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BEFORE THE SURFACE TRANSPORTATION BOARD

Docket No.36500

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

-CONTROL-

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

U.S. WHEAT ASSOCIATES COMMENTS AND REQUEST FOR CONDITIONS

U.S. Wheat Associates (USWA) respectfully opposes this transaction as it is inconsistent with the public interest. Alternatively, if the Board approves this transaction, USWA respectfully requests that certain conditions be imposed on this transaction in accordance with 49 U.S.C. § 11324(c). USWA seeks these conditions to eliminate the adverse impacts this transaction will have on wheat shippers that are large rail shippers in the United States.

USWA INTEREST IN TRANSACTION

USWA is the export market development organization for the U.S. wheat industry. USWA promotes the reliability, quality, and value of all six U.S. wheat classes to wheat buyers, millers, bakers, food processors, and government officials in more than 100 countries around the world. Its mission is to "develop, maintain, and expand international markets to enhance wheat's profitability for U.S. wheat producers and its value for their customers." Funding is made possible through farmer dollars, goods and services from 17 state wheat commissions, and cost-share grants from the U.S. Department of Agriculture's Foreign Agricultural Service.

USWA created an internal Transportation Working Group (TWG) in 2018 after the realization that increasing rail rates were having a large impact on the wheat industry's export competitiveness. TWG is a working group within USWA that examines rail and other transportation issues on behalf of these member Commissions. Wheat is heavily reliant first on exports, exporting on average half of all US production, and second on rail transportation to move this commodity across the U.S. to feed the world. Rail rates have a disparate impact on wheat shippers vis a vis other bulk US commodities due to the large percentage of production that is exported and having major growing regions not generally adjacent to the Mississippi waterways. Distances from the central and northern plains wheat producing areas are far too great to truck wheat to export facilities, making railroads a crucial and irreplaceable link in the wheat export logistics chain.

The results of this increased dependance on rail for the movement of wheat exports have been clear. Over the last decade, rail rates have increased exponentially, and wheat continues to be charged higher rates than other commodities with similar handling characteristics. These premiums relative to these other commodities clearly demonstrate the current market power of the Class I railroads and the lack of any serious competition afforded to wheat shippers.

That unchecked market power has had serious implications for U.S. wheat's competitive position vis a vis other major world exporters, such as Canada. The Canadian comparison is particularly telling as the two spring wheat and durum growing regions are similarly positioned in the interior of each country, with nearly identical distances to traverse to export facilities in each country, with differing government rail policies being one of the only large differences in market position. However, despite the similarities, work collected by one of USWA's member states showed similar origin to export point rail moves in Canada were 30% below the US moves at the time.

Specifically, USWA has some concerns about how this transaction will affect wheat shippers in the U.S. While USWA welcomes the addition of the CP's Northern US plains network to the KCS system, we are concerned that Canadian shippers may gain an unfair advantage over US wheat shippers. Canadian railroads, including the CP, have a recent history of involvement from the Canadian government. Revenue caps, known as Maximum Revenue Entitlement or MRE, on grain transportation movements to port facilities effectively limit rail rates by statute, rather than the market, lowering the transportation costs that exporters must pay for grain. This in turn means that Canadian exporters can undercut U.S. exporters. USWA has routinely raised these export subsidy concerns before the U.S. government.[1] Mandated grain shipping minimums during times of supply chain logistics challenges, implemented as recently as 2014, have shown the Canadian government's willingness to prioritize Canadian grain shipments over other sectors and originations.[2] In addition, Canadian shippers currently have access to policy tools such as their final offer rate arbitration and competitive switching that provide them with an edge vis a vis US producers. The results of those policies have become clear over time. If that advantage were to extend to Canadian shipments farther into the US

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[1] *See* USWA Comments to Office of United States Trade Representative, USTR-2018-0029, Canada, Oct. 30, 2018, https://www.regulations.gov/comment/USTR-2018-0029-0043.

[2] *See* Wall Street Journal, *Canada Mandates Higher Minimum Grain Shipments for Railroads,* Aug. 1, 2014, https://www.wsj.com/articles/canada-mandates-higher-minimum-grain-shipments-for-railroads-1406913099

domestic market, and into Mexico – great harm could come to the US wheat industry. As such, it is important that the STB consider measures such as more competitive access and additional transparency measures to ensure that this merger results in healthy competition between railroads and their customers, rather than a further consolidation of market power and uneven advantages accruing to certain shippers.

Moreover, Mexico is USWA's largest export customer, taking in more than 3 million tons of wheat from the US annually. An increasing share of that wheat is moving directly to Mexico via rail. Mexican customers and US elevators have increasingly added shuttle train capacity to support those moves. More than 75% of current year shipments to Mexico have been shipped via direct rail, resulting in lower costs, faster transit times, and greater predictability for both shippers and receivers.

Furthermore, the current KCS railroad encompasses large portions of US winter wheat production, adding the CP network to that system is projected to dramatically increase traffic on the now-KCS lines, potentially driving rates higher for US wheat producers, and possibly straining a system under a great deal of scrutiny for service and delay issues.

Wheat shippers have been adversely impacted by the consolidation of the rail industry and their increasingly captive status in many locations. Further consolidation of the rail industry will only make this impact worse. Moreover, USWA has serious concerns discussed above about how this transaction could impact the US wheat market because it could create new inroads into the US and Mexican wheat markets for rail-advantaged Canadian wheat shippers. As a result, USWA is opposing this transaction or alternatively seeking conditions in the event the Board approves it.

THE TRANSACTION

Applicants are seeking approval under 49 U.S.C. §§ 11321-26 for a proposed transaction that involves the acquisition of control by Canadian Pacific Railway Limited (Canadian Pacific), Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries, Soo Line Railroad Company (Soo Line), Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware & Hudson Railway Company, Inc. (collectively, CP) and Kansas City Southern and its U.S. rail carrier subsidiaries, The Kansas City Southern Railway Company (KCSR), Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, KCS) (CP and KCS collectively, Applicants).

By decision served April 21, 2021, the Board found the Transaction to be a "major" transaction under 49 C.F.R. § 1180.2(a), as it is a control transaction involving two or more Class I railroads. Canadian Pacific presently controls Soo Line, a Class I railroad, and proposes in Docket No. FD 36500 to acquire common control of KCSR, also a Class I railroad. *See Canadian Pac. Ry.—Control— Kan. City S. (Decision No. 3),* FD 36500, slip op. at 3 (STB served Apr. 21, 2021). By decision served April 23, 2021, following a public comment period, the Board found the proposed transaction to be subject to the regulations set forth at 49 C.F.R. part 1180, subpart A, in effect before July 11, 2001, pursuant to the waiver for a merger transaction involving KCS and another Class I railroad under 49 C.F.R. § 1180.0(b). *See Canadian Pac. Ry.—Control—Kan. City S. (Decision No. 4)*, FD 36500, slip op. at 2-3 (STB served Apr. 23, 2021) (with Vice Chairman Primus dissenting).

The Transaction involves all the U.S. mainline and branch line mileage of the CP and KCS rail systems. (Application 1-31.) The CP rail network spans Canada from the Pacific Ocean at Vancouver to the Atlantic Ocean at Saint John, N.B. In the United States, CP owns rail property in Michigan, Illinois, Minnesota, North Dakota, South Dakota, Wisconsin, Maine, Vermont, Iowa, Missouri, and New York, reaching into the U.S. industrial centers of Chicago, Ill., Detroit, Mich., Buffalo, N.Y., Albany, N.Y., Kansas City, Mo., and Minneapolis, Minn. (*Id.* at 1-20; id., Ex. 13, Operating Plan 8.) CP's principal routes serving the United States extend from six Canada/United States border crossings: North Portal, Sask./Portal, N.D.; Emerson, Man./Noyes, Minn.; Windsor, Ont./Detroit; Buffalo; Rouses Point, N.Y.; and a point near Jackman, Me., on the Quebec/Maine border. CP also operates a short stretch of branch line trackage between Abercorn, Que., and Richford, Vt. (*Id.* at 1-22 to 1-23.)

The KCS rail network extends in a north-south corridor from Kansas City, south to the Pacific Ocean at the Port of Lazaro Cardenas, Mexico. (*Id.* at 1-24.) In the United States, KCS owns rail property in Alabama, Arkansas, Illinois, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas. (*Id.* at 1-20.) KCSR's network is centered on Shreveport, La., with lines radiating in five directions. (*Id*. at 1-24.) KCSR's north-south corridor extends from the Mexican border at Laredo, Tex., to Kansas City. *(Id.*) The "Meridian Speedway" line runs east-west through Shreveport, between the Dallas, Tex. area and a connection with Norfolk Southern Railway Company at Meridian, Miss. (*Id.* at 1-25.) KCSR operates a secondary line that extends southeast from Shreveport to New Orleans, La. (*Id*.) KCSR also operates the former "Gateway Western" lines extending east from Kansas City to Springfield, Ill., and East St. Louis, Ill., where it connects with the Terminal Railroad Association of St. Louis and other Class I railroads. (*Id.)* KCSR also operates several former "MidSouth" branch lines in Mississippi and Tennessee. (*Id.)*

As set forth in the September 15 Merger Agreement, Canadian Pacific, through its indirect, wholly owned subsidiary Cygnus Merger Sub 2 Corp., acquired KCS. (*Id.* at 1-2.) Upon receipt of approval by the shareholders of Canadian Pacific and KCS and the satisfaction of other customary closing conditions, Cygnus Merger Sub 2 Corp. merged with and into KCS (the Merger), with KCS surviving the Merger. (*Id.*) Upon completion of the Merger, holders of KCS's common stock became entitled to receive a combination of Canadian Pacific common shares and cash in exchange for their common stock, and holders of KCS's preferred stock became entitled to receive cash in exchange for their preferred shares. (*Id.*) Immediately following completion of the Merger, Canadian Pacific conducted a series of internal transactions that resulted in its voting interest in the successor to KCS being placed into a voting trust, as approved by the Board (*Id.*) As a result of the internal transactions, KCS is legally merged with and into Cygnus Merger Sub 1 Corporation, a wholly owned subsidiary of CP, with Cygnus Merger Sub 1 Corporation surviving. *(Id.*) However, the successor holding company of KCS will continue to own KCS's railroad and other affiliates, and will maintain the same name, governance structure, and other corporate-level attributes of KCS. (*Id.*) Applicants state that, if and when the Board grants the Application, CP accepts any conditions imposed by the Board, and the Board's approval becomes administratively final, then the voting trust would be terminated, and Canadian Pacific would assume control of KCS. (*Id.* at 1-3.)

STB VIEW ON FURTHER MERGER ACTIVITY

The regulations applicable to this transaction as noted are set forth at 49 C.F.R. part 1180, subpart A, in effect before July 11, 2001, pursuant to the waiver for a merger transaction involving KCS and another Class I railroad under 49 C.F.R. § 1180.0(b). These merger regulations were adopted soon after passage of the Staggers Act of 1980. The Board has explained that "the widespread financial distress faced by our nation's rail carriers in the period leading up to enactment of that statute, and the associated deteriorating service levels faced by their customers, were due in large measure to an overly restrictive regulatory system that unduly limited the ability of railroads to effectively rationalize what was at that time a significant degree of excess rail infrastructure."[3] These merger regulations — aimed at encouraging railroads to formulate proposals that would help rationalize excess capacity so long as competition, access to essential service, and other public interest goals were not degraded — were in response to these serious problems affecting railroads and their customers at that time.[4]

As the Board explained, however:

> The goals of that merger policy have largely been achieved. It does not appear that there are significant public interest benefits to be realized from further downsizing or rationalizing of rail route systems, as there is little of that activity left to do. Looking forward, the key problem faced by railroads — how to improve profitability through enhancing the service provided to their customers — is linked to adding to insufficient infrastructure, not to eliminating excess capacity.[5]

Therefore, the Board noted that any additional rail mergers presently offer very little opportunity for additional efficiencies through elimination of excess capacity. And while extensions of single-line service as touted by Canadian Pacific here can offer benefits to railroads and their customers, the Board has expressed that these benefits could be better achieved, short of merger, through innovative joint marketing arrangements and other cooperative efforts, such as joint dispatching to more efficiently move trains through congested terminal areas.[6] With

[3] *Major Rail Consolidation Procedures,* EP 582, slip op. at 3 (STB served Mar. 31, 2000).
[4] *Id. See* 49 CFR 1180.1(a) (The Surface Transportation Board encourages private industry initiative that leads to the rationalization of the nation's rail facilities and reduction of its excess capacity. One means of accomplishing these ends is rail consolidation).
[5] *Public Views on Major Rail Consolidation,* EP 582, slip op. at 6 (STB served Mar. 17, 2000).
[6] *Major Rail Consolidation Procedures,* EP. 582, slip op. at 3.

respect to transactions like here, the Board advised that "[j]oint marketing arrangements, which enable railroads to offer joint-line service almost as seamless as single-line service, could be more practicable and more likely to be in the public interest when the carriers connect largely end-to-end, rather than competing over broad territories."[7] Further, the Board expressed concern that the integration of two large railroads is complicated and takes a significant amount of time, and has been associated with severe service disruptions.[8]

Additional service disruptions at the present time would be devastating to the U.S. supply chain. There are already major service issues on the U.S. rail network brought on by the pandemic and the widespread adoption of Precision Scheduled Railroading as the Board has noted.[9]

The prospect of reducing the already small number of major Class I railroads even further is deeply concerning. As a result of the intense merger activity that took place in the 80s and 90s, the number of overall railroad companies has been reduced dramatically, and the size of the remaining carriers has increased correspondingly. This consolidation has resulted in less competition, higher rates, and poorer service over the last twenty years.[10]

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[7] *Id.* at 3, note 10.
[8] *Id. at 3.*
[9] *See, e.g., First-Mile/Last-Mile Service,* EP 767 (STB served Sept. 2, 2021).
[10] *See, e.g.,* Escalation Consultants, "*Economic Analysis: Consolidation and Increasing Freight Rail Rates*," June 2021, https://www.freightrailreform.com/new-report-finds-rail-customers-paying-a-steep-price-for-consolidation-and-dwindling-competition/; Rate Reform Task Force, Report to the Surface Transportation Board, at 11, Apr. 25, 2019, https://prod.stb.gov/wp-content/uploads/Rate-Reform-Task-Force-Report-April-2019.pdf ; U.S. Senate Committee on Commerce, Science, and Transportation, *The Current State of the Class I Freight Rail Industry*, at 9-10 (Sept. 15, 2010) (describing increased "pricing power" and higher margins for Class I railroads); U.S. Gov't Accountability Office, *Freight Railroads: Industry Health Has Improved, but Concerns about Competition and Capacity Should be Addressed*, at 13-16 (Oct. 6, 2006) (documenting rate increases from 2000 to 2004, and explaining "the rail industry has continued to consolidate, potentially increasing the market power of the largest railroads. …[A]ccording to

OPPOSITION TO TRANSACTION/REQUEST FOR CONDITIONS

Under 49 U.S.C. § 11324, the Board must consider the public interest in addressing rail mergers, considering, at a minimum, **adequacy of transportation to the public**; including other rail carriers in the area involved; **competitive effects**; financial impacts on the involved carriers; and impacts on employees. "The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities." *Id.* at (c). In addition, the rail transportation policy set out in 49 U.S.C. § 10101 directs the Board, among other things, to promote safety, efficiency, good working conditions, an economically sound and competitive rail transportation system, and the needs of the public and the national defense.

USWA's reasons for its opposition to this transaction are further loss of rail competition, unfair competitive advantage for Canadian wheat, and poorer rail service. These impacts from this transaction clearly make it inconsistent with the public interest, thereby requiring the Board to deny it.

As the U.S. Department of Justice explained in its comments[11] filed earlier in this proceeding:

> Although on its face this transaction may raise fewer competitive problems than other possible combinations of Class I railroads, the Board should carefully consider the

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freight railroad officials, shippers, and financial analysts, since 2004, rates have continued to increase as the demand for freight rail service has increased, and rail capacity has not kept pace with demand.").

[11] Comment of the U.S. Dept. of Justice, Apr. 12, 2021, at 9-10.

competition implications posed by this transaction. As the Board has recognized, a railroad merger can harm competition even if the parties do not compete head to head to provide single-line service between the same origin and destination pairs. As one example, railroads can also compete through "source competition"—that is, the ability of shippers to choose between railroads that can carry their goods to (or receive goods from) different endpoints.[12] As the Board has explained:

> [S]ignificant losses in geographic competition could occur even where carriers truly are "end-to-end," because there are many commodities (such as phosphate and soda ash) that have a limited number of sources. Similarly, a merger between BNSF and a Canadian carrier, even if largely end-to-end, could raise potential competitive concerns in western export wheat markets. End-to-end carriers that compete with each other geographically would stand to gain market power if we were to approve their merger without imposing effective conditions, which, as discussed above, could be difficult.[13]

Railroads can also compete by serving portions of longer multi-carrier or multi-modal shipping routes. For instance, CP and KCS might each provide part of competing

[12] *See* Statement of Interest for the United States, *In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL Docket No. 1869, at 12-13 (July 13, 2020), https://www.justice.gov/atr/casedocument/file/1294246/download (explaining that two hypothetical railroads that interline to serve a move from San Francisco to New York, with one carrying the traffic from San Francisco to Chicago, the other from Chicago to New York, could still compete with one another for the business of a shipper in Chicago: "Thus, if a Chicago-based shipper disliked western carriers' rates to San Francisco, it could shop for a lower price and send its product instead to New York on an eastern carrier if a market for its product existed in both cities. Western and eastern carriers are rivals in this scenario – they are not competitively neutral and they are certainly not partners."); Russell Pittman, *Options For Restructuring The State Owned Monopoly Railway*, Railroad Economics 182 (2007).

[13] *Major Rail Consolidation Procedures,* EP 582, slip op. at 16 (STB served June 11, 2001).

multi-modal routes between Asia and the eastern United States, or might compete to serve north-south routes by each partnering with other rail lines. A merger could reduce this type of competition by depriving current or future interchange partners of CP or KCS of a means to compete for this traffic, and thus reduce choices for shippers and ultimately raise prices.

Class I railroads that do not compete on a day-to-day basis for current shippers may compete in broader ways that are socially important, for example in seeking to attract new shippers to locate on their lines and in the adoption of technological and productivity enhancing innovations; or, correspondingly, they may coordinate tacitly or explicitly in anticompetitive actions.[14] The Board has rightly been attentive to such concerns,[15] and should carefully consider these issues when evaluating this transaction or other potential rail mergers.

Thus, before permitting additional consolidation, the Board should thoroughly examine the competition concerns raised by commenters and ensure that this transaction would not exacerbate these trends. As the Board recognized in adopting the 2001 major

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[14] *See* Comment of The Freight Rail Customer Alliance et al., Apr. 1, 2021, at 3 (expressing concern that "the reduction in Class I railroads from seven to six, even if unaccompanied by further consolidation, will facilitate further rate and practice coordination in what is already a highly concentrated and coordinated industry.").

[15] *See, e.g., Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, EP 711, slip op. at 9 (STB served July 27, 2016) ("[T]he consolidation of class I carriers … could lead to reduced competitive options for some shippers and thus should be considered."); Rate Reform Task Force, Report to the Surface Transportation Board, at 11, Apr. 25, 2019, https://prod.stb.gov/wp-content/uploads/Rate-Reform-TaskForce-Report-April-2019.pdf ("As a result of mergers, there are now only seven class I railroads, and they have rationalized their routings and increased rates.").

rail consolidation procedures, the consolidation that has already occurred in this industry means "There is little margin for error as we proceed ahead."[16]

The number of Class I railroads has remained the same since 2001 when the Board expressed its strong concerns over any further major mergers and adopted the new merger guidelines. Now, CP and KCS want to change the landscape to only six Class I railroads in the U.S. As noted, the effects of rail consolidation in the 80s and 90s after 2001 have led to higher rates, less competition, and poorer service. The statement by Chairman Morgan at that time that there is little margin for error when addressing the next major merger is even more true today as the railroads have clearly used their market power to their overwhelming advantage and to the disadvantage of their customers over the past two decades. Therefore, the Board should deny approval of this transaction as it is clearly against the public interest.

Alternatively, if the Board approves the transaction, it should impose the three forms of statutory competitive access as conditions on this transaction for use by any shipper on the new CP/KCS system that is subject to market dominance or receives inadequate service.

Competitive access generally refers to the ability of a shipper to use the facilities or services of an incumbent railroad to extend the reach of the services provided by a competitor railroad. The provisions of 49 U.S.C. §§ 11102 and 10705 make three competitive access remedies available to shippers: the prescription of through routes, terminal trackage rights, and reciprocal switching.

For example, with respect to conditions that could help ameliorate the anticompetitive effects of a major transaction in the post-2001 era, in a quite similar situation, Canadian Pacific

[16] *Major Rail Consolidation Procedures,* slip op. at 66.

announced a proposal to acquire Norfolk Southern in November 2015. Canadian Pacific stated repeatedly that it believed its proposal to acquire Norfolk Southern would have a significantly pro-competitive outcome, emphasizing there is minimal overlap between the track networks of the two companies, and instead the merger would be a market-extension creating an end-to-end transcontinental solution for customers in large parts of the US and Canada.[17] In making this proposal, CP offered to include as a part of the transaction modified terminal access which would have allowed another carrier to operate over CP+NS lines to serve a customer if the customer is not receiving adequate service or is being charged an unreasonable rate. CP also offered to end the bottleneck pricing approach, allowing customers to obtain a separately challengeable rate to the customer's preferred interchange location. It noted that these proposals are consistent with the type of competitive enhancements that the STB has found would offset merger-related competitive harms.[18] Also, in this proceeding, Applicants have already fully committed to keeping all existing gateways open both physically and commercially and ensuring that shippers' existing bottleneck rate regulatory options are not adversely affected by the transaction.[19]

These crucial competitive access conditions will help to alleviate the inevitable service issues that will occur when the two railroads begin to merge their operations. This outcome is one of the major reasons behind why the new merger guidelines were created and should not be taken lightly here.[20] The U.S. rail network is already under tremendous strain at the present time

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[17] *CP Asks U.S. Dept. of Justice to Review Recent Meeting of Some Class I Railroads to Oppose CP Acquisition of NS* (Jan. 19, 2016), https://www.cpr.ca/en/investors/cp-asks-doj-to-review-recent-meetings
[18] *CP Responds to Norfolk Southern White Paper* (Dec. 15, 2015), https://www.cpr.ca/en/investors/cp-responds-to-ns-white-paper
[19] Applicants' Reply to Objections to KCS Waiver from 2001 Major Merger Rules, Apr. 12, 2021, at 21.
[20] *Major Rail Consolidation Procedures,* EP, slip op. at 3.

due to the use of Precision Scheduled Railroading and the ongoing supply chain issues caused by the pandemic. Both KCS and CP are Precision Scheduled Railroading railroads and could easily have crushing service issues from the implementation of this merger at a time when the country certainly does not need additional supply chain problems. As a result, by providing these captive or inadequately served shippers with access to competing railroads, the Board would be ensuring a better transition during the implementation of this merger and protecting the U.S. from additional mayhem brought on by the service issues that will occur as a result of this transaction during a time when the national supply chain cannot afford any additional issues.

Moreover, as discussed, this further consolidation of an industry that is clearly overly consolidated and lacking competition in many instances will only result in less competition, higher rates, and poorer service on this new rail system. While an end-to-end merger will not result in the normal 2-1 railroad effects that the Board has remedied in the past to preserve competition, the impacts of further consolidation of the Class I railroads will only decrease the options available to the shippers that are on these two rail systems as discussed herein. As a result, the time has come for the Board to remedy this loss of competition caused by this merger through these three competitive access remedies. The way to avoid deterioration in competition on this system is to introduce new competition. Otherwise, the new CP/KCS system will reap the benefits of this loss in competition at the sole expense of its shippers. In addition, by providing competitive access to wheat shippers in the U.S., they will be able to better compete with the Canadian wheat shippers who will now have improved inroads to access the U.S. wheat market and the valuable export market in Mexico due to the reach of this transaction across three countries.

Finally, as an additional condition, the Board should permit USWA access to unmasked Confidential Carload Waybill Sample (with masking factors) to study the impacts this transaction will have on the U.S. wheat market. If Canadian wheat shippers are receiving better rail rates than U.S. wheat shippers, thereby causing a loss in business as a result of this transaction, the U.S. wheat industry should be aware of these issues. This result would certainly not be in the public interest and should warrant action by the Board.

CONCLUSION

Based on the foregoing discussion, USWA respectfully opposes this transaction for the reasons discussed herein. Alternatively, if the Board approves the transaction, USWA alternatively asks the Board to impose these competitive access and data conditions on this merger to prevent the loss of competition, to improve service, and to protect U.S. wheat shippers.

Respectfully submitted,

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Dated: February 28, 2022

Certificate of Service

I certify that I have, this 28th day of February 2022, served by email copies of the foregoing document on all parties of record in this proceeding and on the parties listed below, by first-class mail, postage-prepaid, or by email:

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