

October 3rd, 2022

BY EMAIL: law@runyowa.com

Docket No. FD 36500 et al.

305413

Attn: The Honourable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001.

ENTERED
Office of Proceedings
October 3, 2022
Part of
Public Record

Dear Ms. Brown,

RE: September 29, 2022, public hearing and jurisdiction question.

First, our thanks to the Board for accommodating our participation in its September 29, 2022, public hearing on the CP Railway-KCS merger. We appreciate the Board's attention despite the logistical challenges of facilitating many parties over long days of detailed presentations.

Second, we understand that there was a technical problem with the audio feed during my presentation. I understand that the webcast had no audio at the start, including after I turned on the microphone. The STB's version on YouTube started my presentation at 9:40:38 but the audio started at 9:40:56. It appears that the first 18 seconds are missing. Although this is a relatively modest duration, it is an important part of the text and context of the presentation. It is also an important part of the record of proceedings, especially given CP Railway's application to strike my clients' written submissions from the record. Therefore, my clients seek confirmation of whether these missing seconds of audio were recorded and will be added to the record.

Third, at the end of my presentation, Chairman Oberman raised the question about whether the STB had jurisdiction over the issues in my clients' submissions, or whether the Federal Railroad Administration had that jurisdiction. We understand that he was not making a formal ruling on the question and that the Board will formally consider that question before deciding it. That said, we did address the Board's jurisdiction at page 7 of our clients' whistleblower alert, but in summary, we understand the Board's jurisdiction arises under Title 49 U.S.C. § 721 and § 10101. It is our

understanding that whether a railroad merger would exacerbate harms to public health and safety and the honest management of railroads is within the Board's jurisdiction. Further, the Board's interactions with other parties at the hearing affirmed that the overriding public interest is at the centre of the merger review process.

Given the above, we respectfully submit that the privacy, civil liberties, civil rights, railroad governance, national security, public health and safety, sovereignty, and justice system implications of expanding CP Railway's cross-border policing activities fall squarely within the STB's jurisdiction. These are the very issues at the centre of our clients' written and oral submissions. If the Federal Railroad Administration had any jurisdiction over the issues, it is our understanding that this would still not deprive the STB of its jurisdiction, and potentially, its obligation, to address the merger-related impacts of expanding CP Railway's policing powers in the United States. As the STB's jurisdiction over railroad mergers is not in doubt, the STB is likely the last line of defence against a combination that will create the first continental police-security force in the USMCA region, and whose operational command will be vested in corporate civilians outside of American soil.

If the STB found that it had no jurisdiction over the initial or expanded externalization of policing powers via railroad mergers and acquisitions, that precedent would empower private persons and entities from outside the United States to leverage such combinations to secure and command police powers in the country from abroad.

Finally, the jurisdiction issue is not limited to the question of CP Railway's railroad policing per se. The policing aspect of the merger is both an independent question and broader context from which other discrete merger impacts arise. For example, the cross-border privacy of American citizens' personal information arises from the railroad policing issue but is, in itself, a distinct impact of the merger. Similarly, the sovereignty, civil rights, civil liberties, criminal justice, national security, and other public interest may arise from the railroad policing context but independent jurisdictional issues of concern. Therefore, it appears that any analysis of the jurisdiction "question" would, in fact, entail an independent review of the Board's jurisdiction over each issue. We submit that when such an analysis is applied to the policing question and the other discrete interests it raises, the STB has jurisdiction over these issues and the associated merger impacts.

Thank you,

This document has been served on the parties of record by email.

Tavengwa Runyowa

Tavengwa Runyowa