these circumstances, a workshop would be a sensible next step.

III. VOTING TRUSTS

CN disagrees with the Board's proposals to require approval of voting trusts and to apply a public interest standard in doing so. CN described in earlier comments how applying a public interest test at the outset of a merger proceeding would be inconsistent with the statute, and would be an ill-advised attempt at a merits determination prior to receiving evidence. Further, the Board would be "second-guessing the applicants' allocation between them of regulatory risk during the pendency of the merger proceeding." CN Opening Comments 21. And to convert the present option for informal staff review of a proposed voting trust agreement into a requirement of prior Board approval, even under a control test, would substitute regulation for the applicants' decision to assume the regulatory risk of unauthorized control during the pendency of the merger proceeding. *Id.* at 22.

No party replied to these objections. The Port Authority of New York and New Jersey ("PANYNJ"), while opposing a public interest test for voting trusts, argues for a financial test under which applicants would be required to establish that "the financial aspects of the proposed transaction will not leave the surviving carrier(s) in a situation where it or

incentives to propose transcontinental mergers would be low as well, and that, if a transcontinental merger were completed, any reductions in competition would be correspondingly small, as well as into whether the railroads would have the ability through lower rates and new and improved services to increase transcontinental traffic.

they will not be able . . . to meet the investment needs of the carrier(s).” PANYNJ Reply 4. According to PANYNJ, the Conrail transaction “had essentially become a *fait accompli* before any financial information was submitted to the Board,” but left NS and CSX unable to invest adequately in their systems. *Id.* at 3. EEI supports the Board’s voting trust proposal on the ground that approval of a voting trust is the “‘point of no return’ after which, as a practical matter, it is almost impossible” for the Board to deny an application. EEI Reply 4.

From the outset of this proceeding, CN has supported a more rigorous examination by the Board of a transaction’s financial impacts on the ability of the merging carriers to maintain and improve service.²⁰ The examination of financial terms, however, like the examination of any other element of the public interest, should occur during and not prior to the merger proceeding. This timing is required by the statute and supported by sound policy, as CN has earlier described. CN Reply 19-20; CN Opening Comments 21-22. It is illusionary to think that the Board could apply a financial test in isolation, when there might not even be a definitive merger agreement,²¹ the marketplace has not yet responded to the proposal through the tendering or voting of shares, and the Board lacks evidence on all

²⁰See Ex Parte No. 582, Written Statement of Paul M. Tellier at 24 (Feb. 29, 2000) (“Future applicants should . . . be prepared to demonstrate that their cash flows and debt levels will permit them to respond with alacrity to any service problems that require additional financial resources.”); *see also* CN ANPR Opening Comments 15 (May 16, 2000) (Board’s financial inquiry “should include the amount of debt involved in the transaction, and its effects on the merged railroad’s cost of capital and on the speed with which the merged railroad might be impelled to attempt complete implementation of its transaction.”).

²¹For example, in seeking control of Conrail, NS began a two-stage tender offer. NS sought voting trust approval prior to the initial tender offer, when a definitive merger agreement had yet to be negotiated.

relevant aspects of the proposed transaction, including, for example, the predicted traffic diversions and efficiencies that will drive revenues and earnings expectations.²²

The assertion that the use of a voting trust somehow puts the Board in a straight-jacket is unsupported. The ICC denied an application involving a voting trust in *SF/SP*. And there is no suggestion in the Board's opinion in the *Conrail* proceeding (or any other proceeding of which CN is aware) that the Board would have preferred to disapprove the transaction, or to impose more extensive conditions, but was deterred by the stock acquisitions and voting trusts.

Any disapproval after a merger proceeding is costly, whether or not a voting trust is involved, but the Board is not for that reason constrained from disapproving a transaction. If an applicant in a disapproved transaction were to suffer a loss in connection with the divestiture of railroad stock held in the voting trust, the loss would be a function of the marketplace at that time. This a risk that merger applicants must face if they use a voting trust, but it is not one that the Board should address. The voting trust assures the independence of the subject railroad as required by the Board's existing regulations. The market values of the stock and the underlying rail assets will vary over the period of the voting trust just as they would if there were no voting trust. Applicants and the capital

²²Either a public interest test or a financial test for the use of a proposed voting trust could involve the Board in handicapping one or the other bidder in a takeover contest, where the bidders use a voting trust to effect the acquisition of a partial stock interest in the railroad target. The Board would be handicapping on the basis of highly incomplete information, particularly because the voting trust may well precede the setting of the final financial terms for the proposed control transaction. Even apart from a bidding contest, a public interest test in combination with a requirement for prior approval could advantage non-railroad acquirers not subject to the Board's control jurisdiction.

markets, which learn from experience, are aware of this risk and have every reason to temper their use of voting trusts in light of this risk. The Board should not second-guess these financial judgments by turning approval of a voting trust proposal into any kind of a merits determination.

The risk that the Board *can* manage is the risk of regulatory miscalculation by applicants leading to disapproval or to the imposition of conditions that make the transaction uneconomic for the applicants. The way to minimize that risk is to avoid the regulatory uncertainties inherent in the Board's proposals with respect to conditions to enhance competition, downstream review, and transnational transactions, and to expedite the merger review process as much as possible. CN Opening Comments 6-10.

IV. TRANSNATIONAL TRANSACTIONS

CN has shown that the Board's proposed additional special requirements for applications in transnational mergers (proposed §§ 1180.1(k), 1180.11) "would presume that Congress's general expectations in approving NAFTA" are incorrect with respect to the enumerated subjects (such as ownership restrictions) in the transnational provisions, "notwithstanding the absence of evidence supporting that conclusion and the experience that supports Congress's view." CN Opening Comments 24. Even apart from NAFTA, such proposals would "unreasonably discriminate." *Id.* CP also found the Board's proposals to be in "conflict with the trade policies embodied in NAFTA" and otherwise unsupportable. CP Reply 13-20. Both CN and CP pointed out that the Board can and should resolve any issues credibly raised in the course of a merger proceeding, but should not impose special burdens

all kinds. Both through what it does and does not contain, the record provides sound guidance on those critical distinctions.

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January 11, 2001

EXHIBIT 18

**COMMENTS OF USDA IN *WESTERN COAL TRAFFIC
LEAGUE – PETITION FOR DECLARATORY ORDER*,
FINANCE DOCKET NO. 35506 (OCT. 27, 2011)
(EXCERPTS)**

23183

ENTERED
Office of Proceedings

Before the U.S. Surface Transportation Board

OCT 27 2011

Part of
Public Record

STB Docket No. FD 35506
Western Coal Traffic League—
Petition for Declaratory Order

Comments of the
U.S. Department of Agriculture

Edward Avalos
Under Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture
Washington, D.C. 20250

Date: October 28, 2011

Authority and Interest

The Secretary of Agriculture is charged with the responsibility under the Agricultural Adjustment Act of 1938 and the Agricultural Marketing Act of 1946 to represent the interests of agricultural producers and shippers in improving transportation services and facilities by, among other things, initiating and participating in Board proceedings involving rates, charges, tariffs, practices, and services.

The Department of Agriculture (USDA) represents U.S. farmers, agricultural shippers, and rural electric cooperatives; the vitality of their livelihood is our primary interest. The Board's current procedures allow railroad acquisition/merger premiums to be passed through to railroad customers and is expected to result in higher rail rates for grain and oilseed shippers, particularly for those distant from barge transportation and are thereby most reliant upon rail services. In addition, the Board's current procedures could unfavorably impact rail rates paid by utilities serving rural areas, resulting in higher rates for electricity than would otherwise be the case. Higher rail and electricity rates could increase farm production costs and reduce the economic vitality of rural areas without a corresponding beneficial investment in rail infrastructure.

U.S. Agriculture and Rural Electric Utilities Depend on Rail Transportation

An affordable and reliable transportation network is necessary to maintain the strength and competitiveness of American agriculture and our rural communities. Rail service is a particularly important part of that network for U.S. agriculture, because it is virtually the only cost-effective shipping alternative available for low-value, bulky commodities in rural areas that are distant from water transportation and markets.

Large volumes of grain and oilseeds are produced each year in the United States. American farmers produced more than 19.9 billion bushels of grain and oilseeds in 2009, weighing more than 564 million tons;¹ railroads originated 131 million tons (23 percent) of that total.²

Because many agricultural producers are located long distances from their markets, they are dependent on rail transportation, particularly wheat producers. Nine of the ten top wheat-producing States are more than 150 miles from barge transportation on the Mississippi River, which usually provides the strongest intermodal competition to railroads for the long-distance movement of grain to export ports and therefore moderates transportation costs. Unlike other agricultural shippers in the United States, wheat shippers in much of the Great Plains have no cost-effective transportation alternatives to railroads. The wheat produced in these areas moves long distances to domestic markets for processing and consumption or to coastal ports for export. Shippers in these regions have little direct access to inland waterway transportation and the distances involved can make truck transportation uneconomical. In addition, corn production has expanded westward into regions having less rail-to-rail competition.

Because coal plays such an important role in generating electricity, its costs—including delivery

¹ "Grains and oilseeds" includes barley, corn, oats, rice, rye, sorghum, wheat, and soybeans.

² Association of American Railroads, *The Rail Transportation of Grain*, Volume 7, July 2010.

costs—are reflected in the price consumers pay for electricity. The Powder River Basin of Wyoming and Montana produces 43 percent of the Nation's coal. This production is also far from river transportation, and competitive access to railroads is limited, raising issues about generating electricity at affordable prices, especially in rural areas.

USDA Comments

USDA offers the following comments on our perspective regarding the issues raised in this proceeding.

Rail and Electricity Rates for Rural America

USDA believes that allowing rail companies to pass along acquisition premiums could adversely affect the rail and electricity rates for rural America and farmers, and it should not be allowed. In the case of BNSF, it is the dominant railroad handling the movement of grain, hauling 45 percent of the carloads of grain originated in the United States during 2009.³ In addition, BNSF hauls 26 percent of the coal traffic by tonnage.⁴

The Board's current procedures allow railroad acquisition/merger premiums to be passed through to railroad customers. The estimated \$7.625 billion write-up of BNSF's net investment base, which increases BNSF's pre-acquisition net investment base by 30 percent, is expected to raise rail rates to agricultural producers and electric utilities serving rural areas. Shippers more dependent on rail are expected to have larger increases while other less dependent shippers may have little to no increase in rail rates. A large proportion of these higher rail rates would likely be borne by small agricultural shippers and rural electrical cooperatives, located on rural lines having less traffic density and distant from cost-effective competing modes of transportation.

Many agricultural commodities (grain and oilseeds) have a low value in proportion to their weight. The cost of rail transportation to market constitutes a large percentage of the on-farm price, with costs for certain movements being up to 40 percent of the delivered price. As price takers, farmers are not in a position to pass these costs along to consumers and must absorb increases in transportation costs. On the other hand, coal companies are often able to pass through cost increases to their customers, such as electric utilities who in turn raise prices to individual homes, farms, and rural communities.

USDA believes it is unfair to expect American farmers and rural communities to pay higher rates, which reduce their real incomes, because a large acquisition premium was paid for BNSF. For the rate increases that will likely occur from the pass through, farmers and rural communities are not expected to receive improved service levels or benefit from actual railroad investment in infrastructure. Paying for market driven increases in railroad input costs is legitimate, but that is not the case with a passed through acquisition premium. Instead, farmers and rural electric customers will be paying higher rates simply because of an arbitrary acquisition premium. Further, such premiums are not allowed in other high capital, monopolistic industries, and shouldn't be allowed for rail. Rail consumers deserve the same protections afforded consumers in other regulated industries.

³ Ibid.

⁴ Association of American Railroads, *Railroad Ten-Year Trends, 2000-2009*, 2010.

Revenue Adequacy and Distorting the Rail Rate Appeal Processes

Including the acquisition/merger premium in the capital asset base would artificially lower the return-on-investment as currently calculated by the Board, making one of the most profitable enterprises in the country appear to be revenue inadequate. Railroads could use the appearance of revenue inadequacy to justify further rate increases.

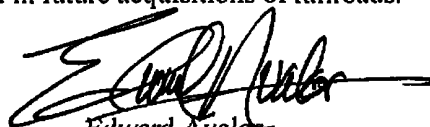
Allowing acquisition/merger premiums to be included in the net investment base inflates the railroad's Uniform Rail Costing System (URCS) variable costs, resulting in much lower revenue-to-variable cost ratios (R/VC) than would otherwise be the case. As a result, many shippers would be deprived of the right to appeal excessive rail rates as R/VC ratios could fall below the regulatory threshold of 180 percent. This would likely result in higher rail rates for grain and oilseed shippers and electric utilities serving rural areas, particularly for those most reliant upon rail services. In addition, the reduction in R/VC ratios would distort the results of Three-Benchmark, Simplified Stand-Alone Cost, and Stand-Alone Cost rate appeals, making successful rate appeals much more difficult.

Premium Pass-throughs Should be Discouraged

Allowing acquisition/merger premiums to be passed through to shippers encourages similar transactions in the future. It is possible that other investment companies watching this proceeding will see how easy it is to pass along premiums and could be encouraged to bid exceedingly high amounts to purchase another railroad. While in the past merger premiums may have been justified between two railroads due to synergistic cost savings and efficiency gains passed on to rail customers, there are likely to be little if any direct benefits to rail customers stemming from an acquisition premium. American farmers and rural communities should not have to pay for a merger premium each time a company decides to buy or sell a railroad.

Summary

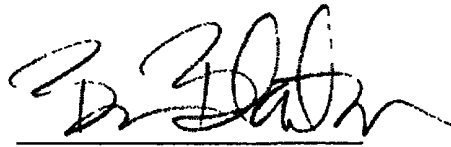
The issue of whether the Board allows railroads to pass through the costs of an acquisition or merger premium to rail customers is an important issue for agricultural shippers and consumers of rural electricity. USDA believes it should not be allowed. Such premiums should also not be allowed to affect revenue adequacy calculations or distort rate appeal processes. Finally, because this practice is not allowed for other industries, USDA believes the Board should change its policy to discourage this practice from being used in future acquisitions of railroads.



Edward Avalos
Under Secretary
Marketing and Regulatory Programs

CERTIFICATE OF SERVICE

I, Bruce Blanton, certify that on this 27th day of October, 2011, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, on all parties of record in STB Docket Number FD 35506.

A handwritten signature in black ink, appearing to read 'Bruce Blanton', written over a horizontal line.

Bruce Blanton
Director
Transportation Services Division
U.S. Department of Agriculture
Washington, D.C. 20250

EXHIBIT 19

**TESTIMONY OF SENATOR AMY KLOBUCHAR IN
*WESTERN COAL TRAFFIC LEAGUE — PETITION FOR
DECLARATORY ORDER,*
FINANCE DOCKET NO. 35506 (MAR. 22, 2012)
(EXCERPTS)**

ENTERED
Office of Proceedings
March 22, 2012
Part of
Public Record

**Testimony of U.S. Senator Amy Klobuchar
Surface Transportation Board
Docket No. FD 35506**

Chairman Elliott and members of the Surface Transportation Board, thank you for convening this hearing to examine the Western Coal Traffic League's pending petition before the Surface Transportation Board (STB). The petition requests an order to prevent BNSF Railway Company (BNSF) from passing on to captive rail customers the roughly \$8.1 billion acquisition premium brought about by Berkshire Hathaway's acquisition of BNSF in 2010.

I am deeply concerned about this issue and have shared my views with the STB several times. Recently, I wrote to the STB outlining specific concerns regarding this acquisition premium and how it will impact captive rail shippers in Minnesota and across the nation, and asked the STB to convene this proceeding to allow all interested persons to participate to ensure public input would be received before rendering a final decision on this important matter.

As I have continued to talk with Minnesotans and others about this issue, it is clear to me that rail dependent shippers have significant concerns that they will be hit hard twice if the acquisition premium is allowed to stand.

First, the actual cost of the acquisition premium will simply be passed on to BNSF customers. This would be especially costly to those shippers that must rely solely on BNSF for rail service and have limited or no access to other transportation options. These utilities, farmers and ranchers, ethanol producers, and manufacturers are already being captive to a single railroad and this anticipated rate increase will certainly make matters worse. The increased costs will stifle economic growth, jeopardize jobs and put rural communities at risk. I reiterate the need for the STB to reexamine accounting policies to help protect shippers against this unfair and harmful practice.

Second, the acquisition premium will hurt shippers because BNSF is permitted to add the amount of the premium to their books as a capital expenditure which is considered a variable cost. By statute, when a shipper brings a rate dispute to the STB there must be at least a 180 percent ratio of rates charged by the railroad to the railroad's variable cost. The acquisition premium increases the variable cost which would mean that even higher rates would need to be charged in order to meet the 180 percent minimum to allow a rate case to be considered by the STB. This level of 180 percent ratio of rates charged to variable costs is the minimum threshold allowed by statute for a shipper to bring a rate dispute before the STB.

Therefore, the costs of the acquisition premium will not only be passed onto captive shippers, but it will make it even more difficult for those shippers to bring rate cases against BNSF in the future.

Consumer protection is one of the primary reasons that other federal and state agencies preclude

acquisition premiums from being included in the rate base of electric utilities or other regulated industries. I encourage the STB to use its authority to resolve this matter in a way that protects consumers of rail transportation services.

I urge the STB to promptly give full and fair consideration to this petition, and urge the Board to issue a decision as soon as practical in order to minimize the effect this delay may have on shippers

Thank you again for your attention to this matter of critical importance.

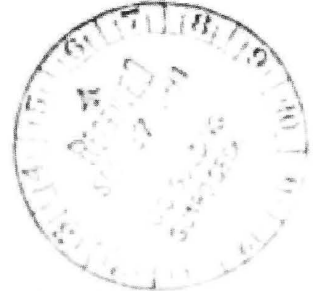
EXHIBIT 20

**PETITION OF BORDEN, FINA AND SHELL IN *ILLINOIS*
CENTRAL CORP. – COMMON CONTROL – ILLINOIS
CENTRAL R.R. & THE KANSAS CITY SOUTHERN RY.,
FINANCE DOCKET NO. 32556 (SEPT. 27, 1994)
(EXCERPTS)**

BEFORE THE
Interstate Commerce Commission

WASHINGTON, D.C. 20423

FINANCE DOCKET NO. 32556



**ILLINOIS CENTRAL CORPORATION--COMMON CONTROL--ILLINOIS
CENTRAL RAILROAD COMPANY AND THE KANSAS CITY SOUTHERN
RAILWAY COMPANY**

**PETITION FOR DETERMINATION THAT PROPOSED
ACQUISITION, PERSONNEL CHANGES AND
VOTING TRUST AGREEMENT WOULD VIOLATE
SECTION 11343 OF THE INTERSTATE COMMERCE ACT**

ENTERED
Office of the Secretary

SEP 27 1994

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Public Record

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**ATTORNEYS FOR PETITIONERS
Borden Chemicals & Plastics Company,
An Operating Limited Partnership
Pina Oil and Chemical Company
Shell Oil Company and
Shell Chemical Company**

September 27, 1994

BEFORE THE
Interstate Commerce Commission

WASHINGTON, D.C. 20423

FINANCE DOCKET NO. 32556

ILLINOIS CENTRAL CORPORATION--COMMON CONTROL--ILLINOIS
CENTRAL RAILROAD COMPANY AND THE KANSAS CITY SOUTHERN
RAILWAY COMPANY

PETITION FOR DETERMINATION THAT PROPOSED
ACQUISITION, PERSONNEL CHANGES AND
VOTING TRUST AGREEMENT WOULD VIOLATE
SECTION 11343 OF THE INTERSTATE COMMERCE ACT

Borden Chemicals & Plastics Company, an Operating Limited Partnership, Fina Oil and Chemical Company, Shell Oil Company and Shell Chemical Company (Petitioners), pursuant to 5 U.S.C. § 554(e) and Section 1.1117.1 of the Commission's regulations, hereby petition the Commission to issue an order determining that the proposal of the Illinois Central Corporation (IC Corp.) to place the stock of the Illinois Central Railroad (ICR) into a voting trust, to acquire and actively manage the Kansas City Southern Railway (KCSR), and otherwise to adopt the transfer of officers and directors between companies and the management scheme as described in the letter dated August 16, 1994 (August 16 Letter) from counsel to IC Corp. to the Commission's Secretary would constitute an unlawful acquisition of control under 49 U.S.C. § 11343, inconsistent with the Commission's

Guidelines for the Proper Use of Voting Trusts, 49 C.F.R. Part 1013, and with Commission standards and precedents.^{1/}

I. INTRODUCTION

Petitioners operate major petroleum and petrochemical production facilities in the Baton Rouge-New Orleans corridor and are served by one or both of the rail carriers involved in this merger proceeding. The ICR and KCSR run parallel routes between New Orleans and Baton Rouge, and are the only two carriers serving the chemical corridor along the east bank of the Mississippi River. While the routes thereafter diverge, they run essentially in parallel into the Midwest. Analysis of 1992 waybill data reveals that approximately \$700 million of traffic originated or terminated in the Baton Rouge-New Orleans corridor, and the chemicals group constituted approximately 44% of that traffic. Petitioners alone account for approximately 5 Billion pounds of freight annually moving by rail in the corridor. A merger of the ICR and KCSR would have substantial adverse impact upon Petitioners by virtue of the elimination of competition, heretofore imminent competition and potential competition in the Baton Rouge-New Orleans corridor.

^{1/} IC Corp. requested an informal, nonbinding opinion from Commission staff concerning the voting trust pursuant to Section 1013.3(a) of the Commission's regulations. Considering that the required action is informal and nonbinding, and the procedure relating to that request does not call for public notice and request for comments, Petitioners hereby seek a formal advisory opinion from the Commission regarding the propriety of the voting trust and related arrangements and the Commission's enforcement intent.

As set forth herein, the proposed acquisition of KCSR by IC Corp. and the exercise of domain and control of KCSR pending Commission consideration and disposition of the merger application would constitute the de facto coextensive management of both carriers by IC Corp. and would be adverse to Petitioners and prejudicial to the Commission's consideration of the merger application itself.

II. GOVERNING STANDARD

The Interstate Commerce Act prohibits consolidations and mergers of two or more carriers, and the acquisition of control of a carrier by one or more other carriers, without the prior approval and authorization of the Commission. See, 49 U.S.C. § 11343. In recognition of the operation of the financial marketplace, the Commission allows acquisitions of beneficial interests to occur on condition of the creation of an independent voting trust which is effective to preclude control being exercised prior to receipt of authority from the Commission. Independent Voting Trusts (Ex Parte No. 332), 42 Fed. Reg. 39243 (Aug. 3, 1977), citing to B.F. Goodrich Co. v. Northwest Indus., Inc., 303 F. Supp. 53 (D. Del. 1969), aff'd, 424 F.2d 1349 (3d Cir. 1970), cert. denied, 400 U.S. 822 (1971). However, the Commission also has made clear that the use of a voting trust for acquisition purposes is available only insofar as "the trustee is truly independent of the acquiring carrier settlor. See, Illinois Central R.R. Co. v. United States, 293 F. Supp. 421-429 (N.D. Ill. 1966), aff'd per curiam, 385 U.S. 457 (1967)." Id. There is

a substantial body of reported case law concerning the structuring of independent voting trust arrangements, and the IC Corp. proposal must be measured against those precedents and standards.^{2/}

III. SUMMARY OF PROPOSED TRANSACTION AND VOTING TRUST

A. Transaction

On July 18, 1994, IC Corp. and Kansas City Southern Industries, Inc. (KCSI) executed a letter of intent confirming an understanding between IC Corp. and KCSI with regard to a transaction (Transaction) involving the acquisition by IC Corp. of certain assets of KCSI, in particular its railroad subsidiary KCSR. Illinois Central Corporation--Common Control--Illinois Central Railroad Company and the Kansas City Southern Railway Company, Finance Docket No. 32556, 59 Fed. Reg. 44155 (August 26,

^{2/} In its informal request of August 16, 1994, IC Corp. references "Commission precedent" which it alleges supports the contemplated structuring of the voting trust and carrier management and operations. None of the "precedents" cited by IC Corp., with one minor exception relating to communications between the two carriers which is not addressed in this Petition, relies upon published decisions of the Commission or of reviewing courts. Indeed, with regard to the issues of placement of ICR into the voting trust, deployment of former IC Corp. or ICR officers and employees, and stock ownership issues, three of the six decisions cited as precedent entailed letters from Commission staff, all concerning motor carrier proceedings and two without any reference to Commission files or docket numbers. A fourth decision relates to short line and switching railroads, and two decisions concern the Santa Fe-Southern Pacific merger which entailed establishment of a new holding company rather than the acquisition of one railroad by the parent of another. As discussed in more detail within, these cases are not authoritative precedent for the transaction proposed by IC Corp. No case supports the integration of management of the two carriers and the financial tying arrangements as contemplated by IC Corp.

EXHIBIT 21

**CANADIAN NATIONAL INVESTOR PRESENTATION,
“ENHANCED COMBINED NETWORK
FOR OUR CUSTOMERS”
(MAY 2021)
(EXCERPTS)**



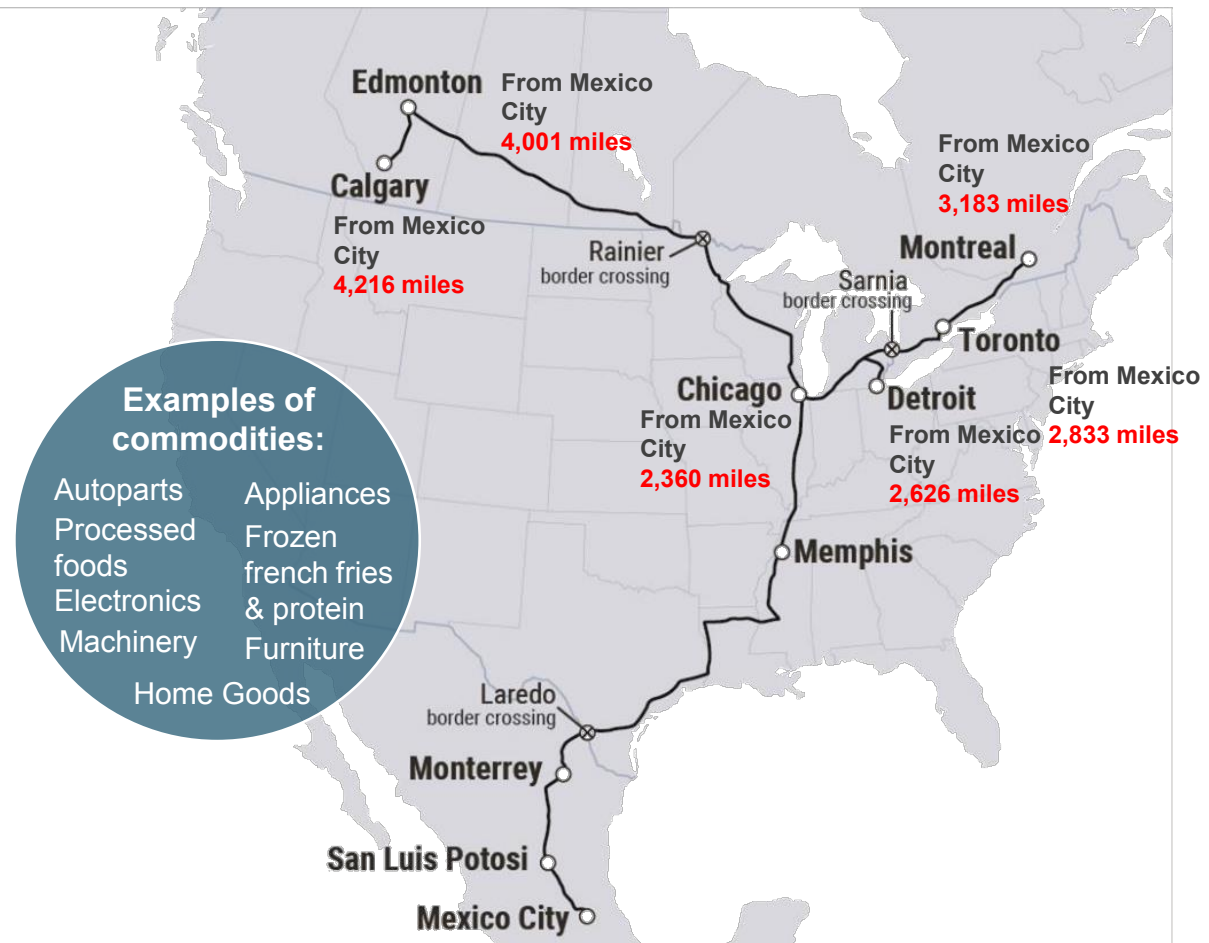
Enhanced Combined Network for Our Customers

INVESTOR PRESENTATION
May 2021



Creating the Best-in-class 21st Century USMCA Intermodal Service

- Single line
- Single operator
- Fluid border crossings
- One-stop customer service



Targeting US\$6B of incremental potential truck intermodal opportunity ⁽¹⁾

(1) US\$6B is a part of previously announced total additional addressable market opportunity of US\$8B.

EXHIBIT 22

***CN/IC*, RAILROAD CONTROL APPLICATION, VOL. 2
(CN/IC-7), JOINT VERIFIED STATEMENT OF GEORGE C.
WOODWARD & MICHAEL H. ROGERS (EXCERPTS)**

JOINT VERIFIED STATEMENT
OF
GEORGE C. WOODWARD AND MICHAEL H. ROGERS

Introduction

My name is George C. Woodward. I am Senior Vice President of ALK Associates, Inc. (ALK), a management consulting and information technology development firm located in Princeton, New Jersey. I have been with the firm since September 1991. I currently lead ALK's strategic consulting services and have participated in numerous studies of major rail industry transactions, including the BN/SF merger, the proposed Conrail acquisition of SP's eastern lines, KCS's joint venture with TMM and Tex-Mex, and the privatization of TFM. Prior to joining ALK, I was Executive Vice President-Distribution Services and Senior Vice President-Marketing and Sales at SP from 1987 to 1991. Prior to that, I was with Conrail from 1978 to 1987, most recently as Vice President-Marketing. Before Conrail, I was with SP from 1972 to 1978 in various engineering, operating, and marketing positions. I hold a B.S. in Physics from the Georgia Institute of Technology and attended the M.B.A. program at the University of Arizona. I have completed the Advanced Management Program at the Harvard Business School.

My name is Michael H. Rogers. I am Vice President of ALK Associates, Inc. I have been associated with the firm's strategic planning practice since June 1989. I have nine years of experience in analyzing railroad restructuring studies, including analyses involving Conrail, CN, ATSF, SP, KCS, Tex-Mex, and TFM. I hold a B.S.E. in Electrical

acquisition analysis has provided us with in-depth knowledge of rail industry traffic flows and commercial considerations. Biographies detailing our professional experience are attached to this statement as Appendix I.

We were asked by Applicants in this proceeding to assess rail-to-rail traffic diversions that would result from CN's proposed acquisition of IC. In order to do so, we performed five separate diversion analyses for various service types, each encompassing both extended hauls for CN/IC, and traffic that neither CN nor IC participated in during the base year 1996. As discussed in detail below, these analyses show in total that over \$217 million in new traffic would be attracted to a new CN/IC system through rail-to-rail diversions. These revenues do not include the \$7.5 million in revenues resulting from diversions of port traffic found in the CN analysis discussed in the Verified Statement of Mr. S. Craig Littzen, or the \$23.4 million in revenues resulting from truck-to-rail diversions found in the analysis performed by Reebie Associates and described in the Verified Statement of Mr. Joseph G. B. Bryan. Altogether, the above gains amount to approximately \$248 million in new gross revenues for CN/IC.

In Part 1, below, we discuss the scope of our analysis. We then describe our general assumptions in Part 2, followed in Part 3 with an overview of our analytic methodology. (A detailed description of our methodology is provided in Appendix II.) Finally, in Part 4, we discuss the specific findings of each of our five analyses.

1. Scope of the Traffic Analysis

We analyzed the impact of the proposed CN/IC Transaction with the combined traffic synergy of the CN/IC/KCS Alliance and the CN/KCS Access Agreement. (We use the term "Transaction" in this statement to refer both to CN's proposed acquisition of control of IC and to the integration of the operations, services, information systems and marketing function of the two railroads.) The Transaction, Alliance, and Access Agreements are described in detail in the Joint Verified Statement of Gerald K. Davies and Donald H. Skelton.

As described more fully in the next section of our statement, our analysis was based on the operation of CN and IC as a single integrated system, taking into account the CN/IC/KCS Alliance and the key elements of the CN/KCS Access Agreement (which are contingent on approval of the Transaction). Each of our analyses was based on 100% CN 1996 waybill traffic data, 100% IC 1996 waybill traffic data, and the 1996 Rail Waybill Sample for other rail carriers (including CCP and KCS), with Canadian traffic terminations augmented using 100% KCS 1996 waybill traffic data.

Separate ATD traffic diversion networks were modeled for general merchandise, automotive (finished vehicles), intermodal, coal/bulk, and reload. For purposes of each analysis, the CN and IC networks were "familized" in our Advanced Traffic Diversion Model -- that is, treated as if they were part of a single, integrated railroad family -- to estimate the opportunities for extended hauls over the CN/IC system and also to attract traffic to the combined system that was not carried by either CN or IC in 1996.

Our analysis generally does not cover potential changes in rail traffic origin and destination patterns (source alternatives), growth or decline in traffic due to general economic conditions, or potential shifts in traffic between rail mode and other transportation modes. The one exception to the modal shift exclusion is the fact that our reload diversion analysis, which is described below, assumes that certain movements now carried by rail could be delivered by truck from IC's reload centers as part of a diversion to CN/IC. (This analysis did not in any way overlap the Reebie truck-to-intermodal rail analysis.)

2. General Assumptions

Our analysis relied on the following general assumptions common to each of the studies:

1. Railroad corporate structures are as they existed in the base year 1996, except the post-Transaction structure would include:
 - a. The proposed CN/IC Transaction
 - b. The CN/IC/KCS Alliance, including the following elements:
 - Springfield, Illinois to become the principal gateway for traffic moving between CN territories or northern IC territory on the one hand, and KCS territory in the midwest on the other.
 - Jackson, Mississippi to become the principal gateway for Alliance traffic moving between CN/IC served territories and southern KCS territory or Tex-Mex (Mexican traffic).
 - A new formal cooperative relationship between KCS and CN/IC in the utilization and operation of the terminal at Jackson, Mississippi.
 - c. The CN/KCS Access Agreement, including the following elements:

Figure 1: General Merchandise

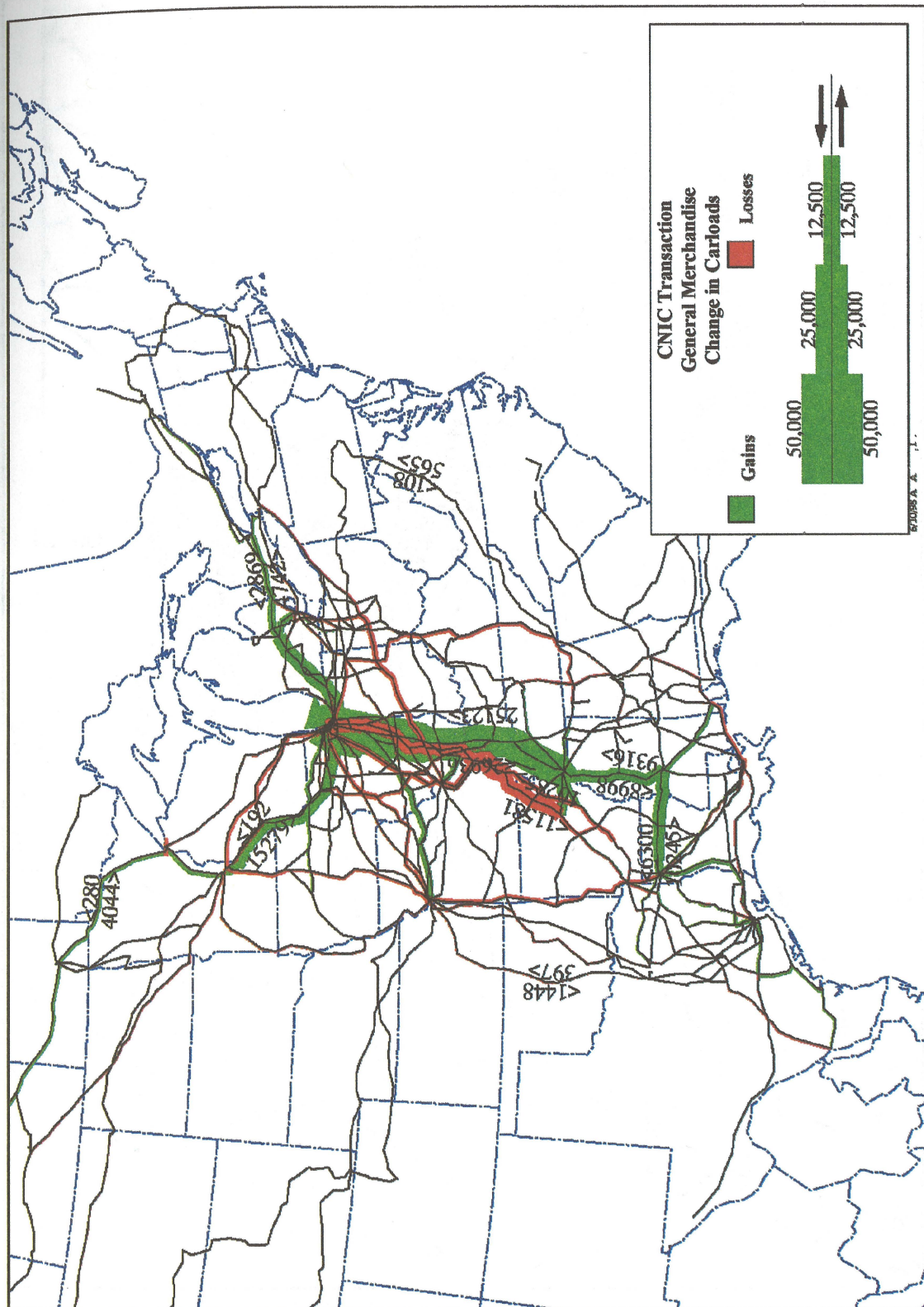


EXHIBIT 23

**CP LETTER (CP-22) IN *CP/KCS*,
FINANCE DOCKET No. 36500
(JUNE 21, 2021)**

LAW OFFICE OF DAVID L. MEYER
WWW.MEYERLAWDC.COM

1105 S STREET, N.W.
WASHINGTON, D.C. 20009
202-294-1399

June 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. 36500, *Canadian Pacific Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Canadian Pacific Applicants¹ submit the following in response to the Reply filed by Kansas City Southern (“KCS”) on June 16 in this proceeding.

KCS’s Reply – and its near-contemporaneous actions taken in support of its litigation strategy – have altered the landscape relative to conditions as of the time CP filed its Petition for Expedited Declaratory Relief (CP-18), and threaten to deny the Board and the public the benefit of CP’s forthcoming Application in this docket presenting a procompetitive alternative to the anticompetitive control transaction being pursued by CN. On the eve of filing its Reply, on June 15, KCS for the first time formally requested that “CP promptly return or, at CP’s option, destroy all written or electronic Confidential information received from or on behalf of [KCS], without retaining any copy or extract of it in any form, and confirm such destruction in writing to [KCS].”² CP appreciates the fact that KCS is currently bound by contract to support CN’s acquisition of KCS, and that KCS Reply accordingly reflects a strategy devised by Canadian

¹ Canadian Pacific Applicants are 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”).

² June 15, 2021 Email from A. Godderz (KCS) to J. Ellis and J. Clement (CP) re: Notice (Exhibit 1 hereto).

The Honorable Cynthia T. Brown
June 21, 2021
Page Two

National (“CN”) to impede CP’s ability to prepare its own, competing Application, which CN has stated publicly should not be allowed.³

CP submits this response for the limited purpose of (1) explaining why the relief that KCS desires – forcing CP into the CN docket as an “inconsistent applicant” – is not warranted and not in the public interest, and (2) placing into the record evidence of the concrete harms in the form of wasted effort and cost that would be occasioned by the path that the Reply proposes. The Board should accept this response in the interest of a more complete record, and as CP’s reply to KCS’s *de facto* request to dismiss Finance Docket No. 36500.

1. There is no ambiguity about what the Reply demands of CP: that CP scrap all of the work it has done to date to prepare a merger application in this docket using KCS confidential information (which, as explained in the attached verified statements of Michael Baranowski (Exh. 3) and Sean Cline (Exh. 4), is nearly complete but for needed access to additional KCS information); do nothing for several months, awaiting a possible CN merger application; and then seek to obtain the same KCS information all over again in discovery, no doubt against CN resistance, in order to start all over again from scratch to prepare – in very limited time – an “inconsistent application” in the CN docket. The Reply is shamelessly seeking to handicap, if not eliminate, the CP/KCS alternative so as to constrain the Board’s evaluation of the potential for consolidation involving KCS to serve the public interest.

2. The Reply’s suggestion that CP might proceed with an application using only publicly available information is equally disingenuous. Forcing CP to scrap the detailed operating plan, traffic analyses, and other components that are underway, and substitute CP’s best guess at the combined railroad’s operations, finances, and other important details would render it impossible for CP to prepare an application that would meet the Board’s rigorous standards for public interest review. The Board should not want any major merger application to make assumptions that may lack foundation about half of what a combined network would look like. *See Cline V.S.* at ¶ 5. The CP/KCS operating plan that CP has nearly completed is based on models for system-wide train scheduling, blocking plans, traffic density, equipment

³ CN UBS Global Industrials and Transportation Virtual Conference Transcript (June 8, 2021) at 10-11 (remarks of S. Finn) (“So, [we’re obviously of the view], and we’ll have a chance to review this for KCS, that [that] is *not in the best interest of the parties to have two parallel applications and we think the STB will decide that in due course*. But we’ll be looking forward to see KCS’ response to the application by CP to continue to be exchanging information with the KCS notwithstanding the fact that their merger agreement has been terminated. And obviously, I think, the STB by ruling yesterday that they would give the full 20 days to KCS, they want to make sure that KCS has the time and the reflection to provide appropriate comments [why] that would not be a good idea”) (emphasis added, with corrections from webcast, https://event.webcasts.com/viewer/event.jsp?ei=1470609&tp_key=5368907d27) (excerpts are Exhibit 2 hereto).

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utilization, and projected growth that rely heavily on detailed information from both CP and KCS. It cannot be a one-sided project. *Id.*

3. The Reply fails entirely to address the extraordinary prejudice that both CP and the public interest would suffer were CP forced to discontinue and destroy its work on its pending Application. As the attached Verified Statements of Sean Cline and Michael Baranowski establish, since March 2021 a dedicated group of 50 CP employees have been working around the clock to collect, analyze and model data to provide the STB with a meticulously prepared Application. This work was a combined effort not only of CP employees, but also of a number of outside consultants, who collectively invested approximately 15,000 hours and \$3 million towards preparing CP's forthcoming Application. Cline V.S. at ¶ 4. Without ongoing access to KCS's information and data, the vast majority of that preparatory work would likely be rendered useless. *Id.*

4. The Reply does not even attempt to suggest that CP's continued access to KCS's information would impose any undue burden on KCS. As to the information that CP already has – and merely seeks the ability to continue using (all subject to the Board-entered protective order, of course) – KCS need not do anything. For the modest additional information CP needs to complete its Application, this is information that – until CN persuaded KCS's board of directors to terminate the CP merger agreement – KCS agreed to provide CP. This is information that KCS will now be providing to CN – if it has not done so already – in connection with CN's own forthcoming merger application. CP would be satisfied were it given access to information germane to a CP/KCS combination in the same form and at the same time as KCS provides comparable information to CN. The only impact of the access CP seeks is to make a CP/KCS application more useful to the Board and the public in assessing the merits of the CP/KCS alternative. CN's private interest in limiting the Board's view of the merits to its own application is not in line with the Board's role in carrying out the public interest.

5. The Reply's effort to deny the existence of a "controversy" is betrayed by its own arguments, which reinforce and expand the extent of the actual controversy – namely, KCS's demand that CP shut down its work on an Application immediately, and its claim that CP is in "violation" of its undertakings to KCS. Even more fundamentally, the Reply's suggestion that KCS's entitlement to the return or destruction of data is so clear that there is no actual "controversy" misapprehends the relief CP seeks. CP does not ask the Board to interpret or apply any private contract between CP and KCS. Instead, CP invokes the Board's inherent authority to authorize discovery from one party to a proceeding to another in order to serve a public purpose. *See* 49 C.F.R. § 1114.21. That KCS disputes CP's entitlement to that relief is all the controversy the Board needs to act.

6. To the extent the Reply means to say that the Board may not act because of KCS's alleged contract rights, that position would lack merit. Not only does KCS's contract say

The Honorable Cynthia T. Brown
June 21, 2021
Page Four

nothing about whether it shall be free from Board-ordered access to information, a contrary contractual requirement could not stand as an obstacle to Board action. The Board has made clear that a party “cannot effectively preclude [the Board’s] approval of a transaction from going forward simply by entering into a contract that purports to prevent all alternatives to its own preferred outcome.” *CSX Corp. & CSX Transportation, Inc. – Control & Merger – Conrail Inc. & Consolidated Rail Corp.*, Finance Docket No. 33220 (Decision No. 5 served Jan. 9, 1997), at 5.

7. The Reply’s position that CP must wait to file an “inconsistent application” in the CN Docket is not a path consistent with the public interest in the unique facts of this case, where this separate docket has been active since March and where CP – initially with KCS’s cooperation – has expended extraordinary effort preparing a merger application that will present the many public benefits of a CP/KCS combination.

(a) There is nothing exclusive about the “inconsistent application” path for the Board’s consideration of alternative proposals to control a major railroad. In prior cases, the ICC reviewed multiple proposals in separate, parallel dockets commenced separately. *See, e.g., Norfolk & Western Ry. & Baltimore & Ohio R.R. – Control – Detroit, Toledo & Ironton R.R.*, Finance Docket No. 28499 (Sub-No. 1), 295 I.C.C. 425 (1979);⁴ *Southern Pacific Co. – Control – Western Pacific R.R. Co.*, Finance Docket No. 21314, 327 I.C.C. 387 (1965) (second application filed within two weeks of first).

(b) The “inconsistent application” path would squander all of the work to date in Finance Docket No 36500, especially the work that CP has been undertaking on its application to control KCS, but also including the work of the Board and the public in addressing the rules that should govern the CP/KCS proceeding.

(c) CP appreciates the burdens and complexities that may be placed on the Board and Board Staff from having parallel applications, and is prepared to work cooperatively to minimize those burdens. The Board, for example, could consolidate the service lists of the two dockets, address both in a single opinion on the merits if that proved efficient, and consider certain other matters in an appropriately coordinated fashion, again to the extent that proved efficient. But the solution is not to require CP to start all over sometime in the future and pursue an inconsistent application from scratch through discovery that would inevitably be burdensome for all concerned, add considerable cost and delay, and possibly jeopardize altogether CP’s ability to present a complete application.

⁴ Though GTW, the second-in-time applicant, was at times referred to as the “inconsistent applicant,” its application was submitted in an entirely separate docket.

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June 21, 2021
Page Five

(d) CP was planning to submit its Application herein on or shortly after June 28. CP believes it would be in the public interest for it to be able to present its Application at the earliest possible date, but – were it advantageous from the standpoint of the Board’s processes, as well as to minimize the degree to which KCS must gather and provide information separately to CP and CN – CP would be prepared to wait until August 20 to file its application, the date CN has said it plans to file its own Application. *See Finance Docket No. 36514, Notice of Intent (CN-1) (Apr. 21, 2021) at 5.* In this fashion, the two alternatives may be placed before the public and the Board simultaneously, and the Board will be able to weigh and compare two concrete alternative transactions, side-by-side and at the same time. In the event that the contingencies associated with CN’s bid for KCS (including the need for voting trust approval) fail, the Board and the public interest will benefit from the review of a CP/KCS application being well along so that CP and KCS would be able to deliver the tremendous public benefits the CP/KCS transaction promises as promptly as possible.

8. There is no merit to the suggestion in the Reply that granting relief to CP here would open the floodgates for hostile efforts to coerce unwilling railroads to cooperate with unwanted takeover attempts. This is not such a case. KCS had entered a binding agreement to be acquired by CP; CP and KCS cooperated closely to document the benefits of a CP/KCS combination – a “perfect fit,” according to KCS at the time – and KCS supplied information to CP in order to support the preparation of a joint Control Application. Now, even though KCS’s contract with CN obligates it to resist CP’s efforts to present a CP/KCS alternative, KCS is in the process of providing CN the very same information that CP needs access to in order to complete its Application. A narrow ruling for CP on its Petition in this unique case will not encourage unwanted suitors, especially for railroads that do not wish to be sold.

For the foregoing reasons, CP respectfully requests that the Board grant CP’s request for a declaratory order confirming that CP may have continuing access to the information from KCS needed to prepare its Application and related regulatory submissions in this docket.

Respectfully submitted,



David L. Meyer

*Attorney for Canadian Pacific
Railway Limited*

Attachments

cc: All Parties of Record

EXHIBIT 1

**JUNE 15, 2021 EMAIL FROM
A. GODDERZ (KCS) TO J. ELLIS AND J. CLEMENT (CP)**

From: Adam Godderz <AGodderz@KCSouthern.com>
Sent: Tuesday, June 15, 2021 4:16 PM
To: Ellis, Jeffrey J. (Canadian Pacific Railway Ltd.) <jeff_ellis@cpr.ca>; 'James Clements' <James_Clements@cpr.ca>
Cc: Rosenblum, Steven A. <SARosenblum@WLRK.com>
Subject: Notice

*** EXTERNAL EMAIL ***

Dear Jeff and James:

Reference is made to the Confidentiality Agreement (the "Agreement"), dated as of December 9, 2020, by and between Canadian Pacific Railway Limited, a corporation incorporated under the laws of Canada ("CP"), and Kansas City Southern, a Delaware corporation (the "Company"). Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Agreement.

The Company hereby requests that, in accordance with paragraph 6 of the Confidentiality Agreement, CP promptly return or, at CP's option, destroy all written or electronic Confidential Information received from or on behalf of the Company, without retaining any copy or extract of it in any form, and confirm such destruction in writing to the Company; provided that CP and its Representatives may retain Confidential Information to the extent it is required by law or to the extent it is backed-up on its or their (as the case may be) systems or servers pursuant to bona fide document retention policies, is not available to any user (other than those personnel whose role is to manage such document retention policies (and only in such capacity) and who are not otherwise end users of such information) and cannot be expunged without considerable efforts.

Nothing herein shall be deemed to modify or amend the Agreement, which shall remain in full force and effect, including the obligations of CP and its Representatives to continue to hold in confidence all Confidential Information in accordance with the terms of the Agreement.

We would very much appreciate if you could confirm receipt of this email at your earliest convenience.

Best,
Adam

Adam Godderz
Senior Vice President-Chief Legal Officer and Corp. Sect.
Kansas City Southern
427 West 12th Street | Kansas City, MO 64105
Office: 816.983.1360 | Cell: 816.809.3732
Email: agodderz@kcsouthern.com<mailto:agodderz@kcsouthern.com>

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Please be advised that this transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If you are not the intended recipient, please do not read, copy or re-transmit this communication. If you have received this communication in error, please notify us by e-mail (helpdesk@wlrk.com) or by telephone (call us collect at 212-403-4357) and delete this message and any attachments.

Thank you in advance for your cooperation and assistance.

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EXHIBIT 2

**CN UBS GLOBAL INDUSTRIALS AND TRANSPORTATION
VIRTUAL CONFERENCE TRANSCRIPT EXCERPTS
(JUNE 8, 2021)**

08-Jun-2021

Canadian National Railway Co. (CNI)

UBS Global Industrials and Transportation Virtual Conference

CORPORATE PARTICIPANTS

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

OTHER PARTICIPANTS

Thomas Wadewitz

Analyst, UBS Securities LLC

MANAGEMENT DISCUSSION SECTION

Thomas Wadewitz

Analyst, UBS Securities LLC

Welcome everybody to the First Day of the UBS Industrials and Transports Conference. I will – My name is Tom Wadewitz, I'm the Free Transports analyst at UBS. I will be hosting panels and fireside chats through the day, focused on transports. It's a real pleasure for me this morning to kick things off with Canadian National. I think they've got a lot of interesting things to talk about. Obviously, we've got JJ Ruest, the CEO; Sean Finn, the Chief Legal Officer; and Paul Butcher, the Vice President of Investor Relations. I'm going to hand it over to Paul and we're going to get into the fireside chat fairly quickly. But JJ, Sean, Paul, thank you for joining us.

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

Thank you, Tom.

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

Yeah. So, thank you, Tom.

Thomas Wadewitz

Analyst, UBS Securities LLC

Yeah.

Paul A. N. Butcher

Vice President-Investor Relations, Canadian National Railway Co.

So, before we begin, I'd like to draw your attention to the forward looking statements and additional legal information which are available at the beginning of the presentation. As a reminder, today's conference call

going to do so. But I can tell you, we selected to go under the current/new rules. We didn't ask to be exempt from those rules. So, we did so with a clear understanding what that contemplated for us going forward, with us being able to make our case by which we understand very much both railways CN and KCS.

And we're confident that in the context of the STB application, the control application, which we'll file probably in October – September or October, we'll address those issues, and we're looking at them in great detail. But obviously, what we decided to proceed under the so-called current rules, because they're no longer new, they're now 25 years old, we did so with a clear understanding of what the downstream effects might be and how we'd address them in the overall application.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Okay. What – how do you think about the [indiscernible] (00:28:02) – I guess, [indiscernible] (00:28:05) of the public interest analysis that STB could do. Do you think that it's possible that they do kind of a mini-merger analysis and look at things, the five criteria in some detail and potentially take comment periods as building a record, recognizing there's [ph] less ability (00:28:26) to build a record with a short comment period versus a full review? And then also how do you think about the potential for them to consider a comparative analysis? CP has continued to move forward with their applications, even though they no longer have an agreement with KCS. So, how do you think about the kind of the [indiscernible] (00:28:45) of what STB may look at in voting trust and also about, is it even possible that they end up doing kind of a comparative analysis as part of a voting trust or a merger review?

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Well, obviously, the agencies are very, very competent and has expertise on a lot of areas that are addressed in the overall voting trust applications. So, we're very confident that they'll do the work that could be done to get satisfied [ph] that it's in the (00:29:12) public interest if that's the KCS shareholders have access to a voting trust. And obviously, the ultimate test here is we should allow the KCS [ph] shareholders (00:29:25) to decide who is the best partner for them with respect to the sale of their interests in the KCS and the company itself. Obviously, we've submitted a very detailed joint petition. So obviously, we felt compelled to make sure that we had all the facts and all the law in front of the STB.

So, we think we've done pretty detailed [indiscernible] (00:29:45) submission. And I think that it's recognized that in some cases comments we made in the overall voting trust submission is almost as strong as [ph] some comments you'd (00:29:55) have seen in our overall control application, but notwithstanding that [ph] want (00:29:57) to make sure [indiscernible] (00:29:58) of the STB. As you know, we've asked them to adopt a procedural schedule. We had proposed a 10 day comment period. We're still waiting that decision from STB on what – what would be the procedural schedule for the voting trust. Obviously, they've already approved one voting trust, this one is identical. We think we have addressed the comments that were set out in the decision of May 17.

So, we'll wait to see how the STB proceeds when it comes to the procedural schedule. But we're comfortable with the 10-day period, 20-day period of comments. But obviously, that will be determined by the STB in the coming days and there'll be a period for comment and that's – under the current rules that was provided for. With respect to having a parallel [ph] control (00:30:40) application, as you probably saw on last night the STB issued a decision providing the full 20 days for KCS to comment on the request by the other bidder to continue to have access to all the information that KCS we're sharing with them prior to them terminating the merger agreement and signing up with CN.

So, [ph] we'll obviously review (00:31:03) and we'll have a chance to review this for KCS, that is not in the best interest of the [ph] party to (00:31:09) have two parallel applications and we think the STB will decide that in due course. But we'll be looking forward to see KCS' response to the application by CP to continue to be exchanging information with the KCS notwithstanding the fact that their merger agreement has been terminated. And obviously, I think, the STB by ruling yesterday that they would give the full 20 days to KCS, they want to make sure that KCS has the time and the reflection to provide appropriate comments [ph] where that would not (00:31:42) be a good idea.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Right. Okay. I've had a couple of questions that have come in that I'll try to work in here. I think one you were talking about the procedural schedule. Do you have a specific date in mind that is a timeframe they're required to give you a response on procedural schedule and are there any other kind of, I guess, decisions or elements [ph] of (00:32:09) feedback you're looking for from STB in the near term?

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Yeah. There's no deadline [ph] per se (00:32:15). Normally, it would have been 20 days. And it's important to realize we filed our procedural schedule on May 18. And then obviously our petition for voting trust on May 26, so if it's 20 days or 10 days depending on this deadline [indiscernible] (00:32:34), but we expect in the coming days, the STB is quite busy, they have a lot in their plates [ph] obviously (00:32:39). So, we're very, very understanding that they have to do this in an organizing structured fashion. And we're looking forward to see a procedural schedule as soon as possible under the circumstances. So, we're not going to push – [indiscernible] (00:32:57) to ensure that this is done right and if they're comfortable that the [indiscernible] (00:33:01) select when it comes to comments will allow the parties to make comments in a organized and structured fashion.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Well so you – I mean you mentioned a 20-day rule, but you're saying you're not sure if that 20-day rule applies or not?

Jean-Jacques Ruest

President, Chief Executive Officer & Director, Canadian National Railway Co.

A

Yeah. Well, STB has a certain [ph] amount of discussion (00:33:22) obviously. But we [ph] would (00:33:24) expect in the coming days to have a decision on the procedural schedule based on one of the two dates either May 18 or May 20.

Thomas Wadewitz

Analyst, UBS Securities LLC

Q

Okay. Let's see, what about appeal, I think there's some debate about how would an appeal work, how do you do – I forgot the term, an appeal within STB, I forgot the technical term for that or you go straight to an appeals...

Sean Finn

Executive Vice-President-Corporate Services & Chief Legal Officer, Canadian National Railway Co.

A

Reconsideration – a reconsideration – yeah, reconsideration is the term you're looking for, Tom?

EXHIBIT 3

VERIFIED STATEMENT OF MICHAEL BARANOWSKI

VERIFIED STATEMENT OF MICHAEL R. BARANOWSKI

1. I am Michael R. Baranowski, Senior Managing Director at FTI Consulting (“FTI”), a global management consulting firm headquartered in Washington, D.C. I joined FTI in June of 1998, after having worked for another consulting firm, Klick, Kent & Allen, for over 10 years. As part of my role, I provide financial and economic consulting services to companies involved in the transportation industry. I have been involved in a significant amount of regulatory consulting work for clients appearing before the Surface Transportation Board (the “Board”), including all of the current Class I rail carriers. I hold a B.S. in Accounting from Fairfield University and have pursued supplemental finance studies at Kean College in Union, New Jersey.

2. On March 21, 2021, I was hired by Canadian Pacific Railway Limited (“CP”) to provide assistance in connection with analyses supporting CP’s application for Board authorization to control Kansas City Southern (“KCS”) (the “Application”), including analyses relating to traffic studies and operating economies.

3. My mandate with CP consists of providing supporting analysis for the CP/KCS application, particularly by quantifying cost savings resulting from merger-related efficiency gains and other benefits. My team and I have also been asked to assess the amount of additional rail traffic that the merged networks will be able to attract and use that information in conjunction with the efficiency.

4. Since March, my colleagues at FTI and I have dedicated approximately 1,500 hours towards the completion of the rail-to-rail traffic studies and synergy analyses. I estimate the studies I have been tasked with preparing are at approximately 75% completion.

5. The underlying data my team and I need to complete the analyses in support of the Application comes from three main sources: public and private registries held by third parties, including the Board's Carload Waybill Sample data; data held by CP; and data held by KCS.

6. While the bulk of the work is already completed, needed refinements cannot be accurately completed without a continued access to documents and information that can only be obtained from KCS. Specifically, we have yet to receive certain data from the KCS marketing and commercial teams, preventing us from confidently predicting achievable transaction-related traffic gains. In addition, we have not had access to detailed information from KCS regarding labor, equipment and maintenance costs nor any operating expenses and associated operating metrics related to their Mexican operations. We have relatively sparse data, which means that our analyses will yield only approximations of the efficiency gains and related benefits from a merger with CP. Receipt of the actual detailed data from KCS would allow more refined and precise calculations, presenting the most accurate representation of the public benefits from the proposed transaction.

7. Not being able to use KCS's confidential data at all, including that which we have already incorporated into our analyses (based on material voluntarily provided by KCS in furtherance of the then-joint application) would present a much more serious set of consequences. Publicly available information, even augmented by the Carload Waybill Sample data, would not be sufficient to prepare a reliable set of analyses. With an operating plan containing about only half of the required information and data, I would have no real foundation upon which to calculate merger-related efficiencies in a meaningful way. In my opinion, and based on my experience working with the Board, even the best possible merger benefit studies developed under such circumstances would be too speculative to meet the Board's expectations.

VERIFICATION

I, Michael R. Baranowski, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 20th day of June, 2021.



Michael R. Baranowski
Senior Managing Director
FTI Consulting

EXHIBIT 4

VERIFIED STATEMENT OF SEAN CLINE

VERIFIED STATEMENT OF SEAN CLINE

1. My name is Sean Cline. I am the Managing Director, Integration Office, at Canadian Pacific Railway Limited (“CP”). I joined CP in August of 1991, performing various leadership and project management roles for internal projects and for the Information Services Department. Six years ago, I began serving in leadership roles on the Information Services Lead Team, up until taking on my current role in May 2021. I now lead CP’s Integration Office, which is responsible for the preparation of CP’s application seeking Board authority to control Kansas City Southern’s (“KCS”) (the “Application”), notice of which was filed jointly by CP and KCS on March 22, 2021.

2. Upon the public announcement of the transaction between CP and KCS, I was officially tasked with overseeing and supervising a multi-disciplinary team comprised of in-house and external consultants, engineers and other experts whose mandate is to develop the Application, including detailed plans for the combined system’s operations and safety integration.

3. I am submitting this statement to convey the extent to which CP’s efforts to prepare the Application would be impacted if CP were prevented from accessing KCS’s confidential information, including potentially having to return or destroy all confidential information CP has thus far obtained from KCS in connection with this proceeding.

4. The application that CP has been putting together for the past 10 weeks is near completion. Since March 22, a dedicated group of 50 CP employees have been working around the clock to collect, analyze and model data to provide the STB with a meticulously prepared application. This work was a combined effort of not only CP employees, but also of a number of outside consultants. Among these teams, approximately 15,000 hours and \$3 million have been invested towards achieving that goal. Without access to KCS’s information and data, I believe

that the vast majority of that work would be rendered useless. We would have to throw out all of our existing analyses, which are based on the detailed KCS traffic data and other information (e.g., regarding IT systems and other matters) that KCS regards as confidential. Using only publicly available information – perhaps supplemented with waybill sample data that our consultants have access to – we would at best be able to prepare a set of plans and analyses that were largely speculative regarding the part of the combined system south of Kansas City.

5. It would be an excessively difficult exercise to prepare a credible application—meant to establish the benefits and implications of a merger between two companies—by making assumptions about half of what a combined network would look like. In particular, an operating plan, which is based on models for system-wide train scheduling, blocking plans, traffic density, description of lines, maps, equipment utilization, projected growth ton-miles and environmental assessments, cannot be a one-sided project.

6. Along with CP's data, KCS's information forms the basis of the operating models and projections CP needs to generate. Requiring our teams to redo the work without access to KCS's data would not only mean that thousands of hours of work and millions of dollars were lost, but that a viable application is potentially not achievable.

VERIFICATION

I, Sean Cline, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 20th day of June, 2021.

Sean Cline

Sean Cline
Managing Director, Integration Officer
Canadian Pacific Railway Limited

EXHIBIT 24

**CANADIAN PACIFIC & KANSAS CITY SOUTHERN AGREE
TO COMBINE JOINT CONFERENCE CALL
TRANSCRIPT EXCERPTS
(MAR. 21, 2021)**



Transcript

Canadian Pacific and Kansas City Southern Agree to Combine Joint Conference Call

March 21, 2021

Canadian Pacific Corporate Participants:

Keith Creel, President & Chief Executive Officer
Nadeem Velani, EVP & Chief Financial Officer
John Brooks, EVP & Chief Marketing Officer
Chris de Bruyn, Managing Director, Investor Relations & Treasury

Kansas City Southern Corporate Participants:

Patrick Ottensmeyer, President & Chief Executive Officer, Kansas City Southern
Michael Upchurch, Executive Vice President & Chief Financial Officer, Kansas City Southern
Michael Naatz, Executive Vice President & Chief Marketing Officer, Kansas City Southern

MANAGEMENT DISCUSSION SECTION

Operator

Good morning. My name is Annie and I will be your conference operator today. At this time, I would like to welcome everyone to the Canadian Pacific and Kansas City Southern Joint Conference Call.

The slides accompanying today's call are available at www.investor.cpr.ca. All lines have been placed on mute to prevent any background noise. After the speakers' remarks, there will be a question-and-answer session.

[Operator Instructions] I would now like to introduce Chris de Bruyn, Managing Director, Investor Relations and Treasury, to begin the conference. Sir?

Chris de Bruyn

Thank you Annie. Good afternoon everyone and thank you for joining us on a Sunday to discuss this morning's merger announcement.

On the call with me today are Keith Creel, President and Chief Executive Officer of Canadian Pacific, Pat Ottensmeyer, President and Chief Executive Officer of Kansas City Southern, Nadeem Velani, Executive Vice President and Chief Financial Officer of Canadian Pacific, Mike Upchurch, Executive Vice President and Chief Financial Officer of Kansas City Southern, John Brooks, Executive Vice President and Chief Marketing Officer of Canadian Pacific, and Mike Naatz, Executive Vice President and Chief Marketing Officer of Kansas City Southern.

This presentation includes forward-looking statements and non-GAAP measures as outlined on Slide 2. The formal remarks will be followed by a Q&A. In the interest of time, we would appreciate if you limit your questions to one.

It is now my pleasure to introduce Mr. Keith Creel.

Keith Creel

Hey thanks Chris.

What an historic day. I can tell you, the energy of our collective teams, I think, is unparalleled in our history, it is historic and in a sense for CP in our 140-year history, and I'm sure that Pat would agree as well, and KCS's 130-plus year history, and also historic to the North American economy to think about combining these two railroads to create an unparalleled network that will create the first U.S., Mexico, Canadian system on the heels of USMCA being approved last year, which gives us assurance for creating a supply chain that allows in a macro level and at a micro level unparalleled value creation for our customers and service and in competition, creating new single-line hauls, increasing capacity, investment in routes, improved routes, and again, enhanced competition amongst the rail options that exist today, increasing in every aspect and never decreasing competition.

It is going to create substantial value for our shareholders at both companies that's compelling. When I say compelling, \$780 million of annual run rate synergies that are unlocked by this combination, serve and drive substantial earnings accretion, brings the two iconic companies together that have unparalleled records in service, safety and efficiency.

As the industry knows, certainly we have led these two railroads, have the best growth profile, CAGR in the entire industry for the last three years, but it takes the strength of both companies to combine and create a greater

outcome than ever would be possible than it would be standalone. It is something that really gets us excited for all stakeholders, our customers, for our shareholders, for our employees and for the North American economy that we serve. Then above and beyond that, something that emotionally and personally that's near and dear to all of our hearts and that's our responsibility to the environment, to take a transaction that allows stepped improvement and improvements benefiting the environment, is something, again, that's equally exciting to all of us.

That said, we've got the two smallest Class 1 railroads in the industry forming a compelling partnership that potentially levels the playing field, makes us uniquely benefit from the opportunities that this network will create, a 20,000 mile railroad, about 20,000 employees combined. Although we will still be the smallest from a revenue standpoint in the Class 1 space, the value creating opportunity, again, for all those debt stakeholders, we feel, is unparalleled in this industry.

The final thing I'll say before I turn it over to Pat to provide a bit of color himself, this combination is not about cuts, it's not about line rationalizations, it's not about cutting heads, it's all about growth. It's about growing our business that this network allows us to recognize and bring to the bottom line, it's about growing jobs that move those trains as they move across this railroad to create an increased, growing profile return for our investors for putting their trust and faith and allowing us to be stewards of their money.

So, with that said, let me turn it over to Pat, I'll pause and let him provide some additional color from Pat's perspective.

Patrick Ottensmeyer

Okay. Thanks Keith, and thank you everyone for joining us this afternoon.

I too would like to express my excitement and enthusiasm about the announcement that we made this morning and about the merger and combination of these two very strong, fast-growing, well performing rail franchises.

The operational and cultural alignment between our two companies makes us a natural fit for this transaction, in addition to the power of the geographic combination and some of the other factors that Keith mentioned. It just feels like this is the right time and the right circumstances to put these two companies together, given the benefits and the expected synergies that we'll talk about in a few minutes, coming on the heels of USMCA and other trends in global manufacturing and supply chains that will certainly favor North America going forward.

If you just look at the map and visualize these two companies, it is an unmatched, unparalleled North American footprint, and all of the factors that we've discussed just lead to the creation of incredible opportunities for growth, job creation, all of those things as a result of this combination.

We do not compete head-to-head in any market, as Keith mentioned. We connect here in Kansas City. We share a facility in Kansas City, a yard. CP goes north and we go south. This is entirely complementary and that's why we feel so strongly that this combination is very unique in terms of the attractiveness of this franchise. There's not a single market where we have a customer that is facing a three-to-two or a two-to-one situation, and as we'll review over the course of this presentation, we are creating new single-line service options that will enhance competition and facilitate growth and create positive economic impact for the companies and the communities that we serve going forward.

The leadership team at Canadian Pacific has built an industry-leading franchise through the implementation of PSR for several years and, as you all know, we too at Kansas City Southern have had success with our own PSR

implementation and journey for the past two and a half years. So there's a lot of common thinking and strategy with respect to the way we operate the railroads which will help drive the growth opportunities and the synergies that we'll talk about in a few minutes.

This operation, as John Brooks will go through in a few minutes, this opportunity will connect Canadian Pacific's powerful origination network with Kansas City Southern's powerful destination network to create increased options for our customers and shippers.

This is an opportunity, as I said before, to create unmatched service offerings for the U.S., from Mexico to Canada, and all points in between. The combination of these two networks will create truck competitive options that allow us to deliver on the superior environmental and safety impact that railroads can uniquely offer.

With that, I'll turn it back to Keith to go through the map and a further description of this combined network.

Keith Creel

Thanks, Pat, for those comments, and thanks. Putting our focus on the map. You ask yourself why, I think it's pretty self-explanatory, and that's the why. It's all about reach, it's about expanding market reach for our customers that are served by CP and KCS today so that they can grow in their markets and in turn we can grow with them.

It's going to connect customers with premier ports, the U.S. Gulf, Atlantic, Pacific, with key overseas markets that's an important point to remember or to recognize; deliver customers with increased service and reduced transit times if you eliminate these hand-offs and create single-line served, cradle to grave origin to destination supply chain cycles, connect six of the seven largest metro regions in North America. Talk about an opportunity for adding a new intermodal service between Dallas, East Texas and Chicago. So a third alternative. And in fact, if you think about it, uniquely allows a single-line interval and opportunity to go East Chicago into the Northeast Detroit, etc.

So, very compelling. The other, some key attributes. If you look at the map, an opportunity to bypass some of the traffic that otherwise now we'll not have to go through the Chicago gateway via our CP route through Iowa. That's going to improve service, it's going to increase available capacity for shippers in the Chicago gateway, while reducing perhaps fuel burn and emissions in Chicago, which obviously is an important hub city in North America. Across the board, the book of business - grain, automotive, auto parts, energy, intermodal. We can make the case that all will benefit in this increased efficiency and simplicity that this combined network is going to provide, as well as the competition it represents. You bring together two very strong cultures that have strong commitments of service to our customers and commitment in culture of safety and service excellence, it's compelling from a customer standpoint, what this enables and what's possible.

Looking at—transitioning to the book of business, which obviously becomes much more diversified as a result of this transaction. CP's strong bulk franchise is going to merge seamlessly with KCS that just plays off our origin strength to their destination strengths, which obviously is going to strengthen the book, it's going to be more resilient, enhance outbound distribution for all of the products that originate on CP. Coming north and south, again, think about the automobile, the finished vehicles that come out of Mexico through Texas to those mid east markets, new competition, new service offerings that today move through this route.

So, these growth opportunities, if you look at them across the board, they're exciting for us, they're exciting for our customers, at the end part of the compelling reason this transaction makes so much sense.

Finally, from a capital point of view, we have factored in additional network sidings, investments in siding extensions, as well as investment in CTC to support the growth. However, we do believe there are capital synergies which will mitigate the increased investment required to better asset utilization. So, we believe an incremental net \$50 million of capital will ultimately be required in addition to the CPKC-base plans.

A few comments on cash flow and our balance sheet on Slide 13. As Keith mentioned, the cash portion of the deal will be funded through cash-on-hand and approximately \$8.6 billion of debt, which financing has been committed. CP's balance sheet has remained in the 2.4 times debt-to-EBITDA in the last few years, within our targeted range. That has supported our investment grade rating, and combined with strong market capitalization, has allowed us to transact this strategic deal.

With the additional debt, we will be increasing our leverage and expect it to be at 3.8 times our 2021 EBITDA. We have not initiated our NCLB program we announced in January and will not expect to repurchase shares as part of that program. In addition, both CP and KCS will maintain our dividends at current levels.

Our deleveraging plan is based on the free cash flow generated used to pay down both the acquisition financing and any near-term maturities. Based on the strength of the CP and KCS independent plans, we expect that significant cash generation will allow us to work back to our long-term leverage target in the 2.5 times range within 36 months of closing into trust, and importantly, we are not depending on the synergies to be realized prior to delevering the balance sheet. Overall, it's a very compelling cash flow opportunity.

We have engaged with the credit rating agencies and had constructive dialog on the transaction. In the end, we remain committed to our targeted BBB+ Baa1 rating over the long term.

With that, let me pass it back to Pat.

Patrick Ottensmeyer

Okay, thanks Nadeem.

Next slide is a lot of data on here. I'm going to go through quickly and wrap things up here so that we can get to your questions. Suffice it to say that both CP and Kansas City Southern have strong track records and are very committed to improving sustainability and see this transaction as supportive in that effort. Our own PSR journey has been very successful so far, so this transaction is about leveraging our combined operations and network to grow across the markets in North America.

As you all know, rail is one of the most economical and environmentally responsible methods of moving freight - four times more fuel efficient than trucking, one train can keep more than 300 trucks off the road. So, we see this transaction and the growth opportunities that we see and the synergies that will come from this as being very consistent with our commitment to climate change improvement and an environmentally-friendly transaction.

We both have recently committed to setting science-based targets to reduce emissions in line with the Paris agreement, and that work will continue as the combination moves forward. CP is an industry leader in sustainability and the combined entity will continue that leadership trend through the Hydrogen Locomotive Test Project and other initiatives ongoing at CP.

So, we'll wrap things up and move to the final slide here, which is where we started and just talk again about the significant benefits of this combination. This combination of these two companies is truly transformative for North America and provides significant benefits that we believe will increase and enhance competition, allow shippers

across the U.S., Mexico and Canada to benefit from the secure and stable trade environment, the pro-North America investment attitude, the growth opportunities that we believe will come as a result of the USMCA and other factors affecting global supply chain strategies.

As an end-to-end combination, we see this as very pro-competitive. As I mentioned earlier, we see no markets or no customers where options to ship by rail are reduced. In fact, they are enhanced. We believe this will be, this combination will be supported enthusiastically by our customers and shipping groups.

The combined companies' focus on safety and culture of operational excellence make us a natural fit. I think the time is right for this combination, the logic and the strategic value of this combination is quite powerful and we just could not be more excited about the future that we could have together as a combined network.

With that, I will turn it back to Keith for final closing comments.

Keith Creel

Thank you for the color, Pat, John and Nadeem.

Let me, in closing, I want to restate the obvious. The value that our shareholders, both shareholders, employees, both sets of employees communities that we operate in and through and our collective customers enabled by this very unique combination is absolutely undeniable. We're offering a substantial premium to the KCS shareholders, as well as an opportunity to participate in the upside of this combined company on a go-forward basis.

This combination is expected to be accretive to our adjusted diluted EPS in the first full year following our acquisition and control of KCS as we march to double-digit accretion upon the full realization of the synergies in year three. It's a win-win absolutely for both companies and stakeholders. The growth and economic benefits that comes from this transaction is absolutely more than either could ever achieve alone. Together, we will do more.

With that said, let me open it up and turn it over for Q&A.

Question & Answer

Operator: Thank you sir. [Operator Instructions] Your first question comes from the line of Amit Mehrotra from Deutsche Bank. Your line is open.

Amit Mehrotra: Thanks Operator. Congrats to both teams on this announcement. A question on the CP side related to just getting comfortable with the risks around Mexico and the concessions. I know you mentioned in the deck that it expires in 2047, but I think the exclusivity provision can be revisited in 2027. So, if you can just talk about how you get comfortable around the risks related to open access? Thank you.

Keith Creel: Let me start with this and then Nadeem, obviously, you might want to expand on this. When it comes to assessing the risk, in that path in that assessment, in that diligence. The track record that KCS had established successfully operating in that environment, not just surviving but thriving as they partnered with their Mexican partners to grow the business between U.S. and Mexico is, again, it's undeniable. The relationships, the respect, the deep understanding of the concession and how it operates and how in Mexico good business and what it looks like, is something that KCS, I would suggest, they've mastered, given their success.

When you look specifically at the concession, yes it's through 2047 and yes there's an exclusivity provision in 2027, but as I understand it, and I try to relate it to our own competitive environment that we operate in, more specifically in Canada, as long as we're providing service, adequate service and charging a fair price, you'll never

draw a fair return in the marketplace, that's a natural outcome. So, I would suggest that, certainly combined, the opportunity, the potential, again, much like the revenue, will exceed what we could do standalone in either case.

Nadeem, I don't know if you want to add anything to that.

Nadeem Velani: Yes. I mean, I think both independent companies have plans that are going to get to kind of industry-leading operating ratios. This isn't about how low can you go. That's certainly not the case. This is about growth and providing service and expanding service offerings to grow the top line and create more for the industry and taking share off the road.

So, yes, Chris, I won't disagree that naturally the OR is going to get to new unprecedented levels if we execute on our current plans and execute on the synergies we described. I think, more importantly, we're going to generate significant returns. We've been very focused on return on invested capital, and as you take on a bigger asset and you can utilize, get more revenues on that asset base, you're going to generate some significant returns and you can turn those assets and it's a pretty powerful story.

So, I won't disagree with you that we're going to get some improved operating ratio but we're very excited about the return on invested capital long term.

Operator: Thank you sir. Your next question comes from the line of Allison Landry from Credit Suisse. Your line is open.

Allison Landry: Good afternoon. Thanks and congratulations on the announcement. I just wanted to ask about the 2001 merger rules as KSU is not technically a part of those. Do you think there's a risk that this sort of prompts the STB to initiate a review of those rules and consider whether or not KCS should be a part of it just given that the size is so much bigger than it was 20 years ago? Does this potentially elongate the roughly one year timeline that you've outlined for final approval? Just curious to understand how you think about that and what the risks are related to this. Thank you.

Keith Creel: Pat, do you want to—given that—would you like to provide some color on the exemption that KCS received?

Patrick Ottensmeyer: Yes. I think the history here of the exemption that Allison's referring to was done in the wake of—during a period where consolidation in the industry was occurring at a rapid pace and most of that consolidation involved overlapping routes, overlapping networks that kind of surrounded Kansas City Southern. So, the STB at the time felt that creating an exemption for a path involving KCS was appropriate and reflected the situation that existed then. This merger is so much different and we certainly believe that that exemption will apply.

This is a merger that's different than any other that, in my recent memory or my history in the industry, has occurred and that it is totally end-to-end. There are no situations where a shipper or a market is going to lose access to rail options that they have today. In fact, as we talked earlier, this is going to create a new option for single-line rail service in some of the largest freight markets in North America that doesn't exist today, that don't exist today, and that's going to enhance competition, that's going to improve the opportunities to drive further truck-to-rail conversions.

So, we think that that path is certainly clear to the extent that that exemption was granted back in 2001.

Often a deal like this the stars have to align and I would suggest that the stars have aligned to make this deal happen. If you think about the last recent history - I can't go back five years but I can certainly look at the last three - and these two railroads, the two smallest Class 1s, have created the most compelling growth CAGR in the industry to the way we approach our business and the solutions we provide for our customers.

So, you take the power of the two and put it into one extended network, what that opens up is compelling. The value that it creates for competition. The value that it creates for additional service options for our customers, the reach that it creates, the value it creates for our employee bases given that the growth that it will attract drives their job growth. It's not rationalization. It's accretive and it's additional to. Then, of course, obvious, the value it creates for the shareholder is compelling. These values are unparalleled to having opportunity in today's space and time to connect two greater companies and make one greater company to realize the potential again that we can't achieve standalone. How could you not do it now?

Pat, I'll let you expand a bit on some of the background that just feeds into that whole narrative and makes it even more compelling.

Patrick Ottensmeyer: I think if you go back to the map that Keith presented earlier, I think it's Slide 6 in the slide deck, which shows the new CPKC network, just look at that map and this is a North American rail footprint that is unmatched by any other single-line option. You couple that with the recent passage of USMCA by overwhelming majorities in all three countries, the prospect that that represents to certainty and stability of a trading relationship and a broader relationship between the three countries. The pandemic has taught us that global extended supply chains involve greater risk than perhaps a lot of industrial companies are willing to tolerate. I do believe that there is a trend in supply chain strategy to shrink and de-risk those supply chains and North America is going to continue to be a very attractive source of investment and growth, and particularly in manufacturing, industrial activity. And go back to the visual here of the map, this network is not only going to be in a position to benefit from those trends, but actually help drive those trends.

We continue to feel that Mexico is going to be an attractive source and be able to attract foreign investment and grow, and the way this network can connect all three countries, there has been as everyone knows a massive amount of investment already in North American supply chains. I see that growing, I think Keith shares that belief, and creating this network, putting this network together at this moment just makes tremendous sense to help participate and drive all of those opportunities.

So, that is a reason why this combination makes more sense than it ever has and now is the right time to do this.

Fadi Chamoun: Okay. Thanks for that. Just maybe a couple of quick ones. Is there a break fee associated with the deal? Also, if the unlikely scenario that, I guess, you have very high confidence in that regulatory process, but if the STB turns this down, how long do you have to dissolve the trust? Do you have certain time limits that you have to act upon to kind of walk away from the trust to spin it off again?

Keith Creel: Yes. Fadi, I would point you to the merger application when it's filed. It'll give you all the specifics on the break fee. As far as in the unlikely event that we had to spin the Company off, yes there is a traditional—I can't get into the actual specifics, but generally it's about a two year period to exercise a controlled disposition of the asset.

Fadi Chamoun: Okay.

Operator: Thank you sir. Everyone, as previously highlighted, please limit your question to one.