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AMERICAN ECONOMIC LIBERTIES PROJECT

Before the Surface Transportation Board

Response to
Union Pacific Corporation—Control—Norfolk Southern Corporation
Docket No. FD 36873

Written Comment from the American Economic Liberties Project
November 18, 2026

The American Economic Liberties Project (AELP)[1] submits this comment in response to the Surface Transportation Board's (STB's) consideration of the Union Pacific (UP) Norfolk Southern (NS) proposed merger.[2]

We oppose the proposed $85 billion merger between two of the four largest railroads in the country. The merger, first announced in July 2025,[3] would create a transcontinental rail network, the largest private freight rail system the United States has ever had. If finalized, this deal would give UP-NS an insurmountable bargaining advantage over competing regional networks, as the company would become an unavoidable bargaining partner for shippers large and small. It would also reduce employment and job security for rail workers across the United States. The deal clearly does not satisfy the requirements set forth in the STB's 2001 merger guidelines, so it must be blocked.

Not only is this merger likely illegal and will allow the combined company to have outsized influence and leverage over the industry and economy, but the process reveals why this level of consolidation is dangerous in the first place. UP CEO Jim Vena has not only attempted to bypass the STB to try and gain merger approval by cozying up to the President, but it was recently revealed that he made a direct threat to raise prices against shippers who speak out against the deal.[4] Vena and UP already know this deal is anticompetitive, and are using their already existing power to try to escape the rule of law. If UP is able to gain even more dominance through the merger, the railroad will have even more power and audacity to use it against shippers, workers, consumers, and rivals.

At the same time, the companies refuse to be forthcoming with information in the application process. In January 2026, the STB unanimously rejected UP-NS's original merger application, as the parties failed to file the required information regarding the merger – including a market-share

analysis and the full merger agreement between the two companies.[5] In April, the companies refiled their revised merger application, with the STB accepting that application a month later.[6] However, even with the revised application, the companies continue to lack "transparency and depth" according to Board Member Richard Kloster, submitting thousands of pages of documents without actually addressing the anticompetitive impact of the merger.[7] By refusing to be transparent and forthcoming, it is clear that UP-NS knows that the merger is illegal and cannot be justified by the board.

In addition, we submit the attached October 2025 report, "The New Railroad Barons: Why the Union Pacific/Norfolk Southern Railroad Merger Must Be Blocked," which further details the history of consolidation of the railroad industry including previous failed mergers that have hurt workers, shippers, communities, and resulted in delays which can lead to shippers and other customers going out of business; expected harms of this merger; and the risk of contagion to further consolidate the industry.

I. Harms of the Merger

A combined UP-NS would reduce competition in the already consolidated rail industry, giving the $250 billion company[8] outsized influence to control and bend the economy to its will.[9] The combined rail systems would no longer have to compete for shippers, resulting in higher prices and worse service, which may result in businesses shuttering.[10] Indeed, earlier this month, it was revealed that UP CEO Jim Vena told a conference of shippers in March that "[if the merger is blocked], Union Pacific will still be there. And … I'll probably increase everybody's rates that said they didn't want a seamless railroad [UP-NS merger] by 3 or 4 extra percent to teach you a lesson."[11] The ability to make such threats without fear of losing customers or partners is itself a hallmark of market power. This particular merger is also likely to spur additional consolidation in the rail industry, as industry observers have speculated that BNSF would likely seek to acquire CSX to "compete" with a merged UP-NS, which would only exacerbate these harms.[12] As previous rail mergers have shown, these harms are not theoretical,[13] and UP-NS promises regarding "efficiency," "synergies," or even that the companies will "seamlessly connect" should be disregarded.[14]

Rail mergers cause operational meltdowns, backups, and disruptions, causing costly shipping delays – with railroads facing little accountability for harms they inflict.[15] Workers will see their bargaining power diminished, stagnant and reduced wages, and layoffs that lead to burnout and safety risks.[16] As railroads consolidate and cut costs, they divert traffic and minimize staff, which can cut off communities from emergency services or lead to train derailments.[17]

This merger is also likely to facilitate more deindustrialization. The success of American manufacturing relies on reliable transit networks for access to inputs and shipping to customers,

in the US and internationally. This consolidation of rail will make it difficult for a small or midsize factory to ship things within the country — particularly if they're shipping from or between small and midsize cities — or to export across the world. If this merger goes through, it will only hasten our transformation into a peripheral backwater with a few "gateway" supercities that receive imported manufactured goods and collect raw materials for export from the hinterlands.

II. Opposition is Widespread

Opposition to the merger is broad and far reaching.[18] A number of railroad labor organizations,[19] with this and other railroad mergers, have consistently raised the alarm about the safety risks of consolidation and the associated cuts to investment. Shippers – including farmers, energy producers, and manufacturers large and small – highlight the certain and long-term loss of competition in the rail industry.[20] The resulting higher prices for shippers could both harm American competitiveness and increase cost of living as prices are passed on to the American consumer.[21] Other railroads – including major competitors BNSF, CSX, and CPKC – oppose the merger, highlighting UP's "longstanding pattern of obstructive conduct" and urge the STB to block the deal.[22] Environmental and safety groups likewise continue to highlight the safety and environmental risks of further rail consolidation.[23]

In addition, State Attorneys General from red and blue states have vocally come out against this merger based on its likely effects, citing its harms to farms across the Midwest.[24] Members of Congress from both parties have voiced concern.[25] And President Trump's former Acting Chairman of the Council of Economic Advisers has called for the UP-NS deal to be blocked.[26]

III. Support is Limited, Often Out of Threat, Fear, or Necessity

Outside of the merging railroads and the executives who stand to financially benefit from the deal interests of the merging railroads, few support the proposed transaction. The support that does exist tends to come from various corners of industry and labor who are plausibly afraid of retaliation should the deal be allowed and the combined system be permitted to wield its newly-found monopolistic position or those tied to the Trump administration.[27] This is apparent from UP CEO Jim Vena's comments earlier this year where he said he would "probably increase everybody's rates" if they didn't support the deal.[28] Such threats call into question whether industry comments in support of the merger accurately reflect sentiment or if they are in response to said threat. Others may be refraining from commenting altogether out of fear of retaliation.

For rail unions, arbitrary layoffs and furloughs as the major rail systems have consolidated may create understandable fear that opposition to the merger might result in retaliation by the carrier with job cuts in the future. In that context, some union leaderships have made the move to

support the merger in exchange for promises that their current members' jobs will be protected, or even that they could gain work from rival unions. While we recognize the pressure from the carriers could lead some unions to this conclusion, we think that previous mergers have demonstrated that "job guarantees"[29] should be treated as suspect like any other promises from the merging carriers.[30] We also suggest to those rail unions that while job guarantees may offer a degree of protection to some current workers, a merger on the scale of UP-NS will only accelerate the industry trends which have resulted in a decline in railroad employment across all unions, and even the extinction of entire crafts.

IV. This Proposed Merger is Likely Illegal, and Despite Corporate Bribery, Should Be Blocked

The Surface Transportation Board's 2001 merger guidelines establish clear criteria by which any Class I rail merger must both be in the public interest and *enhance* competition.[31] For a merger to serve the public interest, it must provide "substantial and demonstrable gains in important public benefits" including "improved service and safety, enhanced competition, and greater economic efficiency" and must outweigh any potential harms or anticompetitive effects.[32] These guidelines were put in place after a wave of harmful rail mergers in the 1990s created the current railroad giants of UP, BNSF, CSX, and NS, but also led to a chain of operational meltdowns in the new rail systems.[33] Rail workers have been living through worsened safety conditions for the past two decades, as American communities have experienced the environmental risks of disasters like East Palestine in 2023.[34]

In a tradition it should follow today, the STB, as the Interstate Commerce Commission (ICC) before it, has blocked large rail mergers in recent decades. The 1983 proposed merger of the Santa Fe and Southern Pacific railroads was blocked by the ICC 1986.[35] BNSF attempted to merge with Canadian National in 1999, and the STB's blanket merger moratorium at the time blocked the deal in 2000.[36] A proposed merger between Canadian Pacific and Norfolk Southern fell apart in 2015, in expectation that the STB would block the deal.[37] These proposed deals were all substantially smaller in scope and lesser in harms than the merger now before the STB.

Put simply, this transaction is likely illegal under both the statutory rules governing the Surface Transportation Board and the merger guidelines promulgated by the Board in 2001. The STB reformed these guidelines in 2001 to explicitly block Class I mergers that were far smaller and far less harmful than this one.[38]

The only reason, it seems, that UP and NS are willing to put forth this deal now, is that the companies appear to believe that they will be able to secure approval of this deal by going directly to the President – bypassing the STB process and perhaps providing the administration misleading and incorrect information about the likely effects of this deal. Indeed, UP CEO Jim

Vena quickly sought to get close to President Trump. He met with Trump on September 9, suggesting locations for the domestic deployment of the National Guard while extolling the purported benefits of this dangerous megamerger.[39] Furthermore, with this deal under consideration before the STB, UP is one of the most prominent private donors for the construction of the ballroom to replace the East Wing of the White House.[40] Despite claims to the contrary,[41] these communications between the merging parties and the administration appear to be an attempt at corporate bribery. Furthermore, just days before the formal process for the merger began at the STB, Board Member Primus was fired from his position,[42] despite legal protections for STB members given its role as an independent regulatory body[43] (that has since been overturned.)[44] His firing is especially noteworthy, as Primus was the only board member that voted against the Canadian Pacific-Kansas City Southern merger in 2023.[45]

V. Conclusion

With some mergers, there is a valid debate over the likely merits and harms, but this is not one of them. A combined UP-NS would reduce rail competition for years to come, and it would hurt American commerce overall. Workers will be laid off, prices will be higher for small businesses, shippers, and consumers, some businesses will be forced to close, affecting regional economies across the country. At the same time, the merger would increase risks of on-the-job accidents and environmental disasters – including devastating train derailments. The proposed transaction must be blocked.

Sincerely,

American Economic Liberties Project

Endnotes

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The New Railroad Barons: Why the Union Pacific/Norfolk Southern Railroad Merger Must Be Blocked

Erik Peinert and Ashley Nowicki
October 2025

On July 29, 2025, Union Pacific Railroad announced plans to acquire Norfolk Southern Railway in a $72 billion transaction. As two of the four largest railroads in the United States, the combined $250 billion company[1] would become the country's first consolidated transcontinental railroad system, and the largest *ever* railroad company in the United States. Because of the clear harms to competition and anticipated regulatory reaction, no transcontinental merger of this kind has ever been attempted — until now.

As recent history with rail mergers illustrates, this merger would reduce competition in the rail industry, create service and shipping delays,[2] increase prices for shippers, hurt workers, and threaten the viability of many independent businesses. Several major labor unions have opposed the merger,[3] which would increase safety risks for American rail workers, while shipping associations have expressed concerns about possible price increases and more limited service should the merger be permitted.[4] As Wick Moorman, the retired CEO of Norfolk Southern, said in 2016, "A well-executed large railroad merger is an oxymoron. … Every rail merger of significant size, and a couple that weren't, have been extremely disruptive for a period of time."[5] This deal is also likely to embolden the other two railroad giants, Burlington Northern Santa Fe (BNSF) and CSX Transportation (CSX) to merge as well. This pair of mergers would make the railroad industry into a national duopoly, a scale of railroad consolidation not even met by the railroad barons of the Gilded Age. For all these reasons, this illegal merger should be blocked.

This brief explains the proposed acquisition in the context of the modern railroad industry, the dangers of any such combination, the stakeholders likely to be most affected, and how the public can push back against this merger. It also outlines the regulatory process and merger rules of the Surface

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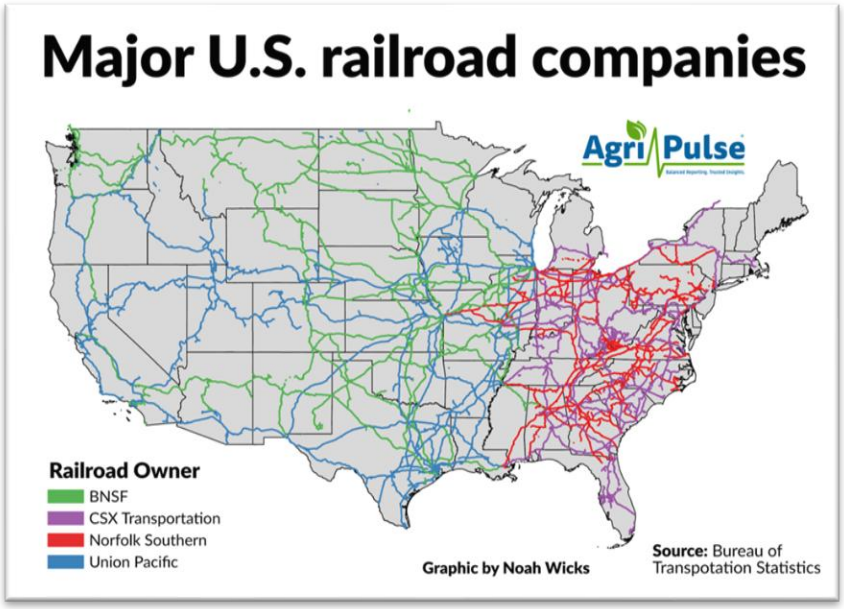
[1] Union Pacific Press Release, "Union Pacific and Norfolk Southern to Create America's First Transcontinental Railroad," July 29, 2025, https://www.up.com/press-releases/growth/norfolk-southern-transcontinental-nr-250729.
[2] FreightWaves, "CPKC system cutover triggers service woes in some former KCS locations," June 11, 2025, https://finance.yahoo.com/news/cpkc-system-cutover-triggers-woes-124648615.html; Kelly Stroh, "CPKC to remedy service disruptions impacting dwell times, switches," Supply Chain Dive, June 27, 2025, https://www.supplychaindive.com/news/cpkc-action-plan-service-disruptions/751642/.
[3] This includes the Transport Workers Union of America and The Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters.
[4] The Surface Transportation Board must take into consideration "the effect of the proposed transaction on the adequacy of transportation to the public … the total fixed charged charges that result from the transaction, the interest of rail carrier employees … [and] whether the proposed transaction would have an adverse effect on competition." *See* 49 U.S.C. § 11324.
[5] Bill Stephens, "Transcon Mergers," *Trains*, Vol. 76, No. 11 (Nov 2016): 24-33, available at: https://www.proquest.com/docview/1820289392?sourcetype=Magazines.

Transportation Board (STB), the federal agency with merger review authority over the railroad industry. An appendix outlines the STB's regulatory process and review timeline for the deal.

The Merger in Context

The STB classifies freight railroads in the United States according to their revenue.[6] The merging railroads, Union Pacific and Norfolk Southern, are two of six Class I railroads in the U.S. Class I railroads earn annual revenues over $1.07 billion (as of 2024), making them the largest railroads that tend to operate long-distance "trunk" lines, connecting major cities across the country.[7] Class II railroads, which earn over $48 million annually, are generally regional railroads, while Class III, which earn under $48 million annually, are generally local railroads.[8]



While there are officially six Class I railroads (the other four being BNSF, CSX, Canadian National, and CPKC[9]), the main four American railroads divide the continental United States into two regional duopolies, roughly divided by the Mississippi River (see map). The western half of the United States is served only by Union Pacific (one of the merging railroads) and BNSF, a fully owned subsidiary of Warren Buffet's Berkshire Hathaway. The eastern half of the country is served only by Norfolk Southern (the other merging railroad) and CSX. The main interchange points between the western and eastern railroads are Chicago, IL, St. Louis, MO, Memphis, TN, and New Orleans, LA, with others like Kansas City, MO, and Meridian, MS, as important but less significant hubs.

This concentrated industry structure was created by a wave of mergers in the 1980s and 1990s, which accelerated following Congress's deregulation of the industry[10] that kneecapped the Interstate

[6] 49 U.S.C. §1201; Surface Transportation Board, "Economic Data," https://www.stb.gov/reports-data/economic-data/. "For regulatory purposes, the Board categorizes rail carriers into three classes: Class I, Class II, and Class III. The classes are based on the carrier's annual operating revenues."
[7] See Surface Transportation Board, "Final Rule Amending Thresholds for Classifying Rail Carriers," April 5, 2021, https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1617633004000/50629.pdf; Surface Transportation Board, "Indexing the Annual Operating Revenues of Railroads," June 24, 2025, https://public-inspection.federalregister.gov/2025-11508.pdf.
[8] Id; American Short Line and Regional Railroad Association, "Railroad Definitions," Effective January 1, 2024, https://www.aslrra.org/about-us/about-aslrra/history/railroad-definitions/.
[9] Class I railroads Canadian National and CPKC largely serve Canadian shippers aiming to reach the American Midwest and the Gulf Coast, and as such they do not serve the relevant national American market.
[10] *See, e.g.*, the Railroad Revitalization and Regulatory Reform Act (1976) which restricted ICC from setting rates unless a railroad had "market dominance" and restricted ICC from controlling rate prices unless it was below a "reasonable minimum" Bernard F. Diederich, "The ICC from A to Z," p. 64, https://www.fedbar.org/wp-content/uploads/2015/07/ICC-pdf-1.pdf.; the Motor Carrier Act (1980) altered ICC's authority, removing rate setting even further as long as truck carriers had a "zone

Commerce Commission (ICC).[11] Congress created the STB to replace the ICC, with more limited authority than its predecessor.[12] These previous mergers provide a guide to what can be expected if Union Pacific and Norfolk Southern are permitted to merge: higher prices, worse service, operational delays, and less investment in the nation's railroad infrastructure.

Previous Rail Mergers

In the eastern half of the country, Chessie System and Seaboard System Railroad merged to create CSX in 1980.[13] In response, Southern Railway and Norfolk & Western Railway merged in 1981 to create Norfolk Southern.[14] These two mergers established a rail duopoly in the eastern half of the country. When the mid-Atlantic rail system Conrail was going bankrupt in 1999, CSX and Norfolk Southern split its assets and routes.[15]

In the western half of the country, Union Pacific and BNSF reached their current size by merging up, ostensibly to compete with each other. Union Pacific acquired Missouri Pacific railroad and Western Pacific railroad in 1982, then Missouri-Kansas-Texas railroad in 1988, then merged with Chicago and Northwestern railroad in 1995. Last, Union Pacific merged with Southern Pacific railroad in 1996.[16] BNSF was formed in 1996 through the merger of Burlington Northern railroad and the Atchison, Topeka and Santa Fe railroad.[17]

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of rate freedom" p. 9, https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg793.pdf; the Staggers Rail Act (1980) railroads no longer had to submit rates to the ICC which were posted publicly and subject to ICC oversight, allowing rail to charge different prices to different shippers including big business rebates, while making it easier to shut down unprofitable routes which were previously kept open to maintain access, Matthew Jinoo Buck, "How America's Supply Chains Got Railroaded," The American Prospect, February 4, 2022, https://prospect.org/economy/how-americas-supply-chains-got-railroaded/, Jerry Ellig, "Forty Years After Surface Freight Deregulation," The Regulatory Review, December 14, 2020, https://www.theregreview.org/2020/12/14/ellig-forty-years-after-surface-freight-deregulation/; the ICC Termination Act (1995) abolished the ICC and transferred jurisdiction to the STB. Congressional Research Service, "Abolishing a Federal Agency: The Interstate Commerce Commission, Incremental Deregulation of Surface Transportation," Henry B. Houge, January 10, 2024, https://www.congress.gov/crs-product/R47897.

[11] Congress created the ICC to rein in the monopolistic and powerful rail industry. *See*, National Archives, "Interstate Commerce Act of 1887," https://www.archives.gov/milestone-documents/interstate-commerce-act, Congressional Research Service, "Abolishing a Federal Agency: The Interstate Commerce Commission, Incremental Deregulation of Surface Transportation," Henry B. Houge, January 10, 2024, https://www.congress.gov/crs-product/R47897, and Ben Johnson and Sharon D. Thomas, "The Staggers Rail Act of 1980: Deregulation Gone Awry," West Virginia University, The National Coal Issue, Volume 85, Issue 4, May 1983, https://researchrepository.wvu.edu/cgi/viewcontent.cgi?article=2458&context=wvlr.

[12] Congressional Research Service, "The Surface Transportation Board (STB): Background and Current Issues," Ben Goldman, July 9, 2025, https://www.congress.gov/crs-product/R47013#:~:text/.

[13] Angela Cotey, "CSX Merger Family Tree," Trains, June 2, 2006 (last updated November 22, 2020), https://www.trains.com/trn/railroads/history/csx-merger-family-tree/.

[14] Id.

[15] Id.

[16] Union Pacific, Chronological History, https://www.up.com/about-us/history/chronology, retrieved August 22, 2025; The U.S. Department of Justice urged STB to deny the proposed merger. *See*, U.S. Department of Justice, "Justice Department Urges Denial of Union Pacific/Southern Pacific Merger," press release, June 3, 1996, https://www.justice.gov/archive/atr/public/press_releases/1996/0673.htm.

[17] Angela Cotey, "BNSF Railway Merger Family Tree," Trains, June 2, 2006 (last updated November 22, 2020), https://www.trains.com/trn/railroads/history/bnsf-railway-merger-family-tree/.

Even by the very lax merger standards of the late 1990s and early 2000s, these combinations were recognized as mistakes with devastating outcomes. Shippers reported a deterioration in service, fewer options with higher prices, and the loss of jobs,[18] while workers lost jobs[19] and those that didn't faced strenuous working conditions.[20] The STB quickly recognized the error in permitting so many of these transactions. So, at the end of 1999, when BNSF announced plans to merge with the recently privatized Canadian National (CN) Railway, the STB opted for a 15-month full moratorium on Class I railroad mergers in March 2000.[21] Issued by a Republican-led STB, senators and representatives across both parties supported the moratorium.[22]

While rail fares fell on average following deregulation in the 1980s and 1990s,[23] they rose again beginning in the 2000s following this merger wave, given the greater pricing power and less incentive for the railroads to invest.[24] As the GAO commented on the rate increases in 2006, "[a]fter years of reducing the size of its workforce and shedding track capacity, the industry is increasingly operating in a Freight Railroads capacity-constrained environment in which the demand for its services exceeds its capacity in some areas," highlighting that their capacity limitations were self-imposed by their market power and lack of investment. The GAO continued, "the rail industry has continued to consolidate, potentially increasing the market power of the largest railroads."[25]

In 2001, STB revised its merger rules, which set a much higher bar for rail mergers, based on the statutory requirement that any merger be "consistent with the public interest."[26] Whereas the previous rules had required that mergers not harm competition — a standard which the previous mergers had not met — now mergers are required to actively "enhance competition."[27] No Class I railroads have attempted to merge under the new rules in almost 25 years.[28] The one partial exception is the 2023 merger of Kansas City Southern and Canadian Pacific. That was adjudicated under the old

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[18] Paul D. Larson and H Barry Spraggins, "Union Pacific/Southern Pacific merger: impact on shippers," 1998, https://digitalcommons.wayne.edu/jotm/vol10/iss1/7/. "Shippers report a negative impact due to less rail competition, … railroad service has deteriorated, … and service problems are more severe for rail."; Daniel Machalaba, "Problems in the Wake of Merger Continue for Union Pacific," The Wall Street Journal, October 2, 1997, https://www.wsj.com/articles/SB875724698120686000?st=p9QH3J&reflink=desktopwebshare_permalink; https://finance.yahoo.com/news/rail-merger-warning-higher-costs-160438998.html.

[19] Between 1981 and 1982, 11 percent of railroad workers were laid off, Gary Adkins, "The return of the railroads," Illinois Issues, 8, March 1983, https://www.lib.niu.edu/1983/ii830308.html#:~:text=Laying%20off%20many%20employees%20also,opposed%20to%20$11%2C023%20in%201971; The Record, "California to lose 1,600 jobs: Union Pacific moving positions to Midwest," RecordNet, October 23, 1996, https://www.recordnet.com/story/news/1996/10/23/california-to-lose-1-600/50843745007/.

[20] Railroad Workers United, "RWU Resolution Against Further Class One Rail Mergers," August 6, 2025, https://static1.squarespace.com/static/65a5619d244f0b032324f7bc/t/689977c7a62a3c4c94778048/1754888135390/RWU+Resolution+Against+Further+Class+One+Mergers+FINAL+%281%29.pdf.

[21] Dan Lang, "STB Imposes Rail Merger Moratorium," Transport Topics, March 17, 2000, http://ttnews.com/articles/stb-imposes-rail-merger-moratorium.

[22] FreightWaves, "STB Merger Moratorium Wins Backing from Senators," March 23, 2000, https://www.freightwaves.com/news/stb-merger-moratorium-wins-backing-from-senators/.

[23] *See* Staggers Rail Act of 1980, S. 1946, 96th Congress, https://www.congress.gov/bill/96th-congress/senate-bill/1946.

[24] Government Accountability Office, "Freight Railroads: Industry Health Has Improved, but Concerns about Competition and Capacity Should Be Addressed," October 6, 2006, https://www.gao.gov/products/gao-07-94.

[25] Id.

[26] 49 U.S.C. §11324(c). For more background on the revised rules, see Committee on Commerce, Science, and Transportation, Hearing on the Surface Transportation Board's New Merger Rules, June 28, 2001, https://www.congress.gov/107/chrg/CHRG-107shrg88970/CHRG-107shrg88970.pdf.

[27] Progressive Railroading, "STB's new merger rules no surprise," June 11, 2001, https://www.progressiverailroading.com/rail_industry_trends/news/STBs-new-merger-rules-no-surprise--3352.

[28] Canadian Pacific had planned a merger in 2016 that was abandoned after opposition from the Department of Justice and Norfolk shareholders, even before the STB ruled. *See*, e.g., Josh Funkap, "Canadian Pacific ends bid to buy Norfolk Southern," April 11, 2016, https://apnews.com/article/f171a91354a444fb90b1cc2e1b62be85.

merger rules, as STB exempted Kansas City Southern from the new rules in 2001 for being the smallest Class I railroad.[29] The exemption was contentious even at the time.[30]

Meanwhile, industry concentration has continued to take a toll. By 2023, the top-four major railroads hauled 7% fewer loads than they had two decades earlier, in 2003.[31] And freight rates increased at more than twice as fast as inflation over a similar time frame (hiking by 43% despite a modest 8% increase in operating costs)[32] as revenue from captive customers (those with access to only one rail line) swelled from 27% to 50% of overall revenues.[33]

The Proposed Merger

The overly concentrated industry and its problems have changed little since 2001. Nevertheless, two of the very largest Class I railroads now intend to merge, which would bring the effective number of railroads from four to three.

Union Pacific Railroad, of Omaha, NE, is the second-largest rail freight carrier in the United States, with over 32,000 route miles of track and almost 33,000 employees.[34] As of August 2025, Union Pacific had the largest market capitalization for rail in the U.S., at an estimated $132.03 billion.[35] Its operating margin of 40% is on par with that of Big Tech companies.[36] The company has a particularly poor track record with respect to safety for rail workers and to cost-cutting and layoffs resulting in shipping delays,[37] with the Federal Rail Administration writing to Union Pacific in 2024 that the company "continues to furlough employees at a rate, based on available data, far outpacing that of any of your Class I peers."[38]

Norfolk Southern Railway, of Atlanta, GA, has around 19,500 route miles with around 20,000 employees. [39] As of August 2025, Norfolk Southern's market capitalization was an estimated $62.92 billion, fourth overall in the U.S. for rail.[40]

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[29] Surface Transportation Board Decision, Docket No. FD 36500, April 23, 2021, https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1619216719308/50743.pdf.
[30] *See* dissent from STB Member Robert Primus at Surface Transportation Board Decision, Docket No. FD 36500, April 23, 2021, https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1619216719308/50743.pdf.
[31] Marybeth Luczak, "For STB, an Earful on Freight Rail Growth," Railway Age, September 22, 2024, https://www.railwayage.com/regulatory/for-stb-an-earful-on-rail-industry-growth/.
[32] AFPM, "Freight Rail in America: Can a Market Be 'Free' if There's Almost No Competition?," April 25, 2022, https://www.afpm.org/newsroom/blog/freight-rail-america-can-market-be-free-if-theres-almost-no-competition.
[33] Id.
[34] Union Pacific, Company Overview, retrieved August 12, 2025, https://www.up.com/aboutup/corporate_info/uprrover/index.htm.
[35] Union Pacific Corporation Market Capitalization, retrieved August 8, 2025, https://companiesmarketcap.com/union-pacific-corporation/marketcap/.
[36] The Capitol Forum, "Union Pacific/Norfolk Southern: Monopoly Concerns, Industry Track Record Fuel Shipper Skepticism Over Proposed Rail Mega-Merger," Vol. 13, No. 665 August 15, 2025.
[37] Mary Kennedy, "Cash Mark Moves: Are Railroad Layoffs Compromising Safety and Service," Progressive Farmer, March 11, 2024, https://www.dtnpf.com/agriculture/web/ag/columns/cash-market-moves/article/2024/03/11/railroad-layoffs-compromising-safety.
[38] Federal Railroad Administration letter to Union Pacific, February 29, 2024, https://www.stb.gov/wp-content/uploads/FRA-Administrator-Bose-Letter-to-Mr.-Jim-Vena-2.29.24.pdf.
[39] Norfolk Southern Company Fact Sheet, retrieved August 8, 2025, https://www.norfolksouthern.com/content/dam/nscorp/pdf/576950%20NS%20Corporate%20Fact%20Sheet_07-2025%20FINAL2.pdf.
[40] Norfolk Southern Market Capitalization, retrieved August 8, 2025, https://companiesmarketcap.com/norfolk-southern/marketcap/.

Although geographically the merger would primarily connect non-overlapping lines (which nonetheless carries risks of competitive harms, as noted below), the parties have some overlap in the Midwest, such that the merger would reduce the number of competing rail providers from two to one in those areas.[41]

The parties are expected to justify their union on grounds of promised but vague efficiencies. However, real operational efficiencies can be achieved through other means, short of mergers, such as contractual arrangements.[42] The parties are also expected to argue that the merger would enable them to compete more effectively with the trucking industry. However, the merged entity would have strong financial incentives to focus on extracting more from its captive customers instead. As reported by Capitol Forum, rail-dominant commodities (such as many chemicals that cannot be safely and cheaply transported long distances by truck) are a much higher-margin business. Union Pacific generated more than twice as much revenue per rail car from bulk customers (e.g., shippers of grain, fertilizer, and coal) and industrial customers (e.g., shippers of chemicals, metals, and petroleum products) — both categories that tend to depend on rail — than from premium customers (which tend to be intermodal shippers) in 2024.[43] Due to these margins, 70% of United Pacific's revenue comes from customers who cannot easily switch to trucking. Meanwhile, Wall Street analysts have criticized Norfolk Southern for earning a majority of its revenue through low-margin intermodal cars, which prompted Norfolk Southern to remove 15% of its intermodal lanes.[44] The merged entity would likely focus more on high-margin bulk and industrial segments as such customers' rail options decrease and its ability to maximize extraction from them grows. Thus, there is little reason to believe that the merger would enhance competition overall.

Harms of the Merger

As previous rail mergers have illustrated, the combination of Union Pacific and Norfolk Southern would likely cause a range of harms.

Loss of Competition for Shippers

The greatest harm would be the likely permanent loss of competitive rail services for shippers. Many shippers' associations — the Freight Rail Customer Alliance,[45] the American Chemistry Council,[46] the National Industrial Transport League (NITL),[47] and the Alliance for Chemical Distribution[48] — have already expressed concerns about the merger, including outright opposing the deal which is likely to result in higher prices, worse service, and loss of customer businesses with little to no recourse for those harmed.

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[41] The Capitol Forum, "Union Pacific/Norfolk Southern: Monopoly Concerns, Industry Track Record Fuel Shipper Skepticism Over Proposed Rail Mega-Merger," Vol. 13, No. 665, August 15, 2025.
[42] Hal Singer and Logan Summerlin, "The Trump Administration Should Tap the Brakes on the Union Pacific-Norfolk Southern Merger," The Sling, August 8, 2025, https://www.thesling.org/the-trump-administration-should-tap-the-brakes-on-the-union-pacific-norfolk-southern-merger/.
[43] *The Capitol Forum*, "Union Pacific/Norfolk Southern: Monopoly Concerns, Industry Track Record Fuel Shipper Skepticism Over Proposed Rail Mega-Merger," Vol. 13, No. 665, August 15, 2025.
[44] Id.
[45] Stuart Chirls, "Rail merger will bring 'dismal service,' 'high rates', says shippers group," FreightWaves, August 4, 2025, https://finance.yahoo.com/news/rail-merger-bring-dismal-high-101600506.html.
[46] Justin Franz, "Shippers, Stakeholders Skeptical of UP-NS Merger," *Railfan & Railroad Magazine*, July 30, 2025, https://railfan.com/shippers-stakeholders-skeptical-of-up-ns-merger/.
[47] Jeff Berman, "Shipper groups express concerns over Union Pacific-Norfolk Southern deal," Logistics Management, July 31, 2025, http://logisticsmgmt.com/article/shipper_groups_express_concerns_over_union_pacific_norfolk_southern_deal.
[48] Id.

While broad regions are duopolies, there are many individual routes throughout the country where there is only one railroad,[49] and thus no competition. So even the current market structure creates bottlenecks on such routes, both because capacity is limited and because the railroad has no incentive to improve service. Companies have limited accountability for the losses that shippers or their customers experience as a result, such as plant stoppages or lost business due to late deliveries. This merger would eliminate the competition that does exist and further extend the bottleneck and market power along the whole line.

Furthermore, the merged system would be able to preferentially price its services to direct shippers to its own system, with no difference in efficiency. Most traffic crossing the entire country is transferred between rail networks at a small number of transfer points, mostly along the Mississippi river, namely Chicago, IL, St. Louis, MO, Memphis, TN, New Orleans, LA, and to a lesser degree Meridian, MS, and Kansas City, MO. If a shipper wants to send something from the east to the west coast, they can currently negotiate between CSX and Norfolk Southern for a competitive fare, and then again negotiate between BNSF and Union Pacific for the second half of the trip. Having multiple options gives shippers leverage for better rates and services. However, if Union Pacific merged with Norfolk Southern, the combined system would be able to divert and give worse rates to shippers who, for example, choose to use CSX in the east before opting to use the combined system in the west.

The merger would also reduce the reliability and variety of intermodal transport services available to American shippers, as facilities are built for rail not trucks, and using trucks for long distances is not economical, increasing prices for many shippers. Rail systems are built around facilities — railyards, intermodal transfer points, ports, etc. — and shippers use the variety and geographic dispersion of these facilities to both diversify their operations and leverage against the railroads.[50] As railroads merge, more and more of those facilities must rely on a single railroad for their business, and shippers will lose even more power relative to the rail systems. And because switching costs are relatively high, moving one's shipping over to truck is simply not a viable option in the short term and an inefficient one in the long run. This problem is exacerbated by an appellate court decision in July, which struck down a new reciprocal switching rule from the STB that would have allowed shippers who only have access to one railroad the right to have another railroad come to them, on their competitor's tracks, if their sole provider is providing insufficient service.[51]

Many intermodal shippers[52] are already managing this risk. Intermodal operators J.B. Hunt, Schneider, and STG Logistics may have to switch their service providers, as each currently uses Union Pacific or Norfolk Southern in one half of the country but CSX or BNSF in the other.[53]

The end-to-end competitive pressure that exists right now also leads to a range of partnerships that would likely be lost in the event of a merger. The UMAX Domestic Container Program, a partnership of Union Pacific and CSX, provides intermodal shippers and carriers across the country with a fleet of

[49] Bureau of Transportation Statistics; AgriPulse, graphic by Noah Wicks.
[50] Trailer Bridge, "Supply Chain Strategy: Use Carrier Diversity to Avoid Disruption," August 21, 2023, https://www.trailerbridge.com/insights-resources/blogs/supply-chain-strategy-use-carrier-diversity-to-avoid-disruption/.
[51] Adam Yanelli, "RAILROADS: Appeals court vacates US regulator's reciprocal switching rule," Independence Commodity Intelligence Service, July 10, 2025, https://www.icis.com/explore/resources/news/2025/07/10/11118205/railroads-appeals-court-vacates-us-regulator-s-reciprocal-switching-rule/.
[52] These are shipping and trucking companies that use a combination of rail and other transport options for different legs of a shipment.
[53] Bill Stephens, "UP-NS merger puts intermodal giants on the wrong side of the map," Trains.com, August 1, 2025, https://www.trains.com/pro/freight/intermodal/up-ns-merger-puts-intermodal-giants-on-the-wrong-side-of-the-map/.

shipping containers.[54] Union Pacific just two years ago launched an intermodal service to connect Mexico's industrial markets to the American Southeast, in cooperation with CSX and Norfolk Southern. Just last month, CSX and KPKC launched a similar partnership, Southeast Mexico Express (SMX), to connect shippers across Mexico, Texas, and the Southeast.[55] Because the western and eastern railroads are not direct competitors, today shippers are able to split their business and have access to such services. But a combined national railroad would be incentivized to use any leverage they can to divert business to themselves, cutting off such services or offering preferential fares.

These sorts of delays, preferential terms, and higher prices for shippers will harm the United States' current push to reinvigorate its manufacturing base, something that requires manufacturers and exporters to have reliable, competitive, and consistent access to industrial inputs from its suppliers and to export markets.[56]

Operational Difficulties During Railroad Mergers

Operational meltdowns, backups, and service interruptions have been rampant in the recent history of rail consolidation. The wave of mergers in the 1990s created unprecedented backlogs and service interruptions, leading to many shippers diverting their traffic to non-rail providers at a significant expense. Norfolk Southern's 1999 acquisition of Conrail caused major backups and delays for UPS, Ford, GM, and Procter & Gamble, risking temporary plant closures.[57] The Canadian Pacific/Kansas City Southern (CPKC) combination in 2023 has already resulted in the sort of extensive backups and delays the merging parties had promised to avoid.[58] The CPKC merger — like the proposed United Pacific/Norfolk Southern merger — combined two railroads that primarily connected end to end, and thus was seen as carrying less service disruption risk. But it led to significant service disruptions nonetheless.[59]

This merger will certainly cause operational meltdowns and service outages, as is happening with CPKC two years after the merger, with "higher terminal dwell at key yards, slower average velocity, and decreased on-time performance," violating some conditions of the original merger approval.[60] Crucially, there is little to no recourse for shippers or their customers if they go out of business or lose money because of problems with rail. Shippers have to spend more time and money to track their products, sending emergency truck shipments to keep their customers from shutting down. Railroads face little accountability for these harms: shippers and other affected businesses must fight to recover

[54] Union Pacific, "UMAX Domestic Container Program," https://www.up.com/shipping/intermodal/umax.
[55] CSX Press Release, "CSX, CPKC Create Faster Freight Solutions with Southeast Mexico Express," Jul 21, 2025, https://www.csx.com/index.cfm/about-us/media/press-releases/csx-cpkc-create-faster-freight-solutions-with-southeast-mexico-express/.
[56] Richard Hornbeck and Martin Rotemberg, "Railroads, Reallocation, and the Rise of American Manufacturing," National Bureau of Economic Research, December 2019, https://www.nber.org/system/files/working_papers/w26594/w26594.pdf.
[57] Don Phillips, "Rail System Disruptions Reported: Norfolk Southern Suffering Glitches," *Washington Post*, June 8, 1999, https://www.washingtonpost.com/archive/business/1999/06/09/rail-system-disruptions-reported/9926fc3e-04d1-4b2d-8af9-241708613188/. Likewise, the mergers that created BNSF were considered abnormal at the time precisely because they had not created significant service delays.
[58] Surface Transportation Board Letter to Canadian Pacific Kansas City, June 17, 2025, https://www.stb.gov/wp-content/uploads/309673.pdf.
[59] *The Capitol Forum*, "Union Pacific/Norfolk Southern: Monopoly Concerns, Industry Track Record Fuel Shipper Skepticism Over Proposed Rail Mega-Merger," Vol. 13, No. 665, August 15, 2025.
[60] Federal Railroad Administration letter to Union Pacific, February 29, 2024, https://www.stb.gov/wp-content/uploads/FRA-Administrator-Bose-Letter-to-Mr.-Jim-Vena-2.29.24.pdf.

lost business or undue costs that structurally result from the merger,[61] and merger remedies after the fact have a poor record.[62]

Contributing to this is the business strategy of cost-cutting above all else adopted by most of the major rail systems, referred to in the industry as "precision scheduled railroading" (PSR). PSR prioritizes the financial performance of the railroad, focusing on reducing the operating expenses (i.e., cutting all costs possible) relative to revenue.[63] A merger will only worsen those trends, giving the merged system the pretense to cut staff further as it scales trains and shipment sizes even larger.

Environmental and Community Harms

Rail mergers likewise have a long history of overlapping community, environmental, and safety harms and risks. As railroads scale up while seeking to cut costs, they frequently divert traffic to overloaded points of the rail network or areas that were not designed to handle the high traffic or long trains. Under PSR, trains that are multiple miles long and staffed with only a handful of employees (often only two) can block roads, splitting towns in half for an hour or more, sometimes cutting off parts of communities from emergency services, blocking ambulances from reaching the hospital.[64] Likewise, PSR likely contributed to the 2023 East Palestine train derailment, where a nearly two-mile-long Norfolk Southern train staffed with only three employees contaminated over a million gallons of drinking water with industrial waste.[65] This was a frequent source of strong opposition to the recent CPKC merger, which was much smaller in scale than the one proposed today.

[61] *See, e.g.*, Carmack Amendment, 49 U.S.C. § 11706, *New York, Philadelphia & Norfolk R.R. Co. v. Peninsula Produce Exch.*, 240 U.S. 34 (1916), *Hargrove v. Universe Exp. Inc. Moving & Storage*, No. 5:13-CV-594-FL, 2013 WL 5218104, at 7 (E.D.N.C. Sept. 17, 2013) ("An action for damages lies under the Carmack Amendment where goods are not transported with reasonable dispatch."); inadequate and unreasonable rail service, *see, e.g.*, 49 U.S.C. § 11101(a) ("[railroads] shall provide the transportation or service on reasonable request."), 11121(a)(1) ("[rail carriers] shall furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service."); and unreasonable practice by the railroad, 49 U.S.C. § 10702(2) ("[unreasonable] rules and practices on matters related to … transportation or service."). However, the Carmack Amendment may be difficult for shippers to prove and has short notice requirements. The STB often gives leeway to the railroads when demand is high, *see, e.g.*, Allied Corp. v. Union Pac. Pac. R.R. Co., 1985 WL 56817, at 484 (I.C.C. 1985) and *N. Am. Freight Car Ass'n v. BNSF Railway Co.*, 2007 WL 201203, at 9 (S.T.B. Jan. 24, 2007). The STB also frequently rejects challenges to supply practices, *see, e.g.*, *N. Am. Freight Car Ass'n*, 2007 WL 201203, at 8.

[62] John E. Kwoka, *Mergers, Merger Control, and Remedies: A Retrospective Analysis of US Policy*, MIT Press, 2014.

[63] Matthew Jinoo Buck, "How America's Supply Chains Got Railroaded," The American Prospect, February 4, 2022, https://prospect.org/economy/how-americas-supply-chains-got-railroaded/.

[64] *See, e.g.*, Mike Hendricks, "'They just don't care': Trains blocking roads can be deadly. It's only getting worse," *The Kansas City Star*, December 13, 2022, https://www.kansascity.com/news/business/article268879922.html.

[65] Roxana Saberi, "Train that derailed in Ohio highlights cost-cutting strategy in rail industry," CBS News, February 22, 2023, https://www.cbsnews.com/news/ohio-train-derailment-cost-cutting-strategy-rail-industry-east-palestine/; WFMJ, "NTSB confirms rail car axle issue caused Norfolk Southern train derailment," February 6, 2023, https://www.wfmj.com/story/48313339/ntsb-confirms-rail-car-axle-issue-caused-norfolk-southern-train-derailment.

Harms to Workers

Historically, rail consolidation results in job loss,[66] diminishing labor power in negotiating better working conditions and pay, resulting in staffing shortages that lead to burn out and increased safety risks for workers and the public.[67] And in general, consolidation results in stagnant and reduced wages for workers,[68] as there are fewer buyers for labor and greater leverage for the consolidated companies.

Because of these harms, several major labor unions oppose the merger. The Transport Workers' Union (TWU), which represents many Norfolk Southern employees, has come out strongly against the merger, citing Union Pacific's troubling record with skirting safety standards and record of cost-cutting layoffs, even relative to other railroads.[69] The Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters (BMWED), which represents workers who build and maintain tracks, bridges, buildings, and other infrastructure on railroads, also opposes this merger. BMWED rejected a proposed agreement with Union Pacific to support the merger, as the proposed deal did not do enough to protect workers. President Tony Cardwell stated that the union would "vehemently deny [the merger]" and work with the White House to block it.[70] Railroad Workers United (RWU),[71] which represents non-management rail workers including members from all 14 rail crafts, opposes "this [] merger as well as any and all takeovers, mergers, or other combinations of the remaining Class One railroads…" as rail mergers result in service disruption, inefficiencies, staffing shortages and exhausted workers.[72] RWU also strongly opposes the attempted firing of STB member Robert Primus for "daring to stand for fair competition and consumer interests" in an attempt to "grease the skids for corporate railroad consolidation."[73]

[66] David E. Davis and Wesley Wilson, "Deregulation, Mergers, and Employment in the Railroad Industry," Journal of Regulatory Economics, February 1999, https://www.researchgate.net/publication/5155966_Deregulation_Mergers_and_Employment_in_the_Railroad_Industry; Matthew Jinoo Buck, "How America's Supply Chains Got Railroaded," The American Prospect, February 4, 2022, https://prospect.org/economy/how-americas-supply-chains-got-railroaded/.

[67] EHN, "New railroad merger could threaten safety, jobs, and local communities," August 26, 2025, https://www.ehn.org/new-railroad-merger-could-threaten-safety-jobs-and-local-communities/.

[68] Thomas Philippon, "Causes, Consequences, and Policy Responses to Market Concentration," ASPEN Economic Strategy Group, November 21, 2019, https://www.economicstrategygroup.org/publication/causes-consequences-and-policyresponses-to-market-concentration/; Thomas Philippon, "The Economics and Politics of Market Concentration," The Reporter, December 1, 2019, https://www.nber.org/reporter/2019number4/economics-and-politics-marketconcentration..

[69] Transport Workers Union, "TWU Strongly Opposes Union Pacific-Norfolk Southern Merger," July 29, 2025, https://www.twu.org/twu-strongly-opposes-union-pacific-norfolk-southern-merger/.

[70] Josh Funk, "Biggest rail union joins others in endorsing Union Pacific merger but some still have reservations," AP News, September 22, 2025, https://apnews.com/article/smarttd-union-pacific-norfolk-southern-railroad-merger-39d0c6237856f96a78446c1f4cb80bd4.

[71] Railroad Workers United FAQ, https://www.railroadworkersunited.org/faq.

[72] Railroad Workers United, "RWU Resolution Against Further Class One Rail Mergers," August 6, 2025, https://static1.squarespace.com/static/65a5619d244f0b032324f7bc/t/689977c7a62a3c4c94778048/1754888135390/RWU+Resolution+Against+Further+Class+One+Mergers+FINAL+%281%29.pdf; Jake Johnson, "Rail Workers Warn Union Pacific-Norfolk Southern Merger Would 'Simply Line the Pockets of Wall Street'," August 11, 2025, https://www.commondreams.org/news/railroad-workers-united-union-pacific.

[73] Mark Gruenberg, "Rail workers pick up steam against Union Pacific-Norfolk Southern monopoly," Peoples World, September 8, 2025, https://www.peoplesworld.org/article/rail-workers-pick-up-steam-against-union-pacific-norfolk-southern-monopoly/.

Other major unions – including IAM Union Rail Division,[74] the Brotherhood of Railroad Signalmen (BRS)[75] and – have expressed concerns about job security and workers' rights.

SMART Transportation Division (SMART-TD), the largest rail union in the country, initially came out against the merger, citing greater safety risks in a combined system, the likelihood of operational "meltdowns" during integration, and the risk to jobs throughout the transportation sector.[76] Recently, however, SMART-TD announced its support for the merger, as Union Pacific CEO Jim Vena promised not to lay off any workers and to protect their jobs "for the length of their careers."[77] However, this agreement may end up like ones in the past, that were "too often a ticket to misery" as workers had to move to different regions of the country or felt unfulfilled by their new duties.[78] It also does nothing to protect "labor across the middle of the country", or jobs at vital transport hubs – particularly if this deal leads to even further consolidation.[79]

These promises are also unenforceable. As past mergers have shown, corporations – including rail companies – often make empty promises in an effort to justify and build support for illegal mergers.[80] In 1996, the United Transportation Union and the Brotherhood of Locomotive Engineers endorsed the merger of Union Pacific and Southern Pacific to protect 2,500 workers.[81] However, this agreement did not prevent job losses, as the company ultimately laid off or moved thousands of employees across the country the same month the merger was finalized.[82] In other industries, there are a number of examples where companies promised not to lay off workers and even promised to create jobs. In 2018, T-Mobile and Sprint claimed they needed to merge to compete with AT&T and Verizon, promising to

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[74] IAM Union, Rail Division, "Statement on Union Pacific, Norfolk Southern Merger Announcement," press release, July 20, 2025, https://www.goiam.org/press-releases/iam-union-rail-division-statement-on-union-pacific-norfolk-southern-merger-announcement/.

[75] Brotherhood of Railroad Signalmen, "Merger Between Union Pacific and Norfolk Southern Raises Major Concerns for Safety, Workforce, and Accountability," press statement, August 22, 2025, https://www.brs.org/?zone=/unionactive/view_article.cfm&HomeID=952834.

[76] Lori Ann LaRocco, "From jobs to safety, biggest railroad union fears 'meltdowns' from Union Pacific-Norfolk Southern merger," CNBC, August 6, 2025, https://www.cnbc.com/2025/08/06/largest-labor-group-union-pacific-norfolk-southern-merger-job-losses.html.

[77] Josh Funk, "Biggest rail union joins others in endorsing Union Pacific merger but some still have reservations," AP News, September 22, 2025, https://apnews.com/article/smarttd-union-pacific-norfolk-southern-railroad-merger-39d0c6237856f96a78446c1f4cb80bd4; SMART-TD, Union Pacific, Norfolk Southern, "SMART-TD and Union Pacific Announce Landmark Agreement Securing Jobs and the Future of Railroading," https://assets.up-nstranscontinental.com/SMART-TD%20and%20Union%20Pacific%20Announce%20Landmark%20Agreement%20Securing%20Jobs%20and%20the%20Future%20of%20Railroading_Sept%2022%202025.pdf.

[78] Stuart Chirls, "Rail merger: Lifetime job is great "until you're stuck in it"," Freight Waves, September 24, 2025, https://www.freightwaves.com/news/rail-merger-lifetime-job-is-great-until-youre-stuck-in-it.

[79] SMART-TD President Jeremy Ferguson said the risk to jobs goes beyond Union Pacific and Norfolk Southern alone. *See* Lori Ann LaRocco, "From jobs to safety, biggest railroad union fears 'meltdowns' from Union Pacific-Norfolk Southern merger," CNBC, August 6, 2025, https://www.cnbc.com/2025/08/06/largest-labor-group-union-pacific-norfolk-southern-merger-job-losses.html.

[80] Ashley Nowicki and Laurel Kilgour, "Why Merge-to-Compete Arguments Are Contrary to the letter and Spirit of Antitrust Laws and How Resulting Mergers Have Harmed the Public," American Economic Liberties Project, December 11, 2024, https://www.economicliberties.us/wp-content/uploads/2024/12/Debunking-Merge-to-Compete.pdf.

[81] Kenneth Howe, "Why Unions Backed Rail Merger / Documents detail agreements struck with Union Pacific," CT Insider, March 20, 1996, https://www.ctinsider.com/business/article/why-unions-backed-rail-merger-documents-detail-2989258.php.

[82] Associated Press, "Severance to Include $10,000," DeseretNews, August 29, 1996, https://www.deseret.com/1996/8/29/19262844/severance-to-include-10-000/; The Record, "California to lose 1,600 jobs: Union Pacific moving positions to Midwest," RecordNet, October 23, 1996, https://www.recordnet.com/story/news/1996/10/23/california-to-lose-1-600/50843745007/#:~:text=California%20to%20lose%201%2C600%20jobs,100%20Stockton%2Darea%20railroad%20positions%2C; Daniel Machalaba, "Problems in the Wake of Merger Continue for Union Pacific," The Wall Street Journal, October 2, 1997, https://www.wsj.com/articles/SB875724698120686000?st=p9QH3J&reflink=desktopwebshare_permalink.

create "thousands of new [] jobs." Instead, there were multiple rounds of layoffs.[83] Merging companies' promises cannot be enforced.

Any job guarantee from Union Pacific in particular rings hollow, as Union Pacific began rapidly laying off or furloughing workers in 2023, once again choosing to "prioritize cost-cutting measures over ensuring safe operations, jeopardizing the well-being of both [Union Pacific's] workers and the public," alone among the Class I companies.[84] At the same time, the company returned money to investors, paying over $3 billion in dividends and stock buybacks of over $700 million.[85]

The Risk of Contagious Consolidation

Just as this merger intends to create a consolidated transcontinental rail system, observers have speculated that BNSF would likely seek to acquire CSX in response, following the trend of getting ever bigger by merging to compete. BNSF, a wholly owned subsidiary of Warren Buffet's Berkshire Hathaway since 2009, is the largest rail carrier in the United States, with 32,500 route miles and approximately 36,500 employees.[86] Loose estimates figured its market capitalization was approximately $200 billion as of 2019, making up around 40% of Berkshire Hathaway's valuation at the time.[87]

CSX, of Jacksonville, FL, is similar in size to Norfolk Southern, with about 20,000 miles of track and approximately 23,500 employees as of the end of 2024. Most of its employees are in one of 12 national bargaining unions.[88] As of August 2025, CSX's market capitalization was an estimated $67.7 billion, the third-largest in the industry.[89] If such a BNSF/CSX merger were to follow the first, then the U.S. will have traded two regional duopolies — where there currently is some competition for shippers to negotiate for better rates across the two regions — for one national duopoly, in which such choice and competition would be lost.

[83] Ashley Nowicki and Laurel Kilgour, "Why Merge-to-Compete Arguments Are Contrary to the letter and Spirit of Antitrust Laws and How Resulting Mergers Have Harmed the Public," American Economic Liberties Project, December 11, 2024, p. 7-9, https://www.economicliberties.us/wp-content/uploads/2024/12/Debunking-Merge-to-Compete.pdf; T-Mobile, "T-Mobile and Sprint to Combine, Accelerating 5G Innovation & Increasing Competition," press release, April 29, 2018, https://www.t-mobile.com/news/press/5gforall; Jasmine Hicks, "The T-Mobile/Sprint merger hasn't created jobs – it's cut thousands," The Verge, September 1, 2022, https://www.theverge.com/2022/9/1/23333124/t-mobile-sprint-layoffs-5g-merger-jobs-promise; Amritpal Kaur SandhuLongoria, "T-Mobile to lay off 5,00 people nationwide, after Sprint merger promised more jobs," USA Today, August 25, 2023, https://www.usatoday.com/story/money/2023/08/25/t-mobile-layoffs-cut-workers-jobs-nationwide/70680602007.

[84] Federal Railroad Administration letter to Union Pacific, February 29, 2024, https://www.stb.gov/wp-content/uploads/FRA-Administrator-Bose-Letter-to-Mr.-Jim-Vena-2.29.24.pdf.

[85] Zacks Equity Research, "Union Pacific Rewards Investors With 3% Dividend Payout," Nasdaq, July 17, 2025, https://www.nasdaq.com/articles/union-pacific-rewards-investors-3-dividend-payout.

[86] BNSF Railway Company Fact Sheet, retrieved August 12, 2025, https://bnsf.com/bnsf-resources/pdf/about-bnsf/fact_sheet.pdf.

[87] Sven Carlin, "Berkshire Hathaway Stock Valuation – Just Burlington Is Worth $200 Billion," https://svencarlin.com/berkshire-hathaway-stock-valuation/, retrieved August 8, 2025.

[88] CSX 2024 10-K, https://investors.csx.com/financials/annual-reports/default.aspx.

[89] CSX Corporation Market Capitalization, retrieved August 8, 2025, https://companiesmarketcap.com/csx-corporation/marketcap/.

Possibly indicating skepticism about a merger, BNSF and CSX have just expanded a range of their partnerships, including coast-to-coast cooperation to provide shippers with more streamlined service across the country.[90] However, many activist investors continue to pressure CSX to pursue a merger.[91]

Conclusion

The American railroad industry is already overly concentrated and controlled by management far more concerned with financial performance and metrics than operational reliability or long-term growth. This merger will cause clear harm to competition in the industry, likely increase costs and delays for the American manufacturers who rely on rail transport, and harm many communities and workers across the Midwest. With one of the likely outcomes being two giant national railroads, both larger than any of the railroads of the Gilded Age barons, this deal should be blocked.

Stakeholders and the public can voice their opposition to this merger through the STB Docket, Finance Docket No. 36873, at https://www.stb.gov/proceedings-actions/dockets-and-service-lists/.

[90] Amy Thielen, "CSX, BNSF expand intermodal partnership – update," SeekingAlpha, August 22, 2025, https://seekingalpha.com/news/4488388-csx-bnsf-expand-intermodal-partnership-but-have-no-plans-to-merge.
[91] Sabrina Valle, "CSX-BNSF railroad pact lessens expectations of quick merger, analysts say," Reuters, August 22, 2025, https://www.reuters.com/business/csx-bnsf-railroad-pact-lessens-expectations-quick-merger-analysts-say-2025-08-22/.

Appendix: Process for Union Pacific/Norfolk Southern Merger

Unlike most mergers in the United States, the Federal Trade Commission and Department of Justice do not decide to approve or block a rail merger, but rather the railroad-specific and independent Surface Transportation Board (STB) does.

a) Prefiling Notice: The merging parties submitted their prefiling notice of intent to merge on July 30, 2025.[92] The STB published this in the Federal Register on August 28.[93]
b) Application: The merging parties will file a full application, which provides a full description of the transaction on or before January 29, 2026.[94]
    a. The full application must be served on all persons who request a copy after the prefiling notice is posted in the Federal Register.[95]
c) Evidentiary Proceedings: The STB must complete an evidentiary proceeding within one year of accepting the merger application. The format can be an oral public hearing or some other format determined by the STB.[96]
    a. The format of the proceeding is chosen based on the needs indicated by written comments.[97]
    b. As part of this review, the White House, the Department of Justice (usually the Antitrust Division), and the Federal Railroad Administration will all submit comments on the proposed merger.
d) Final Decision: The STB must issue a decision to permit or deny the merger application within 90 days of the proceedings.[98]

The STB merger rules, as updated in 2001, present a very high bar for any merging railroads, requiring that combinations "be in the public interest," considered based on several criteria:

(1) **The potential benefits**, such as enhanced service, reduced cost, etc.
(2) **The potential harms**, including[99]:
    (i) Reduction of competition: The merger rules recognize that end-to-end mergers like the one proposed here can harm competition by allowing the merged carrier to exploit increased market power.
    (ii) Harm to essential services: To the degree that merging Class I railroads will interrupt service for other essential services, such as Class II or III freight rail carriers, or Amtrak passenger rail, this will count against the merger.
    (iii) Transitional service problems: Given the disastrous problems with integration in the 1990s, operational difficulties in merging will count against the parties.
    (iv) Enhanced competition: The parties are required to provide evidence of how this will enhance competition, not just maintain it.
(3) **Necessary protections for employees**, to ensure that collective bargaining agreements will be maintained and that employment will not be adversely affected.

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[92] Notice of Intent to File Application for Approval of Transaction, Finance Docket No. 36873, July 30, 2025, https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/989/309832.pdf; 49 CFR Part 1180.4(b).
[93] STB, "Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company," Docket No. FD 36873, https://public-inspection.federalregister.gov/2025-16524.pdf; https://www.federalregister.gov/documents/2025/08/28/2025-16524/union-pacific-corporation-and-union-pacific-railroad-company-control-norfolk-southern-corporation.
[94] Notice of Intent to File Application for Approval of Transaction, Finance Docket No. 36873, July 30, 2025, https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/989/309832.pdf.
[95] 49 CFR Part 1180.4(c)(5)(v).
[96] 49 CFR Part 1180.4(e)(2).
[97] 49 CFR Part 1180.4(e)(1).
[98] 49 CFR Part 1180.4(e)(3)(i).
[99] For (i)-(iv), *see* 49 CFR Part 1180.1(c)(2)(i)-(iv).

(4) **Environmental and safety concerns**. The STB asks the merging parties to come to voluntary agreements with affected communities, which in this case would most likely be those in the Midwest, where rail traffic would be rerouted directly across the country rather than through transfer hubs like Chicago or St. Louis.
(5) **Cumulative impacts and crossover effects**.[100] Because there are so few Class I railroads remaining, the STB recognizes that any further mergers will fundamentally restructure the industry and its competitors. This is a very high burden to meet, to the degree that this merger will arguably prompt a BNSF/CSX merger to maintain competition in response.

In short, in order for this merger to be lawfully approved, Union Pacific will need to show that there will be minimal harm to competition from an effective four-to-three merger; there will be little to no operational problems in the process of integration; the merger will somehow enhance competition; and the merger will not make any further mergers or combinations necessary, even as the transaction promises to give the merged railroad a leg up on their regional competitors.

More information about the merger process is available in the STB's Merger FAQ.[101]

Status of the STB and Primus' Illegal Firing

For most of 2025, the five-member STB had only four members, split evenly by party: Chairman Patrick J. Fuchs (R), Robert Primus (D), Michelle A. Schultz (R), and Karen Hedlund (D).

On August 27, just as proceedings were beginning at the STB, President Trump illegally fired Board Member Primus, who had been the sole vote against the 2023 Canadian Pacific/Kansas City Southern merger.[102] The STB is an independent regulatory agency, and while the president does nominate members when there are empty seats, by law members remain in office for the entirety of their fixed term, which for Primus was to conclude at the end of 2027.[103] Rail unions have spoken out against this illegal firing.[104] Primus has sued to contest it, but litigation is ongoing.[105]

As for the empty seat, it is unclear when a fifth commissioner might be appointed, with very little public indication of timing or possible candidates.

[100] The rules say, "Because there are so few remaining Class I carriers and the railroad industry constitutes a network of competing and complementary components, the Board cannot evaluate the merits of a major transaction in isolation. The Board must also consider the cumulative impacts and crossover effects likely to occur as rival carriers react to the proposed combination. The Board expects applicants to explain how additional Class I mergers would affect the eventual structure of the industry and the public interest. Applicants should generally discuss the likely impact of such future mergers on the anticipated public benefits of their own merger proposal." 49 CFR Part 1180.1(i).
[101] STB, "Frequently Asked Questions: Major Railroad Mergers," https://www.stb.gov/wp-content/uploads/Major-Merger-Frequently-Asked-Questions.pdf.
[102] Josh Funk, "Trump fires Democratic member of Surface Transportation Board ahead of huge rail merger decision," Associated Press, August 28, 2025, https://apnews.com/article/primus-stb-trump-surface-transportation-board-up-809f0e78d0e428cf9fd04c919b4ef950.
[103] Surface Transportation Board, "Robert E. Primus," https://www.stb.gov/about-stb/board-members/previous-board-members/robert-e-primus/, accessed August 31, 2025.
[104] SMART-ID Statement, "SMART-TD Condemns Unprecedented Removal of STB Member Robert Primus," August 28, 2025, https://www.smart-union.org/statement-smart-td-condemns-unprecedented-removal-of-stb-member-robert-primus/; AFL-CIO Transportation Trades Department Press Statement, "Rail Labor Statement on Firing of STB Member Robert Primus," August 28, 2025, https://ttd.org/news-and-media/press-releases-and-statements/rail-labor-statement-on-firing-of-stb-member-robert-primus/.
[105] Id.

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2026, I caused a true and correct copy of the foregoing Comments of the American Economic Liberties Project in Finance Docket No. 36873 to be served upon all Parties of Record identified on the Surface Transportation Board's official service list for this proceeding, as well as the Secretary of Transportation, the Attorney General of the United States, counsel for Union Pacific Corporation and Union Pacific Railroad Company, counsel for Norfolk Southern Corporation and Norfolk Southern Railway Company, and the assigned Administrative Law Judge, Hon. Jenifer Soulikias.

Service was accomplished by electronic mail upon those recipients who have consented to electronic service and by [identify applicable alternative method] upon any remaining recipients, consistent with 49 CFR § 1104.12 and the Board's procedural orders in this proceeding.

I further certify that service was made upon the required recipients contemporaneously with the filing of these Comments with the Surface Transportation Board.

Respectfully submitted,

/s/ Ashley Nowicki

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November 18, 2026