



U.S. Department of
Transportation
Office of the Secretary
of Transportation

General Counsel

400 Seventh St., S.W.
Washington, D.C. 20590

209950

January 26, 2004

Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

JAN 26 2004

RECEIVED

Re: Finance Docket No. 34424

Dear Secretary Williams:

Enclosed please find an original and twenty copies of the Initial Comments of the United States Department of Transportation in the above-referenced proceeding, together with a computer diskette of this document convertible into WordPerfect. I have also included an additional copy that I request be date-stamped and returned to the messenger.

Thank you for your assistance in this matter.

Sincerely,

Paul Samuel Smith
Senior Trial Attorney

Enclosures

cc: Parties of Record



ORIGINAL

DOT-2

Before the
Surface Transportation Board
Washington, D.C.

209950

Canadian National Railway Company, and Grand Trunk)
Corporation -- Control -- Duluth, Missabe, and Iron Range) Finance Docket No. 34424
Railway Company, Bessemer and Lake Erie Railroad)
Company, and the Pittsburgh & Conneaut Dock Company)

Preliminary Comments of the
United States Department of Transportation

Introduction

The Surface Transportation Board ("STB" or "Board") in this proceeding is considering whether to approve the combination of the Canadian National Railway Company ("CN") and three other rail carriers, the Duluth, Missabe, and Iron Range Railway Company ("DMIR"), the Bessemer and Lake Erie Railroad Company ("B&LE"), and the Pittsburgh & Conneaut Dock Company ("P&C Dock").¹ See Decision No. 2, served December 1, 2003. Pursuant to the procedural schedule established herein, the United States Department of Transportation ("DOT" or "Department") hereby submits its preliminary comments on the transaction.

At this point the record consists only of the application and related pleadings; in

¹/ CN actually seeks to acquire the Great Lakes Transportation Company LLC ("GLT"), which consists of these three railroads as well as the Great Lakes Fleet ("GLF"), a water carrier that owns and operates a fleet of vessels transporting iron ore and other bulk commodities on the Great Lakes. The purchase of the GLF is not subject to the Board's jurisdiction, but is under review by the U.S. Department of Justice. Decision No. 2 (served December 1, 2003) at 3-4. The Coast Guard and the Maritime Administration are separately considering whether CN's acquisition of the GLF would be consistent with the requirements of the Jones Act (specifically, 46 U.S.C. § 883) and corresponding portions of those agencies' regulations. Id.

this wholly incomplete state, DOT takes no position on the merits of the transaction or on any of the issues raised to date. Consistent with past practice, in these circumstances we will reserve judgment pending a review of the initial comments of other parties, and we anticipate expressing our substantive views on reply.² The Department looks forward to the development of a more complete legal and factual record in this regard.

The Application

CN has entered into an agreement to purchase from GLT for \$380 million in cash all of the outstanding equity of the DMIR, B&LE, P&C Dock (collectively, the "GLT railroads"), and the GLF.³ CN itself is a class I railroad that operates more than 14,000 route miles of track across Canada from Vancouver, British Columbia, in the west, to Halifax, Nova Scotia, in the east, serving every major metropolitan area in that country. Through its ownership of other railroads -- notably the Illinois Central, Wisconsin Central, and Grand Trunk Western -- CN also operates approximately 3,500 miles of track in the United States. The CN system in this country stretches from Buffalo, New York, and the port of Duluth, Minnesota/Superior, Wisconsin in the north, to the Gulf of Mexico in the south, serving Detroit, Chicago, St. Louis, Memphis, and New Orleans as well. CN-2 at 4-7, 18-19 and note 3; Decision No. 2 at 3-4.

The GLT railroads are all very small carriers. The DMIR is the largest of the three; it is a class II railroad with just over 200 miles of track in Minnesota and Wisconsin. The vast bulk of its traffic is taconite pellets moving from plants in the Mesabi Range in Minnesota to docks on Lake Superior or to interchange points with

²/ Reply comments are now due February 24, 2004.

³/ Technically, CN would purchase from GLT the holding companies that own the equity of these carriers.

other rail carriers. The B&LE is also a class II railroad operating between Conneaut, Ohio (on Lake Erie) and North Bessemer, Pennsylvania. The P&C Dock is a class III switching railroad involved in bulk transfer operations at Conneaut. Id. Together with the GLT these entities form what the Board has described as “an integrated iron ore delivery chain” for the steel industry. Decision No. 2 at 3. The owner of GLT, Blackstone Capital Partners, is seeking to “reorient its investments” away from the transportation sector. CN-2 at 6, 10.

CN lists three primary purposes for the transaction: (1) to acquire control of 17 miles of DMIR track on the route CN uses between Winnipeg and Chicago,⁴ (2) to increase its operating flexibility, and (3) to develop “closer and more extensive relationships” with the steel industry. CN-2 at 9-10. CN submits that this combination would benefit the public interest by ensuring the financial security (and therefore the continued service) of the GLT railroads and by improving CN’s own transit times and reliability. Id. CN asserts that there would be no adverse impact on intramodal competition because the acquisition would reduce rail service options for only one shipper, which would still be served by two railroads. Id. at 12; Verified Statement (“V.F.”) of Christopher A. Vellturo.⁵ Moreover, in CN’s view the lack of any competing origins and destinations served by CN and the GLT railroads removes any threat of loss of geographic or product competition. Id.; Vellturo V.F. and V.F. of Gerald P. Radloff. CN has also committed to keeping open on commercially reasonable terms

⁴ CN now only operates on this line via trackage rights.

⁵ CN acknowledges that there is at least one other potential shipper, an ore processor, that enjoyed competitive rail service before it closed last May. CN has committed to offer competitive access to another railroad should that shipper resume operations. CN-2 at 11, note 14.

“all existing active gateways” at which it interchanges traffic with other carriers, and to waive defenses otherwise available to it through this transaction in “bottleneck” cases. CN-2 at 12.

Preliminary Comments

The role of the Department in this proceeding is ultimately grounded both in the statutory provisions that govern this transaction, and in DOT’s statutory responsibilities as the Executive Department of the United States established by Congress “to provide general leadership in identifying and solving transportation problems,”⁶ to the end that the Secretary of Transportation “shall provide leadership in the development of transportation policies and programs.”⁷

As noted, the Department will not take a position on the merits of the application at this time. Neither will DOT now offer any views on the question of whether conditions should be required in the public interest as a condition to any approval by the Board. It is clear, however, that the proposed merger presents issues of importance to the public. Applicable statutory provisions require the STB to examine the transaction’s true impact upon competition, and notices of intent to participate filed by both the U.S. Department of Justice and shippers involved in the steel industry suggest that this subject will be thoroughly explored. 49 U.S.C. § 11324(d). Adequate consideration of these and other issues requires that the record first include additional information.⁸

⁶/ 49 U.S.C. § 101(b)(5).

⁷/ 49 U.S.C. § 301(2).

⁸/ Safety, as always, remains a primary concern for DOT, and the Federal Railroad Administration (“FRA”) has already commented upon the Safety Integration Plan filed by CN. FRA letter filed January 22, 2004. DOT has also previously addressed CN’s environmental appendix. DOT-1.

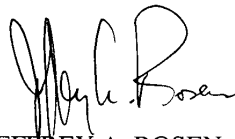
The Department submits that, pursuant to applicable federal law, the following issues also warrant consideration in this proceeding:

- Whether the transaction is likely to substantially lessen competition, create a monopoly, or restrain trade in freight surface transportation in any region of the country.
- Whether the transaction's anticompetitive effects, if any, outweigh the public interest in meeting significant transportation needs.

Conclusion

The Department appreciates this opportunity to participate in a proceeding of regional significance to railroads, shippers, and the general public. We look forward to development of the record and to contributing to a sound final decision.

Respectfully submitted,

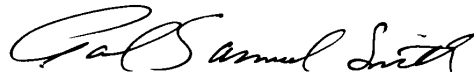
A handwritten signature in black ink, appearing to read "Jeffrey A. Rosen". The signature is stylized with a large, looped "J" and "R".

JEFFREY A. ROSEN
General Counsel

January 26, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused a copy of the Initial Comments of the United States Department of Transportation ("DOT-2") in STB Finance docket No. 34424 to be served by first class mail, postage prepaid, upon all Parties of Record in this proceeding.

A handwritten signature in cursive script, appearing to read "Paul Samuel Smith".

Paul Samuel Smith

January 26, 2004