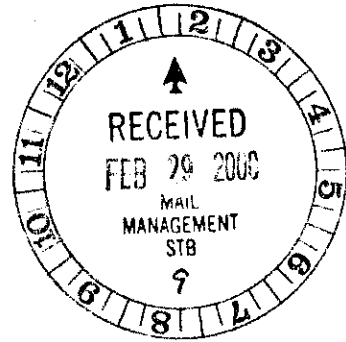


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Before

the

Surface Transportation Board

in the matter of

Ex Parte 582

Public Views on Major Rail Consolidations

Statement

By

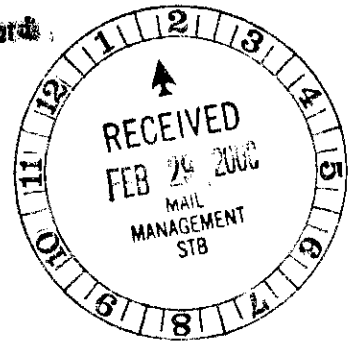
James Johnson
Traffic Manager
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Akron OH 44309

March 9, 2000

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March 9, 2000

Good Morning Chairman Morgan, Vice Chairman Burkes, Commissioner Clyburn, and Staff. Thank you for the opportunity to appear at today's hearing. I am James Johnson, traffic manager of Empire Wholesale Lumber Co. As you already know, I am also privileged to be a shipper representative on the Railroad-Shipper Transportation Advisory Council. But, I am here today as a representative of Empire - a concerned purchaser of rail transportation service. Empire has both practical and philosophical concerns with regard to further consolidation of Class I rail carriers.

Empire functions in several roles in the distribution of forest products. Empire ships forest products by rail and truck throughout North America. Our role in any specific transaction can be highly variable. We are often a direct rail or truckload shipper-moving product from a production facility to a customer. Or we might be a value-added stocking wholesaler moving products by rail or truck from a production facility to a distribution facility; or moving products by rail or truck from a breakbulk reload distribution facility to a customer. An independent lumber wholesale-distributor has to be extremely nimble to survive in today's market. We often have to change sourcing, routing; or grounded intransit inventory location. Occasionally we may need to

substitute alternative products; or even temporarily withdraw from selected markets to adjust to current market conditions. Even with that high degree of flexibility, we have not been able to avoid railroad merger-related transit delays and competitive pricing problems.

Lumber is a commodity that continuously changes value. As most commodities, it's market price changes several times each trading day. However, each sale is made at a negotiated spot market price. The price is influenced by factors like current supply relative to demand, expected ship or delivery date, quantity, mode and price of transit. In recent years, our retail lumberyard and industrial customers have drifted towards "just in time" inventory methods. Our manufactured housing customers are mostly "just in time". Our wholesaler, buying group and mass merchandiser customers predicate their sales on the ship and delivery dates established by our sales contract. Extended or erratic transit time - which has occurred on all major mergers - impacts negatively on our customers' confidence in our ability to support their inventories. Since 1980, railroad mergers plus a massive consolidation in the producer or supply side of the forest products industry has resulted in rapid elimination of pricing differentials between **both** formerly competing supplier-mergers and railroad-merger partners. This lack of competition has resulted in higher prices for the ultimate consumers of forest products.

As an example, just 8 short months ago we were told that the division of Conrail would create millions of dollars in cost efficiencies for NS and CSXT. Last month we saw a media publicity blitz wherein, after the merger consolidation, Mr. Snow, CEO of CSXT, now says "it is a seller's market". And, since it is now a seller's market, Mr. Snow wants CSXT to increase rates by 5% to 6%. So much for customers participating in the economies of scale made possible by the division of Conrail. Every forest products producer merger and every Class I railroad merger has damaged the independent wholesale distributor of forest products by eroding their market

flexibility. That is the practical side of our concern with the direction of the rail industry consolidation.

Philosophically, we are concerned about what we perceive as the Surface Transportation Board presiding over an implosion in the railroad industry. Mergers that have reshaped the rail industry over the past five years have involved specific anti-competitive issues, some of which have been presented to, and addressed by, this Board. However, under the current rules of engagement, each shipper, shortline railroad or community is obliged to come before you to demonstrate their specific, localized problems. Some of those problems require mutually exclusive solutions. Rail mergers do compound some of those problems, like rail-segmented communities, but the problems exist because of prior non-merger causes. And some of those problems maybe God couldn't fix on a good day. Expecting this Board to right all wrongs is not realistic.

But it is realistic to expect this Board to address chronic systemic problems that cause, or that are manifested as, a shipper, shortline railroad or community problem. **Mergers have consolidated out of existence about 80% of the U. S. Class I railroad competitors that existed when the Staggers Act of 1980 was signed into law.** Like sequential amputations, past merger implementations have progressively curtailed competitive Class I railroad transportation alternatives. Each of the Class I railroad mergers of the past five years has created or resulted in substantial periods of inadequate service. Congress will not tolerate a continuation of this drain on the productivity of U. S. companies.

And now, we find ourselves at the dawn of a virtual collapse of all Class I rail-to-rail competition, particularly East of the Mississippi River. The non-performing railroads have been absorbed. The inefficient operators now seem to be efficient. Class I's have shed the labor

intensive industrial and merchandise car switching, and light density track - all too often abused by decades of deferred maintenance. This cost has now been shifted from Class I's to peripheral regional and shortline railroads. In many cases the Class I's have elected to walk away from their labor intensive local switching service "retail" function. The compensation Class I's pay to their shortline partners for providing that retail service is often far less than the shortline's lower fully allocated cost. Shippers have far fewer alternatives via far healthier core long haul "wholesale" service providers. The shippers have generally not seen rate reductions, but the rate divisions Class I's pay to the shortlines are often less than the Class I's savings. As a result, net cost savings realized by the Class I's are not shared in by either the shippers or the shortlines who are impacted by the mergers.

The enabling legislation, 49 USC 11324, empowers this Board to approve a rail merger with literally one restriction - the Board must determine that the proposed merger does not conflict with the public interest. The public interest - whether the public recognizes it or not - is continuation of a financially stable system of privately-owned rail service providers offering competitively priced, safely operated, responsive service to their customers.

This Board has correctly determined that railroad access to capital is critical to maintaining a healthy railroad system. And the Board recognizes that a healthy railroad system supports a healthy economy. Access to capital is critical to successful operation of a railroad. However, access to capital is not an adequate excuse for allowing industry consolidation that defies, or even violates, traditional U. S. antitrust policy.

The public interest requires maintenance of rail-to-rail competition for traffic where it exists, and creation of rail-to-rail competition where it makes sense. Systemic changes are urgently needed to insure reasonable access to competitively priced rail transportation. Without

rail-to- rail competition, this Board has to impose - and vigorously enforce - ethics, pricing and performance standards on monopolies. It is better to design an incentive system to reward ethical behavior and performance to standards.

In past hearings I have cautioned the Board about adopting broad competitive access as suggested by some in this room. The industry has consolidated to the point that I have no choice but to urge this Board to adopt a policy designed to vigorously create competition in any mergers involving one or more Class I rail carriers. The Board should implement liberal competitive shortline carrier access to multiple Class I connections, and nationwide implementation of joint terminal operations as has been done in Detroit and Northern New Jersey. Such a policy would promote small and captive shippers reasonable access to responsive, competitively-priced rail transportation. In some cases, shipper access may be enhanced over what existed prior to the merger. CSXT and NS, the purchasers of Conrail, proved that enhanced terminal area competition can be a workable, private sector solution.

As proven by past mergers, large communities and shippers can often achieve private sector solutions to resolve their problems. You must insure that small communities and shippers, shortline and regional railroads are not further disadvantaged by exclusion from comparable solutions. This proposed policy would be most effective if the access conditions granted primarily connect non-merger railroads to shippers who were formerly on the merger partners' track. I believe it that the recent structural changes in the Class I railroad industry already make it necessary to completely rethink and reverse the bottleneck decision.

Thank you for holding this hearing and allowing me to participate.