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BEFORE THE
SURFACE TRANSPORTATION BOARD

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NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

CSX TRANSPORTATION, INC.'S
PETITION TO REJECT
NORFOLK SOUTHERN'S REVISED APPLICATION

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VERIFIED STATEMENTS

- Verified Statement of Nathan Miller, Professor at Georgetown University and Founding Partner with Econic Partners
- Verified Statement of Julie M. Carey, Senior Managing Director with National Economic Research Associates, Inc.

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1. INTRODUCTION AND SUMMARY

Pursuant to *Decision No. 6* in the above-referenced proceeding, CSXT¹ hereby submits its comments on the completeness of NS's Revised Application.² As explained below, the Board should reject as incomplete the Revised Application.

NS continues to treat its on-going unlawful control of NPBL with supreme arrogance. Consistent with its minor application, NS's purported *prima facie* case in its Revised Application is simple: We (NS) have controlled NPBL unlawfully for decades, our control of a supposedly neutral terminal railroad has had no anticompetitive effects, and nothing will change if the Board authorizes us to control NPBL going forward. In other words, there is nothing to see here.

¹ Unless otherwise defined, the acronyms and defined terms used herein are the same as those used in the Board's *Decision No. 2*, served on March 14, 2025 in this proceeding, or in CSX Transportation, Inc.'s Petition to Reject Norfolk Southern's Minor Application, filed on February 27, 2025.

² NS filed a Supplement and Perfection of Application on June 13, 2025. NS's supplement, and its February 14, 2025 submission, are collectively referred to herein as the "Revised Application."

NS's theory of the case is fatally flawed in many ways. And like many of NS's filings in this control proceeding and related Board proceedings, the Revised Application is riddled with misrepresentations and inaccuracies. Those flaws will be the subject of a merits analysis if the Board accepts NS's Revised Application as complete. However, at this initial stage in the proceeding, the question is whether NS's Revised Application satisfies the extensive data and analysis requirements of the Board's rules governing significant applications, i.e., whether NS's Revised Application is complete. It is not, and the Board should reject it.

NS's head-in-the-sand premise for this case led it to completely ignore or treat glibly and without analysis several central elements of a significant application, such as the need for a coherent and data-supported impact analysis, a marketing plan, an "inclusion" analysis, and a data-supported definition of relevant markets. NS made critical assertions about competitive factors – such as its claim that CSXT has effective on-dock rail access at NIT even though it has *zero* market share – without adequate data support or expert analysis.

In effect, NS's Revised Application is little more than a repackaged version of its minor application, with lip service to the specific data requests that the Board rightfully demanded in *Decision No. 2. See Norfolk S. Corp. & Norfolk S. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co. (Decision No. 2)*, FD 36836, slip op. at 8 (STB served Mar. 14, 2025). But in asking for certain specific data, the Board clearly did not waive the other important requirements of the Board's rules governing significant applications. The rules are explicit: an application is complete when it "contains all information for all applicant carriers required by these procedures, except as modified by advance waiver." 49 C.F.R. § 1180.4(c)(7)(i). "[I]f the application is incomplete, the Board shall reject it. . . ."

49 U.S.C. § 11325(a). Moreover, the Board’s rules require that “[t]he application must present a *prima facie* case.” 49 C.F.R. § 1180.4(c)(8).³

The Board made it abundantly clear in a recent proceeding that it expects a party seeking control authorization for a significant transaction to provide extensive data and analysis of market and competition, regardless of whether the party seeking control authority thinks such information is necessary. *See CSX Corp. & CSX Transp., Inc.—Control & Merger—Pan Am Systems, Inc. (Decision No. 3)*, FD 36472 (STB served May 26, 2021). NS’s nothing-to-see-here approach does not satisfy the requirements of the statute and the Board’s rules. Therefore, the Board should reject NS’s Revised Application.

This CSXT Petition is supported by verified statements from Nathan Miller, Professor at Georgetown University and Founding Partner at Econic Partners, and Julie M. Carey, Senior Managing Director with National Economic Research Associates, Inc.

2. ARGUMENT

2.1. The Revised Application is incomplete because NS failed to present an adequate impact analysis (49 C.F.R. § 1180.7(a)).

One of the most important elements of a significant application is the “impact analysis.” The Board’s rules expressly require “impact analyses (exhibit 12) describing the impacts of the proposed transaction—both adverse and beneficial—on inter-and intramodal competition.” 49 C.F.R. § 1180.7(a). In addition, 49 C.F.R. § 1180.6(a)(2) requires an examination of the “effect of the proposed transaction.”

³ Applicants can fail to meet their burden of proof and thus not present a *prima facie* case either by “(1) disclosing facts that, even if construed in their most favorable light, are insufficient to support a finding that the proposal is consistent with the public interest, or by (2) disclosing facts that affirmatively demonstrate that the proposal is not in the public interest.” *Railroad Consolidation Procedures Expedited Processing*, 363 I.C.C. 767, 769 (1980).

An impact analysis logically must compare a world (and market and competitive conditions) “with control” and a world “without control.” Otherwise, no “impact” can actually be analyzed.

Normally, of course, the party seeking control authority has not already and unlawfully been exercising control of the target, so the world “without control” is the existing world. That applicant can and must describe the conditions of the existing world so that the applicant can compare it to the hypothetical world “with control.” Here, however, NS has unlawfully controlled NPBL for decades, so the world “with control” is the existing world. But NS utterly failed to establish what the world would look like “without control.” This alone renders NS’s Revised Application incomplete.

An “impact analysis” in this proceeding must contain analysis, supported by data, showing how an independent and neutral NPBL would act if the Board denies NS’s request for control authority. NS could have presented a historical analysis, looking at how the market would have developed if NPBL had been independent and neutral, instead of controlled (unlawfully) by NS. But NS presented no historical analysis. Indeed, NS claims that the Board “should not” “consider past competitive conduct and market changes stemming from the 1982 transaction.” (NS Supplement 31.) In NS’s view, “[t]his proceeding is solely about whether NS’s *future control of NPBL* will result in a substantial lessening of competition.” (*Id.* at 17.)

NS also could have presented an analysis of how an independent and neutral NPBL would act on a going-forward basis if the Board denies NS’s request for control authority. But NS only provided a fleeting reference to that possibility. NS claimed that “a fully independent NPBL could decide to change the foundational documents and not set rates in accordance with the cost-based approach. This would result in even a higher rate for CSXT to access NIT via an NPBL switch.” (*Id.* at 28 n.50.) As implausible as that claim is, it implies that NS believes that a

“without control” world could look dramatically different than the current “with control” world. But NS has failed to adequately analyze this theory or support it with any data or analysis.

The complete lack of analysis on the competitive characteristics of a market that would exist with a neutral and independent NPBL is only complicated by NS’s waffling on the critical question of whether it actually controls NPBL today. After admitting repeatedly that NS has controlled NPBL for decades, NS now suggests that perhaps NPBL is actually independent. NS claims that “NS does not currently exercise control over the NPBL board, as only 3 of 6 of those board members represent NS’s interest.” (*Id.* at 22.) NS is wrong, as CSXT will establish in any merits phase of this proceeding. But the Board cannot make a reasoned impact analysis if NS equivocates on the central issue in the proceeding – does NS currently control NPBL or not?

Because NS failed to provide an adequate impact analysis, the Revised Application is incomplete and should be rejected.

2.2. The Revised Application is incomplete because NS failed to address the effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads (49 C.F.R. § 1180.6(a)(2)(vi)).

The Board’s rules require that an applicant address, as part of a detailed discussion of the public interest justifications in support of the application, “[t]he effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. 11324.” 49 C.F.R. § 1180.6(a)(2)(vi). This requirement is of particular importance and relevance here, in a proceeding that will determine whether a terminal railroad that should neutrally serve its two owning railroads should be controlled by one of those owners. NPBL is co-owned by and serves both NS and CSXT, so it is only natural that the effects of CSXT’s inclusion in a transaction involving NS’s control of NPBL should be analyzed under

this rule. But it is another requirement that NS virtually ignores. The sole reference to this explicit regulatory requirement is: “There is no basis for including another railroad in the control approval because such approval will not adversely affect the ability of any other carrier to provide essential services.” (NS Supplement 42.)

This totally unsupported assertion, even if it were true, does not even begin to answer the question posed by the regulation: What would the effect be of including CSXT or another railroad in the proposed transaction? The only thing that NS’s threadbare response makes clear is that NS does not want the Board to consider inclusion of another railroad. But NS’s desire on the topic is not what the regulation demands. The Board’s rule requires that the applicant provide an analysis of the effect of including another railroad. Would competition be sharpened? If not, why not? Would shipper service be improved? Would operations be affected? Would NPBL’s charter as a terminal railroad providing neutral access to facilities like NIT be advanced? Nothing. NS’s Revised Application says *nothing* about these critical issues.

Contrast NS’s wholly inadequate approach here with the circumstances of the *CSX/Pan Am* case, another recent transaction that the Board found to be “significant.” In that case, CSXT did not even file an application until it had reached out to other potentially affected railroads to ensure that the transaction would include other affected parties and would advance the broader public interest. As CSXT explained there, CSXT had voluntarily negotiated agreements with other railroads (including NS) before requesting control authority. CSXT addressed through related transactions with other railroads any potentially adverse competitive effects that might have arisen as a result of the proposed transaction. (CSXT Appl. APP-36, July 1, 2021, *CSX/Pan Am*, FD 36472.)

Here, NS says nothing about the efforts by CSXT, ultimately rejected by NS, to comply with the Board’s direction to address NS’s unauthorized control of NPBL

by implementing alternative control arrangements for NPBL that would ensure NPBL's neutrality. In short, NS fails to provide any analysis whatsoever of the "inclusion" issue as required by the Board's regulations. This renders NS's Revised Application incomplete.

2.3. The Revised Application is incomplete because NS failed to submit a marketing plan (49 C.F.R. § 1180.7(a)).

Another critical requirement of the Board's regulations that is utterly ignored by NS is the requirement to submit a marketing plan. Under 49 C.F.R. § 1180.7(a), the impact analyses "should reflect the consolidated company's marketing plan" The Board takes this requirement seriously. In the *CSX/Pan Am* case, the Board rejected CSXT's significant application because CSXT did not provide sufficient evidence supporting its marketing plan. *See Decision No. 3*, FD 36472, slip op. at 8 (finding that the applicants "present[ed] no evidence for any of the listed items regarding the consolidated company's marketing plan"). Here, NS did not even bother to submit *any* marketing plan.

In response to the § 1180.7 requirements, NS simply referred to its minor application and several other materials, including a list of the top 10 NPBL customers for the past five years, which the Board specifically requested. *See Decision No. 2*, FD 36836, slip op. at 8. The minor application entirely lacked a marketing plan, and a list of certain NPBL customers clearly does not constitute a marketing plan. Does NS intend to reach out to other customers? How does NS, if granted control authority, expect to develop market opportunities for new and existing customers? Will NS even attempt to enter or expand the intermodal market with NPBL? How does NS see the marketing opportunities that arise from recent expansion of NIT? Again, there is nothing.

Moreover, the regulation demands information on the "consolidated company's marketing plan," but NS does not say a word about how it will undertake

future marketing efforts in the relevant market or markets (NS's failure to identify or analyze the relevant market is addressed below). NS treats NPBL as a "consolidated subsidiary" for STB economic reporting purposes.⁴ How does NS see NPBL supporting or affecting NS's own marketing efforts? What will NS's marketing plan be if control authority over NPBL is denied? Nothing.

Because NS failed to provide a marketing plan pursuant to the Board's rules, the Board should reject the Revised Application as incomplete.

2.4. The Revised Application is incomplete because NS failed to provide a description of the relevant markets (49 C.F.R. §§ 1180.6(a)(2)(i), 1180.7(a)).

Under 49 C.F.R. § 1180.6(a)(2)(i), NS must address "[t]he effect of the transaction on inter- and intramodal competition, including a description of the relevant markets (see § 1180.7)." 49 C.F.R. § 1180.7(a) requires NS to "identify and address relevant markets and issues," and "demonstrate both the relevance of the markets and issues analyzed and the validity of their methodology" as part of the market analysis. *See also Decision No. 3*, FD 36472, slip op. at 8 (discussing the relevant markets issue).

NS asserts that approval of the Revised Application "will have no adverse effect on competition for any shippers who currently use NPBL" and lists what it characterizes as a "myriad of competitive options" for shippers, including rail, drayage to rail and truck from NIT, rail and drayage from VIG, as well as competition from "other East Coast ports." (NS Supplement 34.) However, while NS lists many modes of transportation and many locations, it fails to state which is a relevant market for this transaction, describe the specific contours of that market, or explain how it reached its market definition. It is unclear if NS is arguing that all

⁴ See Norfolk Southern Class I Railroad Annual Report 4 (2023), available at <https://norfolksouthern.investorroom.com/image/2023+NS+Consolidated+R1+Schedules+and+Footnotes.pdf>.

these modes and locations are substitutes for on-dock rail service at NIT. If so, NS has failed to provide the required supporting data to demonstrate the relevance of the market(s) and the validity of its methodology.

Moreover, this proceeding obviously focuses on transportation involving NIT, but NS's discussion of the market analysis required under § 1180.7(a) virtually ignores NIT. (*See id.* at 44.) Is the movement of intermodal containers through NIT a relevant market? Nothing. In fact, NS tries to divert attention from NIT to the Port of Virginia generally and cites statistics regarding CSXT growth at the Port of Virginia (at VIG) since 2007. (*Id.*) But NS does not cite statistics or provide analysis about shippers who may demand on-dock rail service at NIT (where NS's market share is 100%), does not appear to give on-dock rail at NIT any consideration as a relevant market, and does not cite to any supporting evidence as to why or why it did not consider NIT as a relevant market. Furthermore, NS fails to analyze the effect of the expanded capacity and renovations at NIT on future prices and service quality and possible additional NIT-specific demand from shippers.

NS has presented the Board with equivocal, non-specific assertions about a possible range of markets at issue here – NIT, Port of Virginia, or all East Coast ports – with an assurance that, regardless of the correct markets, there will be no substantial lessening of competition. That's not enough. It's not up to the Board to determine what the relevant markets are in a control proceeding. The applicant must present a *prima facie* case, and that requires that the applicant establish the relevant markets. Without a clear articulation of the relevant markets and support for the methodology in defining the markets, NS's Revised Application is incomplete and should be rejected.

2.5. The Revised Application is incomplete because NS failed to show that NS control would not result in a “2-to-1” reduction in competition.

In the rail merger context, the Board has “consistently sought to assure that agency-approved transactions would not result in the creation of ‘2-to-1’ points where shippers lose existing intramodal rail competition.” *Canadian Nat’l Ry.—Adverse Discontinuance—Lines of Bangor & Aroostook R.R. Co.*, AB 279 (Sub-No. 3) et al., slip op. at 5 (STB served May 3, 2004) (citing *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233, 252, 390-93 (1996)). This is a critical issue in control proceedings, yet it is another issue that is addressed only indirectly by NS, and in a way that raises more questions than it answers. A complete application for control must provide a comprehensive and coherent examination of whether the transaction would result in a reduction of competitive options. NS has not done so here.

NS claims that two-party competition for on-dock rail service at NIT exists today and will remain in place after the Board authorizes NS’s control. But CSXT’s 0% market share contradicts this assertion. How is zero market share evidence of two-party competition? NS provides no evidence or precedent for concluding that a rail carrier serving a port facility has effective on-dock rail access even though it has zero market share. Just because NS says that there is two-party competition at NIT does not make it so.

Moreover, NS argues that the elimination of CSXT as the only competition to NS for on-dock rail at NIT through NS’s control of CSXT’s access to NIT will have no “adverse effect.” But again, a bold statement is not a substitute for credible analysis supported by data. There is none. (*See V.S. Miller* 4-5.)

To the extent that NS presents any theory that would explain CSXT’s zero on-dock rail market share, it appears to be that CSXT has made a “choice” not to compete with NS for on-dock rail service at NIT. NS suggests that CSXT has simply chosen not to compete for on-dock rail service at NIT because CSXT does not want

to reduce its contribution. (NS Supplement 12.) But where is the data to support such an implausible claim? NS provides none.

NS then appears to suggest that there may only be one on-dock rail competitor at NIT – NS – but the Board should not worry about it because CSXT’s access to drayage is sufficient to provide competition. According to NS, “CSXT has historically favored moving NIT traffic by drayage because it receives a subsidy from POV that makes it cheaper than on-dock service.” (*Id.* at 18.) But again, where is the analysis that shippers view drayage as an adequate and effective competitive alternative to on-dock rail access? Is NS arguing that the Board should accept a 2-to-1 transaction so long as there is a truck alternative available to the competitor that has been eliminated?

An application that asks the Board to authorize a 2-to-1 elimination of competition must do much more than NS has done here to explain why the Board should not reject categorically the proposed transaction. NS has failed to make its *prima facie* case on this critical point.

2.6. The Revised Application is incomplete because NS’s market analysis is deficient.

Under § 1180.7(a), NS’s market analyses “can address: city pairs, interregional movements, movements through a point, or other factors; a particular commodity, group of commodities, or other commodity factor that would be significantly affected by the transaction; or other effects of the transaction (such as on a particular type of service offered).” NS’s Revised Application falls short here in several respects. Most importantly, NS fails to provide the Board with economic analyses of how markets and competition would differ without NS control of NPBL. Absent these analyses, the Board cannot properly evaluate the Revised Application.

For example, NS does not provide the Board with an analysis of prices that would be paid by intermodal shippers to/from NIT and Port of Virginia absent NS

control of NPBL. NS suggests that an independent NPBL could move away from the current one-size-fits-all rate, which NPBL put in place 15 years ago to replace the prior multiple-rate structure. NS claims this could lead to an even higher switching rate for CSXT access to NIT. But NS does not provide any analysis of the potential effects of such a move. (*See* NS Supplement 28 n.50.) Nor does NS provide any analysis of whether an independent NPBL could set lower prices in a manner that attracts additional business and covers its costs. (*See* V.S. Miller 2-3.) NS has not provided any analysis that would permit a reliable evaluation of the incentives that an uncontrolled NPBL would have for setting rates or the volumes of traffic that would move under that rate (or information on costs specific to that incremental traffic). (*Id.* at 3.)

In addition, there are numerous other categories of information related to market analyses that the Board should consider, but that NS has failed to provide:

- NS does not present cost data or service quality data for the specific corridor routes between NIT/POV and the inland midwestern markets.
- NS does not address the hundreds of millions of dollars of ongoing work to upgrade NIT's facilities and expand its capacity and the impact of those improvements to NIT on competition.
- NS discusses CSXT's supposed capabilities at the Port of NY/NJ, but NS does not conduct an analysis of a shipper's ability to substitute the Port of NY/NJ for NIT/POV with NS control of NPBL as compared to without NS's control of NPBL.
- While NS notes that trucks have the largest market share in POV (NS Supplement 37), it does not provide statistics regarding truck volumes on the corridors to/from the inland points (which have route distances of 700-1,100 miles) or trucking prices against railroad prices on these corridors.

(*See* V.S. Carey 2-3, June 20, 2025.)

NS has provided insufficient market analysis information for the Board to conduct a reasonable analysis of the competitive outcomes of the transaction. Without this information, the Board should reject the Revised Application as incomplete.

2.7. The Revised Application is incomplete because NS failed to support its claims regarding supposed market comparables.

A central element of NS's theory that competition is not (or will not be) harmed here involves its claim that the current NPBL switch rate is reasonable and not exclusionary. NS asserts that "the \$210 per railcar switching fee charged by NPBL is not only reasonable but also among the most competitive rates on a per-container-per-mile basis compared to other ports competing with NIT for international container traffic." (NS Supplement 12.) Given the importance of this claim to NS's overall theory, it was incumbent on NS to present substantial and credible data and analysis supporting it. Again, NS's alleged support is sorely, and fatally, inadequate.

NS made the same claim in its original minor application and CSXT challenged it then. (*See* V.S. Carey 10, Feb. 27, 2025.) Now, rather than address CSXT's criticisms, NS recycles its original assertion and adds a discussion of the operations of Commonwealth Railway in what appears to be a response to the directive in *Decision No. 2*. (*See, e.g.*, NS Supplement 23-27.) NS provides no new data or analysis relating to the other ports that were the subject of CSXT's critique of the minor application.

Indeed, the new data on the Commonwealth Railway switch rate that NS was required to submit shows conclusively why NS was obligated to do more to support its claim that the NPBL switch rate is "comparable" to other switch rates. NS's original discussion of "comparable" switch rates did not include Commonwealth and instead looked at *tariff* rates for 13 terminal railways in states *other* than Virginia.

But the Commonwealth switch rate data that NS was required to submit shows that Commonwealth has a contract switch rate of {{ [REDACTED] }} per container with NS, which is lower than the tariff-based switch rates that NS originally claimed were “comparable” to the NPBL switch rate and far lower than the NPBL switch rate (based on two containers).

The new data provided by NS on the Commonwealth switch rate shows that NS’s original list of out-of-state tariff-based rates do not provide reliable comparables to the NPBL rate. Furthermore, while NS provided the Commonwealth contracted rate as required by the Board, NS chose not to update its original list to provide contracted rates (where available) for the other terminal railways. As a result, the Board is left with unreliable data from NS supporting its critical claim that the NPBL switch rate is reasonable.

3. CONCLUSION

For the reasons set forth above, CSXT respectfully requests that the Board reject the Revised Application as incomplete. Moreover, the Board should not allow NS to refile any application without first divesting its on-going unlawful control of NPBL. NS has patently disregarded the Board’s governing statute for years. The Board should not allow it to continue.

Respectfully submitted,

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VERIFIED STATEMENT OF NATHAN MILLER

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My name is Nathan Miller. I am Professor at the McDonough School of Business and the Department of Economics at Georgetown University. I am also a Founding Partner at Econic Partners, an international economics consulting firm.

I previously served as Chief Economist of the U.S. Department of Justice Antitrust Division. I have consulted and testified on issues of competition, antitrust, and monopolization including on behalf of the competition authorities in the U.S. and Canada.

My work covers topics in the fields of industrial organization and antitrust economics; I teach graduate courses on industrial organization and strategy. I am also an editor at the Journal of Law and Economics, an associate editor at the International Journal of Industrial Organization, and a Research Associate at the National Bureau of Economic Research. I earned a Ph.D. in economics from the University of California, Berkeley, and a B.A. from the University of Virginia. My curriculum vitae is attached as Appendix A.

The purpose of this verified statement is to evaluate whether Norfolk Southern Railway Company (“NSR”) has provided sufficient information to reliably evaluate the potential competitive effects of NSR’s control of Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”).¹ A primary element of NSR’s Revised Application involves rail access and service to the Port of Virginia (“POV”) and its Norfolk International Terminals (“NIT”).

Required Analysis of Competitive Effects of Control Transactions

Evaluation of the potential competitive effects of a proposed control transaction entails comparing the likely difference in the competitive outcomes of firms under common control versus firms

¹ NSR Supplement and Perfection of Application for Acquisition of NPBL, Docket No. FD 36836, June 13, 2025 (hereinafter “Revised Application”) and NSR Minor Application for Acquisition of NPBL, Docket No. FD 36836, February 14, 2025 (hereinafter “Minor Application”).

remaining independent. In this proceeding, the available data and information are from markets in which NSR has had de facto control of NPBL for decades, and the task is to infer the likely competitive outcomes if NPBL were to operate independently of NSR control. By contrast, with a standard merger evaluation, the available data and information are from markets pre-merger, and the task is to infer how incentives and market outcomes may change due to the operation of the merging firms under common control.

NSR contends that authorization of its control of NPBL will not change competitive outcomes because it already has effective control; tomorrow will look like today.² This contention is irrelevant to the question of the competitive effect of NSR control. The relevant question is how would markets and competition differ *absent* NSR control. NSR's application has not provided the information necessary to reliably infer the competitive market outcomes of an NPBL that is not controlled by NSR. Absent this information, the effects of NSR control of NPBL cannot be reliably evaluated.

NSR Has Not Provided Market Analysis Necessary to Determine that Current Outcomes Are Consistent with an Uncontrolled NPBL

NSR has failed to provide the market analysis necessary to evaluate the actions that an uncontrolled NPBL may take to the benefit of its mutual owners. NSR repeatedly emphasizes that NPBL is to establish a "uniform" and "cost-based" rate.³ The NSR-controlled NPBL rate is set at \$210 per car.⁴ NSR contends an uncontrolled NPBL would likely set a higher rate.⁵

A market analysis is necessary to evaluate whether and how an uncontrolled NPBL could set lower prices, consistent with its charter, that attracts additional traffic and covers its costs. Whether any "uniform" rate would generate sufficient revenue to cover total costs depends on the volume of traffic that would pay the rate, recognizing that a lower rate can be expected to yield greater traffic volumes. In the

² Minor Application at 7-8 and Revised Application at 29-30.

³ Revised Application at 18-20. As NSR repeats, citing the 1897 Agreement, "a uniform rate shall be fixed ...regardless of distance" sufficient to yield a modest dividend. Revised Application at 19.

⁴ Minor Application at 24.

⁵ Revised Application at 18 and footnote 50.

railroad industry, there can be multiple rates that cover a firm's total costs, especially given railroads' high fixed costs and that demand differs by shipper and commodity.

A high rate that only permits movement of less price-sensitive traffic (e.g., cement or coal) may cover total costs but result in low traffic volumes. A lower rate consistent with the charter that permits more price-sensitive traffic (e.g., intermodal traffic) to move may also cover total costs, generate more revenue, benefit NPBL's owners, be pro-competitive, and enhance economic efficiency. Assessing the range of such rates requires analysis of the market and potential demand. However, NSR has not provided a market analysis that would reliably inform the incentives an uncontrolled NPBL would have for setting rates, or the volumes of traffic that likely would move under different rates.

Nor has NSR provided information on marginal or variable cost specific for that incremental traffic. NSR's expert, Mr. Fapp, for example, produces an exercise claiming to show how the effect of a lower rate (one proposed by CSXT), applied uniformly, would be financially harmful to NPBL.⁶ This analysis, however, lacks information on both the volume of additional traffic that would be likely to move under a lower rate, and the variable costs relevant to any incremental traffic. The incentives and likely actions of an uncontrolled NPBL depend on this type of information, which has not been provided.⁷

NSR Has Not Consistently Defined a Market in Which Competitive Impact Can be Evaluated

NSR discusses "market" shares using numerous categories and descriptions: all current traffic moving on NPBL, all intermodal traffic at POV, rail-served intermodal traffic at POV, rail-served intermodal traffic at POV's Virginia International Gateway terminal ("VIG"), rail-served intermodal traffic at NIT, as well as shares at certain other East Coast ports.⁸ Much of this discussion turns on

⁶ Revised Application, Exhibit B, Verified Statement of Daniel Fapp (hereinafter "Fapp V.S.") at 31-34.

⁷ Unlike the typical case of a proposed merger of an already uncontrolled railroad, where the actions of an uncontrolled railroad are already observable, this type of information is necessary in this case to evaluate the likely actions of the uncontrolled railroad.

⁸ Revised Application at 2, 6, 11-14, 17, 22, 29, 32, 40, and 42.

calculations of shares of traffic at POV and its separate terminals by Mr. Fapp.⁹ NSR and Mr. Fapp both argue that trucks and other East Coast ports provide competitive options for intermodal shipments at NIT.¹⁰ The shares are uninformative without an analysis of why any or each of these definitions is useful for the purposes of evaluating control of NPBL. Absent analysis of what are appropriate market(s), NSR has not provided a basis to use any particular quantities or ‘market’ shares to evaluate the competitive effects of NSR’s control of NPBL.

NSR has argued that there is robust competition for international intermodal traffic arising between railroads at terminals, among terminals at POV, and among ports on the East Coast.¹¹ NSR has not analyzed how competition among these various elements constrain the potentially anticompetitive effects of NSR control of NPBL. To the extent that East Coast ports are in the market for purposes of analyzing market impacts, NSR has provided no information on traffic to or from these ports, or explained which traffic, ports, and lanes are competitive and how demand among these ports is determined.

NSR states that the application will have “no adverse effect” for any shipper who currently uses NPBL and will not reduce the competitive options of shippers using POV or NIT.¹² Yet NSR control of NPBL eliminates an independent rail routing to the POV NIT facility and shippers that utilize that facility. Rather than two independent potential on-dock rail options (an uncontrolled-by-NSR NPBL-CSXT routing and an NSR routing), both routings currently require railroads controlled by NSR. For shippers using NIT, the NSR-controlled NPBL-CSXT routing does not currently provide an economical alternative to an NSR routing, as no traffic currently moves under that routing, including for traffic to and from CSXT-only locations.¹³ NSR’s argument that there is no “adverse effect” of the elimination of the only

⁹ Fapp V.S. at 2-8, 18, and 25-31.

¹⁰ See, e.g., Revised Application at 2, 8, 24 and Fapp V.S. at 5.

¹¹ Revised Application at 8.

¹² Revised Application at 29.

¹³ Fapp V.S. at 12.

all-rail option to NSR serving those shippers is not supported by an analysis that identifies the relevant market or analysis that would demonstrate the market impact of such an independent rail option.

NSR has not demonstrated a market definition for purposes of evaluating the competitive effect on rail rates to shippers utilizing NIT, or POV more broadly, or on rates charged by POV to shippers or shipping companies for services provided at NIT. NSR argues that drayage by CSXT from NIT is a sufficient competitive option for shippers using NIT.¹⁴ But POV subsidizes the drayage of containers to/from NIT and CSXT, and incurs costs that it would not incur if an uncontrolled NPBL-CSXT routing to NIT were competitive.¹⁵ Absent effective rail-on-rail competition, NSR has a {{[REDACTED]}} share of direct rail service at NIT and over {{[REDACTED]}} of rail-served traffic if subsidized drayage to/from CSXT is treated as intra-modal competition.¹⁶ Even with a subsidy provided by POV, the share of traffic served by CSXT at NIT is {{[REDACTED]}}.

NSR has also not explained how competition between terminals at POV occurs and whether shippers view POV's Virginia International Gateway terminal ("VIG") as a substitute for NIT. Absent a clear market definition, NSR has not explained the demand decisions by shipping companies choosing between VIG and NIT or how demand choices among POV terminals would constrain potential competitive harm to shippers and to POV. For example, NSR has not explained the economics that result in some shipping companies that use CSXT to place some (modest) volume of shipments at NIT rather than at VIG. NSR also has not addressed the commercial realities of POV's operation and management of its terminals (i.e., deciding which ships dock at which terminal), and their impact on the scope of the appropriate market. In addition, NSR has not analyzed whether or how the anticipated expansion of NIT capacity matters for understanding the competitive effects at POV of the control of NPBL by NSX.¹⁷

¹⁴ Revised Application at 13 and Fapp V.S. at 18 and 25.

¹⁵ Fapp V.S. at 24.

¹⁶ Fapp V.S. Exhibit DLF-7 for 2023.

¹⁷ "Norfolk International Terminals (NIT)", available at <https://www.portofvirginia.com/wp-content/uploads/2024/03/2024-NIT-1-Pager.pdf> (accessed June 18, 2025).

To the extent that NSR contends—although has not shown—that there is extensive competition and a high degree of price sensitivity of intermodal shipments to terminals and railroads, NSR has failed to provide a market definition in which to perform a market analysis of the effect of price changes. Such a definition and analysis are needed to identify the volume of traffic that an independent NPBL could attract through lower rates for traffic to or from NIT and the effect of such traffic on the rates NSR could charge.

VERIFICATION

I, Nathan Miller, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on June 19, 2025

/s/ Nathan Miller

Nathan Miller

APPENDIX A

Nathan H. Miller

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Updated June 2025

POSITIONS

Current Positions

Professor, Georgetown University, 2022–
McDonough School of Business (primary)
Department of Economics (secondary)
Senior Policy Scholar, Georgetown Center for Business and Public Policy, 2017–
NBER, Research Associate, 2024–
Founding Partner, Econic Partners, 2025–

Previous Positions

Georgetown University

Provost's Distinguished Associate Professor, 2021-2022
Saleh Romeih Associate Professor, McDonough School of Business, 2019-2022
Affiliated Professor, Economics Department, 2019-2022
Associate Professor, McDonough School of Business, 2017-2022
Assistant Professor, McDonough School of Business, 2013-2017

Other Positions

Chief Economist, U.S. Department of Justice, Antitrust Division, 2024
Visiting Professor, Toulouse School of Economics, 2019-2020
Economist, U.S. Department of Justice, Antitrust Division, 2008-2013

Degrees

Ph.D., Economics, University of California at Berkeley, 2008.
B.A., Economics and History, University of Virginia, 2000.

PUBLICATIONS AND RESEARCH PROJECTS

Refereed Publications

“Mergers, Entry, and Consumer Welfare” (with Peter Caradonna and Gloria Sheu), *American Economic Journal: Microeconomics*, forthcoming.

“Rising Markups and the Role of Consumer Preferences” (with Hendrik Döpper, Alex MacKay, and Joel Stiebale), *Journal of Political Economy*, forthcoming.

“Estimating Models of Supply and Demand: Instruments and Covariance Restrictions” (with Alexander MacKay), *American Economic Journal: Microeconomics*, Vol. 17, No. 1, 238-281 (2025).

“Industrial Organization and *The Rise of Market Power*,” *International Journal of Industrial Organization*, Vol. 98, 103131 (2025).

“A Price Leadership Model for Merger Analysis” (with Ryan Mansley, Gloria Sheu and Matthew Weinberg), *International Journal of Industrial Organization*, Vol. 89 (2023).

- “Oligopolistic Price Leadership and Mergers: The United States Beer Industry” (with Gloria Sheu and Matthew Weinberg), *American Economic Review*, Vol. 111, No. 10, 3123-3159 (2021).
- “Finding Mr. Schumpeter: Technology Adoption in the Cement Industry” (with Jeffrey Macher and Matthew Osborne), *RAND Journal of Economics*, Vol 52, No. 1, 78-99 (2021).
- “Forward Contracts, Market Structure, and the Welfare Effects of Mergers” (with Joseph Podwol), *Journal of Industrial Economics*, Vol. 68, No. 2, 364-407 (2020).
- “Understanding the Price Effects of the MillerCoors Joint Venture” (with Matthew Weinberg), *Econometrica*, Vol. 85, No. 6, 1763-1791 (2017).
- “Pass-Through in a Concentrated Industry: Empirical Evidence and Regulatory Implications” (with Matthew Osborne and Gloria Sheu), *RAND Journal of Economics*, Vol. 48, No. 1, 69-93 (2017).
- “Upward Pricing Pressure as a Predictor of Merger Price Effects” (with Marc Remer, Conor Ryan and Gloria Sheu), *International Journal of Industrial Organization*, Vol. 52, 216-247 (2017).
- “Pass-Through and the Prediction of Merger Price Effects” (with Marc Remer, Conor Ryan and Gloria Sheu), *Journal of Industrial Economics*, Vol. 64, December, 684-709 (2016).
- “Spatial Differentiation and Price Discrimination in the Cement Industry: Evidence from a Structural Model” (with Matthew Osborne), *RAND Journal of Economics*, Vol. 45, No. 2, 221-247 (2014).
- “Modeling the Effects of Mergers in Procurement,” *International Journal of Industrial Organization*, Vol. 37, November, 201-208 (2014).
- “Automakers’ Short-Run Responses to Changing Gasoline Prices” (with Ashley Langer), *Review of Economics and Statistics*, Vol. 95, No. 4, 1198-1211 (2013).
- “Why Do Borrowers Pledge Collateral? New Empirical Evidence on the Role of Asymmetric Information” (with Allen Berger, Marco Espinosa-Vega, and Scott Frame), *Journal of Financial Intermediation*, Vol. 20, No. 1, 55-70 (2011).
- “Strategic Leniency and Cartel Enforcement,” *American Economic Review*, Vol. 99, No. 3, 750-768 (2009).
- “Debt Maturity, Risk, and Asymmetric Information” (with Allen Berger, Marco Espinosa-Vega, and Scott Frame), *Journal of Finance*, Vol. 60, No. 6, 2895-2923 (2005).
- “Does Functional Form Follow Organizational Form? Evidence from the Lending Practices of Large and Small Banks” (with Allen Berger, Mitchell Petersen, Raghuram Rajan, and Jeremy Stein), *Journal of Financial Economics*, Vol. 76, No. 2, 237-269 (2005).
- “Credit Scoring and the Availability, Price, and Risk of Small Business Credit” (with Allen Berger and Scott Frame), *Journal of Money, Banking, and Credit*, Vol 37, No. 2, 191-222 (2005).

Shorter Refereed Publications

- “On the Misuse of Regressions of Price on the HHI in Merger Review” (with Steven Berry, Fiona Scott Morton, Jonathan Baker, Timothy Bresnahan, Martin Gaynor, Richard Gilbert, George Hay, Ginger Jin, Bruce Kobayashi, Francine Lafontaine, James Levinsohn, Leslie Marx, John Mayo, Aviv Nevo, Ariel Pakes, Nancy Rose, Daniel Rubinfeld, Steven Salop, Marius Schwartz, Katja Seim, Carl Shapiro, Howard Shelanski, David Sibley, and Andrew Sweeting), *Journal of Antitrust Enforcement*, Vol. 10, No. 2, 249-259 (2022).
- “Bias in Reduced-Form Estimates of Pass-Through” (with Alexander MacKay, Marc Remer and Gloria Sheu), *Economics Letters*, Vol. 123, No. 2, 200-202 (2014).

- “Consistency and Asymptotic Normality for Equilibrium Models with Partially Observed Outcome Variables” (with Matthew Osborne), *Economics Letters*, Vol. 123, No. 1, 70-74 (2014).
- “Using Cost Pass-Through to Calibrate Demand” (with Marc Remer and Gloria Sheu), *Economics Letters*, Vol. 118, No. 3, 451-454 (2013).
- “The Entry Incentives of Complementary Producers: A Simple Model with Implications for Antitrust Policy” (with Juan Lleras), *Economics Letters*, Vol. 110, No. 2, 147-150 (2011).

Book Chapters and Non-Refereed Publications

- “Rising Market Power: Evidence from Industry Studies” *National Law Network*, November 2025.
- “Rising Markups, Rising Prices?” (with Chris Conlon, Tsolmon Otgon, and Yi Yao), *AEA: Papers and Proceedings*, Vol. 113, 279-283 (2023).
- “Recent Advances in Economic Methodology for Coordinated Effects” (with Jamie Daubenspeck, Kate Maxwell Koegel, and Joseph Podwol), *Antitrust Chronicle* (2023).
- “Price-Fixing Allegations in the Canned Tuna Industry: A Look at the Data” (with Minhae Kim, Ryan Mansley, Marc Remer, and Matthew Weinberg), *Antitrust Bulletin*, Vol. 68, No. 1, 154-163 (2023).
- “Mergers – Countervailing Effects” (with Gloria Sheu), *The Elgar Encyclopedia on the Economics of Competition, Regulation and Antitrust*, Michael D. Noel (editor). Cheltenham, UK: Edward Elgar Publishing (2024).
- “Quantitative Methods for Evaluating the Unilateral Effects of Mergers” (with Gloria Sheu), *Review of Industrial Organization*, Vol. 58, No. 1, 143-177 (2021). Special Issue: The 2010 Horizontal Merger Guidelines after Ten Years.
- “How the MillerCoors Joint Venture Changed Competition in U.S. Brewing” (with Matthew Weinberg), *Microeconomic Insights*, 2017.
- “Ex Post Merger Evaluation: How Does It Help Ex Ante?” (with Daniel Hosken and Matthew Weinberg), *Journal of European Competition Law & Practice*, 2016.
- “Choosing Appropriate Control Groups in Merger Evaluations” (with Aditi Mehta), in *More Pros and Cons of Merger Control*, Konkurrensverket 2012.

Working Papers and Research Projects

- “Technology and Market Power: The United States Cement Industry, 1974-2019” (with Matthew Osborne, Gloria Sheu and Gretchen Sileo), 2025, resubmitted to *American Economic Review*.
- “Phoning Home: The Procurement of Telecommunications Services for Prison Systems in the United States” (with Marleen Marra and Gretchen Sileo), 2025.
- “Can Divestitures Lessen Competition? Analyzing the Reynolds/Lorillard Merger and Divestitures” (with Aviv Nevo, Kenneth Rios, Ted Rosenbaum), in progress.
- “The Dynamics of Emissions Pricing and Technology Adoption” (with Sarah Armitage, Matthew Osborne, and Gretchen Sileo), in progress.
- “Modeling the Effects of Mergers in Procurement: Addendum,” Working Paper, 2017.
- “Cumulative Innovation and Competition Policy” (with Alexander Raskovich), EAG Discussion Paper 10-5, 2010.
- “Competition when Consumers Value Firm Scope,” EAG Discussion Paper 8-7, 2008.

Grants and Awards

Robert F. Lanzillotti Prize for Best Paper in Antitrust Economics, 2022
Rising Markups and the Role of Consumer Preferences

Jerry S. Cohen Award for Best Antitrust Article on Merger Retrospectives, 2022
Oligopolistic Price Leadership and Mergers: The United States Beer Industry

Washington Center for Equitable Growth Grant, AWD-7774872, \$75,278, 2021-2022
Buyer Power in the Beef Packing Industry

Concurrences Antitrust Award: Best Academic Economics Article, 2021
Mergers, Entry, and Consumer Welfare

National Science Foundation Grant, SES 2117197, \$59,436, 2021-2022
An Empirical Study of Inmate Telecommunication Services

Washington Center for Equitable Growth Grant, AWD-7774249, \$51,750, 2020-2021
The Evolution of Market Power in the Cement Industry

National Science Foundation Grant, SES 1824318, \$88,635, 2018-2020
Market Power in Differentiated Products Industries

Association of Competition Economics Best Paper Award, 2017
Understanding the Price Effects of the MillerCoors Joint Venture

Robert F. Lanzillotti Prize for Best Paper in Antitrust Economics, 2015
Understanding the Price Effects of the MillerCoors Joint Venture

Assistant Attorney General's Award of Distinction, AT&T/T-Mobile merger, 2013

Jerry S. Cohen Award for Antitrust Scholarship, Honorary Mention, 2009
Strategic Leniency and Cartel Enforcement

COMPASS Prize for Best Paper in Antitrust Economics by Graduate Students, 2007
Strategic Leniency and Cartel Enforcement

UC Berkeley Dean's Normative Time Fellowship, 2006-2007

UC Berkeley Competition Policy Center Dissertation Award, 2006

UC Berkeley Institute of Business and Economic Research Mini-Grant, 2006

ACADEMIC PRESENTATIONS

Invited Seminar Presentations

2008-2013: Bureau of Economic Analysis, Bureau of Labor Statistics, DOJ (×3), College of William and Mary, Drexel University, Duke University, FTC, Georgetown University (×2), George Washington University, Johns Hopkins University, Michigan State University, Stony Brook University, University of British Columbia, University of Iowa, University of North Carolina (Chapel Hill), University of Virginia

2014: DOJ; University of California, Berkeley; UCLA; University of Virginia

2015: Clemson; FTC; Indiana University; University of Colorado, Boulder; Yale

2016: Boston College; Columbia University; Federal Reserve Board; Harvard University; London School of Economics; University of British Columbia; University of Texas, Austin; University of Toronto

2017: FTC; University of Kentucky; University of Pennsylvania; University of Wisconsin–Madison

2018: FTC; MIT; Texas A&M; Penn State University; University of Maryland

2019: Harvard University; Toulouse School of Economics; MINES ParisTech; KU Leuven; University of Mannheim; Berlin Applied Economics

2020: Research Institute of Industrial Economics (RIFN); Sciences Po; University of Düsseldorf (DICE); Directorate-General for Competition of the European Commission (DG COMP); Hong Kong University of Science and Technology

2021: CBO, Washington University at St. Louis; George Mason University; Joint DOJ/FTC; West Virginia University; FTC; University of Maryland
2022: University of California, Berkeley; University of Pennsylvania; University of Virginia; Iowa State University; Indiana University; University of Delaware; University of Michigan; University of North Carolina; University of Connecticut
2023: University of Rochester; University of Massachusetts Amherst; Pomona College; UCLA
2025: Yale, Chicago Fed (scheduled), University of Florida (scheduled)

Conference Presentations

AEA (2023); APIOS (2018, 2022); Association of Competition Economics (2018); Barcelona GSE Summer Forum (2018); DC IO Day (2020); EARIE (2019); ESEM (2019); FTC Microeconomics (2010, 2014, 2021); Hal White Antitrust (2013, 2014, 2017, 2019); HEC Montreal–RIIB Conference on IO (2025, scheduled); IEF Applied Microeconomics (2016); IOOC (2008, 2009, 2013, 2015, 2016, 2018, 2022); MaCCI Summer Institute (2024); NASMES (2019); NBER IO (2023); Northwestern Antitrust (2013, 2015, 2022); SEA (2013, 2018, 2023); SITE (2025); Triangle Microeconomics (2016)

Conference Discussions

AEA (2015); Cowles Foundation (2024); DC IO Day (2015); Toulouse Digital Economics Conference (2020); HEC Montreal–RIIB Conference on IO (2018); IOOC (2008, 2009, 2013, 2015, 2016, 2018, 2021, 2022, 2025); NY IO Day (2020); RIDGE IO (2021); SEA (2013, 2018, 2023); Northwestern Antitrust (2018, 2023); WCEG (2020)

Keynotes

University of Zurich Workshop on Market Power and the Economy, 2023
Association of Competition Economics (ACE) Conference, 2023
Applied Economics Workshop (AEW), 2024
RIDGE Industrial Organization Forum, 2024
Competition & Regulation European Summer School and Conference (CRESSE), scheduled, 2025

Panels and Other Invited Talks

“Upward Pricing Pressure and Simulation in Merger Review,” Economists’ Roundtable with the Canadian Competition Bureau, 2017
“Institutional Shareholdings: Is There an Antitrust Issue?” Concurrences Global Antitrust Conference, 2018
“Digital Mergers: Need for Reform?” Concurrences International Mergers Conference, 2020
“Making Competition Work: Promoting Competition in Labor Markets,” Joint Hearings of the Department of Justice and Federal Trade Commission, 2021
“Reforming America’s Food Retail Markets,” Yale University, 2022
“Amendments to the Competition Act,” Canadian Economic Association Meetings, 2022
“Buyer Power in the Beef Packing Industry,” R-Calf National Convention, 2022
“Coordinated Effects of Mergers,” ICN Chief Economist Workshop, 2023
“Evolving Approaches to Mergers Between Rivals,” DOJ/FTC Merger Guidelines Workshop, 2023
“Recent Advances in Conduct Estimation,” University of Düsseldorf (DICE), 2023
“Agency Economists Roundtable,” Fordham Conference on Antitrust Law and Policy, 2024
“Overseeing Big Tech: Antitrust vs. Regulation,” Northwestern Conference on Antitrust Economics and Competition Policy, 2024

“The Use of Structural Presumptions in Antitrust,” OECD Best Practice Roundtable on Competition, 2024
“Regaining Competitiveness—Boom or Bust for Competition Policy?” Annual CRA Brussels Conference, 2024
“Making Sense of the Monopoly Broth,” University of Southern California, 2025
“Antitrust Policy Discussion,” Triangle Microeconomics Conference, 2025
“Inflation and Antitrust,” American Bar Association Panel, 2025
“Merger Remedies: What Works Best and How Can We Improve?” American Bar Association Panel, 2025, scheduled
“Market Power in EU and US: What Does the Most Recent Empirical Evidence Show?” CRESSE, 2025, scheduled

TEACHING, ADVISING, AND SERVICE

Courses

Firm Analysis and Strategy, MBA Core Curriculum
Industrial Organization, PhD Economics
Strategic Pricing, MBA Elective
Microeconomics, Executive Education
Causal Inference, MSBA Core Curriculum

Ph.D Advising and Dissertation Committees

Francisco Garrido (co-advisor), 2020, ITAM
Yanyang Wang (committee), 2021, Amazon Web Services
Peter Caradonna (committee), 2022, California Institute of Technology
Ryan Mansley (co-advisor), 2023, Department of Justice Antitrust Division
Gretchen Sileo (co-advisor), 2023, Temple University
Kyle Monk (committee), 2024, Meta
Tianshi Mu (co-advisor), 2024, Tsinghua University
Pedro Roje-Larrebourg (co-advisor), 2024, Banco Central de Chile
Yidi Wu (committee), 2024, Cornerstone Research
Chengjun Zhang (committee), 2024, Morgan Stanley
Cam Healy (advisor), 2025, Congressional Joint Economic Committee
Yi Yao (advisor), 2025, CRA

Service

Editor, *Journal of Law and Economics*, 2021-2024, 2025–
Associate Editor, *International Journal of Industrial Organization*, 2022–
Editorial Board, *Review of Industrial Organization*, 2019-2024, 2025–
DC IO Day: Program Committee 2015-2019, Organizer 2017
IIOC: Program Committee, 2019-2021

Referee Reports

American Economic Journal; *American Economic Review*; *Econometrica*; *European Economic Review*; *International Journal of Industrial Organization*; *Journal of Economics & Management Strategy*; *Journal of the European Economics Association*; *Journal of Finance*; *Journal of Industrial Economics*; *Journal of Law and Economics*; *Journal of Political Economy*; *Management Science*; National Science Foundation; *The RAND Journal of Economics*; *Review of Economic Studies*;

Review of Economics and Statistics; Review of Industrial Organization; Quarterly Journal of Economics, others.

CONSULTING AND TESTIMONY

Live Testimonial Experience

Testified on behalf of U.S. Department of Justice, *United States et al. v. American Airlines Group Inc. and JetBlue Airways Corporation*, U.S District Court, Eastern District of New York, Case No. 1:22-cv-07374-AMD-TAM; 2021-2024

Testified on behalf of Competition Bureau Canada, *Canadian Competition Authority v. Secure Energy Services Inc. of Tervita Corporation*, Canadian Competition Tribunal, Case No. CT-2021-002, 2023

Testified on behalf of Competition Bureau Canada, *Canadian Competition Authority v. Rogers Communications Inc. and Shaw Communications Inc.*, Canadian Competition Tribunal, Case No. CT-2022-002, 2022

Testified on behalf of Competition Bureau Canada, *Canada (Commissioner of Competition) v. Parrish & Heimbecker, Limited*, Canadian Competition Tribunal, Case No. CT-2019-005, 2022

Other Experience

Consulted on the acquisition of Hawaiian Airlines by Alaska Airlines for the merging parties, 2024

Consulted on the abandoned acquisition of Harry's by Edgewell Personal Care for the FTC, 2019-2020

Consulted on the abandoned acquisition of TriZir by Tronox for the FTC, 2020

Consulted on the acquisition of Services Group of America by US Foods for the FTC, 2019

Consulted on the acquisition of Express Scripts by Cigna for the merging parties, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36836

NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

VERIFIED STATEMENT OF JULIE M. CAREY

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36836

**NORFOLK SOUTHERN CORPORATION &
NORFOLK SOUTHERN RAILWAY COMPANY
—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY**

VERIFIED STATEMENT OF JULIE M. CAREY

JUNE 20, 2025

My name is Julie M. Carey. I am an economist and Senior Managing Director with National Economic Research Associates, Inc. (“NERA”). I previously submitted a verified statement in this proceeding, (Docket No. FD 36836) on February 27, 2025 in response to Norfolk Southern’s (NS) minor application (NS-1). In this Verified Statement, I respond to NS’s “Supplement and Perfection” of its application as well as the Verified Statement of Daniel L. Fapp (Fapp VS).¹

The Revised Application fails to empirically demonstrate that NS’s control of NBPL has not enabled the exertion of market power and harm to consumers by NS, particularly in terms of price and quantity effects. NS’s exceedingly high percentages of traffic volumes for international intermodal (IM) container traffic on corridors between NIT/POV² and midwestern locations (as high as nearly {{[REDACTED]}} for NIT) with its control of NPBL as compared to a competitive dynamic expected absent NS control is not explained by costs, service quality or other economic factors on corridors between NIT/POV and midwestern locations.

Well-understood economics teaches that in circumstances such as this case, where NS has its own line and controls the short line that provides any possible access to a competitor railroad to reach an important and growing port terminal, NS has the economic incentive to exclude CSXT from the marketplace and alter quantities and prices that would otherwise exist. There should be no debate.

With that understanding, the question is whether the NS application contains sufficiently robust economic analysis to conclude that NS control of NPBL would not substantially lessen competition on the NIT/POV corridors with midwestern locations despite its incentives. The NS application does not empirically show that NS, with control of NPBL, has no effect on otherwise prevailing competitive dynamics, i.e. NPBL without NS control.

Such economic analyses would begin with preliminary screens to ascertain if sufficiently high shares and concentration exists to raise concern for competitive impact. NS’s shares for NIT/POV corridors for international IM customers, raise substantial concerns. NS has a {{[REDACTED]}}³ share for NIT railroad traffic moves, a nearly {{[REDACTED]}}⁴ share (with small CSXT drayage/combo rail

¹ Docket No. FD 36836, Norfolk Southern Corporation Norfolk Southern Railway Company Acquisition of Control Norfolk & Portsmouth Belt Line Railroad Company, NS-13, Exhibit B, (hereafter Revised Application) Supplemental Verified Statement of Daneil L. Fapp, June 13, 2025 (hereafter Fapp VS).

² Origin and destination pairs between the Norfolk International Terminal (NIT) or the Port of Virginia (POV) and inland IM locations in the Midwest region. POV includes two different terminals, NIT and Virginia International Gateway (VIG)).

³ {{[REDACTED]}} See Exhibit __DLF-7.

⁴ {{[REDACTED]}} See Exhibit __DLF-7.

moves), and an approximately {{[REDACTED]}}⁵ share on the combined corridors from all POV port terminals.⁶ Given NS's high shares in the overall NIT and POV area, the Revised Application must develop a substantial and empirically based competition analysis.⁷

The concerning NS shares observed today are set to profoundly increase in the near future because NIT is in the process of substantially expanding its capabilities. The Revised Application did not address the ongoing and very costly⁸ NIT capacity expansion,⁹ and its impact on competition. A forward-looking analysis of the competitive effects of NS's proposed control of NPBL requires evaluation of the dramatically growing relative importance of NIT, and the potentially even larger competitive impact.

With that context, the Revised Application lacks economic analyses of the but-for prices that would be paid by international IM customers on the midwestern corridor routes to/from NIT/POV absent NS control of NPBL. NS's expert fails to address the effect of NS/NPBL control on NS rates.

Similarly, the Revised Application presents no economic analyses of the but-for volumes that would exist absent NS control of NPBL corridor routes to/from NIT/POV. It presupposes the current large share of NS volumes would be the expected competitive dynamic absent its control of NPBL.

Nor did NS provide sufficient economic analysis to explain NS's high shares at NIT/POV in terms of natural competitive advantages. No cost data or service quality data for the specific corridor routes between NIT/POV and the inland midwestern markets was presented; the switch rate is a single cost component. NS only anecdotally discussed service quality,¹⁰ and provided virtually

⁵ {{[REDACTED]}} 2023. Fapp VS at Exhibit DLF-5.

⁶ Mr. Fapp presents the traffic volumes by corridor (Exhibit DLF-5) but did not calculate market shares or discuss findings.

⁷ For the corridors that Mr. Fapp suggests have both CSXT and NS alternatives, he does not analyze the trivial {{[REDACTED]}} share that drayage with CSXT has as compared to NS for NIT traffic moves. The analysis is inadequate. Fapp Exhibit DLF-5. Total 2023 CSXT volumes at "Portsmouth NIT" from tabs "Originating Comp" {{[REDACTED]}} and "Terminating Comp" {{[REDACTED]}} Total 2023 NS volumes at "Norfolk International" from tabs "Originating Comp" {{[REDACTED]}} and "Terminating Comp" {{[REDACTED]}}. Total NIT volumes at lanes served by both CSXT and NS = {{[REDACTED]}}; CSXT market share = {{[REDACTED]}}

⁸ POV anticipates spending more than \$1 billion on various NIT related construction, including \$650 million NIT semi-automated systems, \$450 million dredging for north and south NIT, as well as \$83 million yard expansion. See Port Of Virginia, Sustainability Report 2023, The Future of America's Most Modern Gateway, p11, available at <https://www.portofvirginia.com/wp-content/uploads/2024/04/2023-POV-Sustainability-Report-3.pdf> See also US Army Corp Notice: AO-2010-00404 (Norfolk International Terminals (North and South) Dredging, Norfolk, Virginia), October 28, 2024. Available at <https://www.nao.usace.army.mil/Media/Public-Notices/Article/3947622/nao-2010-00404-norfolk-international-terminals-north-and-south-dredging-norfolk/>.

⁹ By 2028, NIT will be capable of handling 3.6 mm TEUs, which is substantially larger (more than 50%) than VIG's 2.2 million TEUs. See Port of Virginia, Available at <https://www.portofvirginia.com/gateway/capabilities/>

¹⁰ Mr. Fapp claims that CSXT market shares "was due to structural deficiencies in its own routings" Fapp VS at page 7. No service quality analysis was provided for today, tomorrow or in the future.

nothing that explains NS's {{[REDACTED]}} NIT/POV shares today with two large sophisticated and highly competitive Class 1 railroads reasonably expected to have a closer competitive balance.¹¹

Instead, NS includes general discussion about CSXT's claimed "emphasi[s]" of corridors through the Port of New York/New Jersey.¹² NS doesn't conduct an analysis of a current shipper's ability to substitute the Port of New York/New Jersey for NIT/POV with NS control of NPBL as compared to without NS's control of NPBL.

The Revised Application claims drayage service was a competitive response by CSXT to NPBL's rate increase in 2010;¹³ and suggests it is a feasible economic competitor today and tomorrow.¹⁴ However, CSXT's paltry share today—{{[REDACTED]}} at NIT¹⁵ and {{[REDACTED]}} for POV says otherwise. NS fails to demonstrate the feasibility of short-haul truck moves in combination with rail at the economic scale today¹⁶ or with expanded NIT capacity tomorrow.¹⁷

NS also claims that truck competition has the largest share at POV¹⁸ but shows no statistics regarding truck volumes on the corridors to/from the inland Midwestern IM terminals (which have route distances of 700-1,100 miles)¹⁹ or compare trucking and railroad prices on these corridors.

The Revised Application places emphasis on the switch rate being reasonable due to its claimed cost-based mandate and other aspects of the agreement. First, NS does not analyze the competitive effect of the switch rate as a part of total transportation cost on the NIT/VPA corridors. Second, the NS expert fails to compare NPBL's switch rate to other short line switch rates.²⁰ My concerns about the inadequacy of the market comparable switching fee analysis presented in the NS

¹¹ Only total NPBL system cost data was provided. General references to historical developments of the railroads use of double-stack intermodal were made without supporting analysis of any time-period. Fapp VS at p 7.

¹² Fapp VS at page 6-7.

¹³ Fapp VS at page 4-5, 16-18.

¹⁴ Fapp VS at page 18 and "...drayage is an effective alternative to an-all rail movement using NPBL." Fapp VS at page 25.

¹⁵ For 2023 {{[REDACTED]}}. See Ex __DLF-7 and Ex __DLF-4.

¹⁶ See Trucking Association 2024, Available at <https://tmtava.org/truck-traffic-on-hampton-boulevard/>

¹⁷ As an example, a 40-foot container affixed to a chassis would need to be dispatched with a driver every 5 minutes to move 1,204 containers in a day (during the 10-hour window), or 3600 per month, which is about 43,000 per year. These truck movements take substantial time to move locations. It is not surprising that drayage through busy area is not a replacement for rail service and would pose impediments for any sizable quantity of truck movements of container movements.

¹⁸ Mr. Fapp notes significant transportation options (Fapp VS at pp. 5,) and states NIT is 75% truck(Fapp VS at pp. 21.) Revised Application at p. 32.

¹⁹ The majority of truck volumes to and from NIT/POV may go to/from different locations than the NS and CSXT rail volumes.

²⁰ Mr. Fapp also disregards commercial agreements for rail lifts and instead cites to public tariffs. Fapp V.S. at pp. 15, 25, 30.

minor application were never addressed by NS, including the erroneous exclusion of commercially negotiated rates.²¹ One exception is that the Revised Application did identify NS's low negotiated switching rate with Commonwealth Railway.²² However, NS never looked at whether negotiated switch rates at other facilities were also lower than tariff rates. Third, the NS expert fails to analyze the potentially lower average costs with higher traffic volumes (today or tomorrow) for use by CSXT to access NIT on behalf of international IM steamship customers²³ and fails to conduct a NPBL specific variable cost analysis.²⁴ Fourth, NS fails to identify a single comparison short line operated either jointly or independently (i.e. for the benefit of all railroads served) that observes the starkly higher rates (at levels charged by the NPBL switch rate); and with absolutely no traffic volumes for one railroad.²⁵

VERIFICATION

I, Julie M. Carey, declare under penalty of perjury that I have read the foregoing Verified Statement, that I know the facts asserted therein, and that the same are true as stated. Further, I certify that I am qualified to an authorized to submit this Verified Statement.

Executed on June 19, 2025



²¹ Fapp VS at page 32. See also CSXT-1, Carey VS at page 10-11.

²² Fapp VS at page 30. NS contract for Commonwealth has a {{[REDACTED]}} switch charge per container. This compares to a rate of \$105 per container charged by NPBL at 2 containers per car.

²³ Fapp VS at page 32-33.

²⁴ Fapp VS at page 32-33. Mr. Fapp uses URCS data to calculate a variability percentage from eastern railroad movements and total NPBL costs to derive his estimate of NPBL variable costs. NS-1, Fapp VS, at page 3, fn. 6 and p 4 Table 1. I raised this concern in my response to the NS Minor Application. See also CSXT-1, Carey VS at p. 9.

²⁵ In addition, Mr. Fapp assumes the NPBL rate should be calculated with 2.5 containers per car without support. Fapp VS at pages 14-15 and 33. With a double-stack rail car, the applicable rate is \$105 per container not \$85 (as when assuming 2.5 containers per car).

CERTIFICATE OF SERVICE

I hereby certify that I have caused this CSX Transportation, Inc.'s Petition to Reject Norfolk Southern's Revised Application in Finance Docket No. 36836 to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sally Mordi

Sally Mordi

Attorney for CSX Transportation, Inc.

June 20, 2025