



Surface Transportation Board
Washington, D.C. 20423-0001

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Office of Proceedings
July 16, 2021
Part of
Public Record

MEMORANDUM

TO: Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings

FROM: Martin J. Oberman, Chairman

RE: Ex Parte Communications Related to Docket Nos. FD 36500 & FD 36514

DATE: July 16, 2021

On July 12, 2021, I received a letter from Edward J. Bayer expressing views regarding the notices by Canadian Pacific Railway Limited (Canadian Pacific) and Canadian National Railway Company (Canadian National) of their respective intents to purchase Kansas City Southern and its railroad affiliates (KCS). I have enclosed a copy of the letter with this memorandum. Because Canadian Pacific filed a notice of intent to file an application to acquire KCS on March 23, 2021, in Docket No. FD 36500, and Canadian National filed a notice of intent to file an application to acquire KCS on April 20, 2021, in Docket No. FD 36514, this communication is a prohibited ex parte communication pursuant to the Board's decision in Petition of Fieldston Co., Inc. to Establish Procedures Regarding Ex Parte Communication in Railroad Merger Proceedings, Docket No. EP 619 (STB served Jan. 8, 1997). Please place this memo and the enclosed material in the public docket of Docket Nos. FD 36500 and FD 36514.

P.O. Box 26729
New Orleans, LA 70186
July 2, 2021



Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: CN-KCS Merger

Sir:

I want to express my **opposition** to the proposed Canadian National (CN)-Kansas City Southern (KCS) merger.

The proposed merger is highly anticompetitive. CN already provides service between Canada and Mexico through the United States via its previous merger with Illinois Central. With the acquisition of the KCS, it will have a MONOPOLY on Canada to Mexico service. There will be no choice but through Canadian National.

The merger of the Canadian Pacific (CP) with the KCS makes more sense, because then there will be competition in the Canada to Mexico service. Shippers will have a choice between CNIC and CPKCS.

I participated in the ICC's Rail Merger Study in 1979. One of the main findings of the Rail Merger Study was to maintain competition wherever possible. The CN-KCS merger violates this principle and should be blocked.

Since 1979, Rail Mergers have proceeded with competition in mind, with CSX currently competing with Norfolk Southern in the Eastern United States, and BNSF and UPSP competing in the Western United States.

Allowing the CN-KCS merger to proceed would be comparable to allowing the Union Pacific to acquire not only the Southern Pacific but also the Santa Fe. This would have left the Southwest with only one rail choice, Union Pacific. Fortunately, Burlington Northern was allowed to acquire the Santa Fe, thereby providing a competitive balance in the Western United States.

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Surface Transportation Board
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CN is pressing hard for the merger with KCS because it knows that this will eliminate the competition in the Canada to Mexico corridor, thereby giving it a monopoly. It is trying to slip one by the Surface Transportation Board. However, monopolies are out. Competition is in.

Please maintain competition in the Canada to Mexico corridor. Block the CN-KCS merger and give a green light to the Canadian Pacific-Kansas City Southern merger.

Best wishes.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. J. Bayer', with a long horizontal flourish extending to the right.

Edward J. Bayer