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210566
April 12, 2004

VIA MESSENGER

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

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**Re: TTX Company, et al. -- Application for Approval of
Pooling Car Service With Respect to Flat Cars,
STB Finance Docket No. 27590 (Sub-No. 3)**

Dear Secretary Williams:

In accordance with the Board's decisions in this matter, please find enclosed an original and 10 copies, as well as one electronic copy submitted on a 3.5 inch IBM-compatible floppy diskette of Pacer International Inc.'s comments in this matter. Please acknowledge receipt of this filing by date-stamping the extra copy and having the courier return it to me.

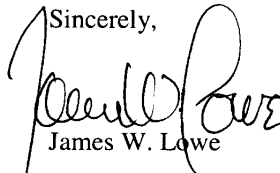
I certify that a copy of this petition was sent today by regular first-class mail to the applicants' representatives:

David L. Meyer
Covington & Burling
1201 Pennsylvania Ave., N.W.
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Patrick B. Loftus
TTX Company
101 North Wacker Drive
Chicago, IL 60606

Please do not hesitate to call if you have any questions.

Sincerely,


James W. Lowe

Enclosures

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**Re: TTX Company, et al. -- Application for Approval of
Pooling Car Service With Respect to Flat Cars,
STB Finance Docket No. 27590 (Sub-No. 3)**

Dear Secretary Williams:

On behalf of Pacer International Inc., we submit this letter regarding the Application of TTX Company for Approval of Pooling of Car Service With Respect to Flatcars ("TTX Application"), pursuant to 49 U.S.C. §§ 11332. Pacer International does not oppose approval of the TTX Application if such approval is limited in duration, is subject to certain conditions, includes monitoring and reporting at regular intervals, and maintains the requirement that substantive changes to the TTX Agreement obtain prior Board approval.

Pacer International

Pacer International is one of the largest intermodal transportation and logistics services providers in North America. Pacer International's retail segment, known as Pacer Global Logistics, consists of affiliated companies that provide a comprehensive portfolio of freight transportation, logistics and other related services directly to shippers and other beneficial owners, including (1) retail intermodal transportation services (consisting of the local truck transportation, or drayage, of the loaded container from the origin point to the origin rail ramp, the transportation by rail of the container from the origin ramp to the destination ramp, and the drayage of the loaded container from the destination rail ramp to the ultimate destination point), (2) trucking services, including long-haul full truckload transportation services and specialized and heavy haul flatbed truck transportation, (3) warehousing services, and (4) international ocean carrier, freight forwarding, logistics and customs brokerage services.

Pacer International's wholesale segment, known as Pacer Stacktrain, provides double-stack and related intermodal rail transportation services for full intermodal container loads of freight over a 50,000-mile North American railroad network, operating out of more than 50 terminal locations in the United States and 10 terminal locations in Mexico. In addition, through its Pacer Cartage affiliate, Pacer Stacktrain also provides complementary intermodal drayage and other local trucking services. Pacer Stacktrain operates its own fleet of intermodal equipment, including more than over 1,800 double stack railcars, 21,000 containers and 23,000 chassis, substantially all of which are leased.¹ Pacer Stacktrain moves more than 1,000,000 full container loads per year in the North American rail network, making it the largest, non-railroad owned stacktrain operator in North America. As a neutral stacktrain operator, Pacer Stacktrain offers high quality, reliable, cost-efficient intermodal rail transportation services to its customers, which consist primarily of intermodal marketing companies, large automotive intermediaries, and international steamship lines who represent multiple shippers and other beneficial owners of cargo.

Reauthorization of the TTX Flatcar Pooling Agreement

In principle, Pacer does not oppose reauthorization of the TTX Flatcar Pooling Agreement. TTX has become an important player in the intermodal transportation industry and serves it well. To order any drastic and immediate changes to the organization and its existence without a full public briefing and hearing period could precipitate a significant disruption to the entire industry.

Nevertheless, Pacer urges the Board not to authorize the amended agreement for a period of fifteen years without monitoring and reporting conditions, as requested by the applicants. TTX Application, at 38-40. Rather, the Board should authorize the agreement for a seven-year period and require the Office of Compliance and Enforcement to prepare monitoring reports at years three and five during the term. *See, e.g., TTX Company, et al. -- Application for Approval*

¹ An intermodal container is a cargo container that is specifically designed to be transported by multiple modes, *e.g.*, truck (by attaching the container to a trailer chassis that is pulled by a truck tractor) and rail (by securing the container to a railroad flatcar). An intermodal trailer chassis is a specially designed trailer undercarriage on which an intermodal container may be mounted and transported over the road by a truck tractor. Double-stack rail transportation is the transportation by rail of intermodal freight containers stacked two-high on specially designed railroad flatcars, also called stackcars, that minimize damage to the cargo by reducing the longitudinal, lateral, and vertical forces exerted on the containers during transit. Double-stack rail service is distinguished from other types of rail intermodal transportation such as trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) service, which subjects the freight to greater shock and stress during transit. Double-stack rail transportation of containerized freight is more economical and cost-efficient because up to twice as much freight can be moved using the same transit service while at the same time significantly reducing the risk of damage to the freight during transit.

of the Pooling of Car Service With Respect to Flat Cars, Finance Docket No. 27590 (Sub-No. 2), 1994 WL 467250, at *9 (STB Service: Aug. 31, 1994) (authorizing the TTX agreement for a 10-year period and requiring the Office of Compliance and Enforcement to prepare monitoring reports and the end of the third and seventh years with the option of requiring a report in the ninth year if the Board determined it was necessary).²

Furthermore, a limited term and continued reporting and monitoring conditions are appropriate, because TTX has a “substantial impact on intermodal activities,” *see id.* at *5, and contrary to TTX’s assertion, *see* TTX Application, at 39, TTX continues to operate in a “market . . . that [is] still . . . dynamic and changing.” *TTX Company, et al. -- Application for Approval of the Pooling of Car Service With Respect to Flat Cars*, 1994 WL 467250, at *4. The rate of car leasing and the number of intermodal loads moved by railroads have increased significantly in absolute terms and relative to other types of freight. The industry anticipates the growth in intermodal volumes to continue year over year in the near future. Consequently, it is safe to assume that the rate of new flatcar acquisitions will also increase to meet the recent and expected growth in intermodal volumes. Authorizing the TTX arrangement without also requiring monitoring and reporting will unnecessarily restrict the operation and development of the marketplace in a way that is counterproductive to the industry, including Pacer International and rail car manufacturers.

Pacer International believes that a seven-year term, with periodic monitoring after years three and five, is sufficiently long to enable TTX to engage in long-term planning and execution of its flatcar pooling strategy while at the same time safeguarding the public interest by enabling the Board and industry participants to address market changes that could warrant a reexamination of TTX’s antitrust immunity.

Scope of Authorization of TTX Flatcar Pooling Agreement

Pacer further requests that the Board reject TTX’s request that it be able to make changes, *without* prior Board authorization, to its car contracts and other policies that are “within the bounds of its pooling authority.” *See* Verified Statement of Andrew F. Reardon (hereinafter “Reardon Verified Statement”), at 16. TTX’s request provides little insight into what changes it considers “within the bounds of its pooling authority,” and what changes are not, and therefore

² In 1994, the Board also conditioned its approval on “the continuing right of any interested person to petition for reopening and reconsideration on the ground that the pooling operation has not resulted in better service to the public or economies of operation or that it has unreasonably restrained competition,” and it reserved “the right to modify its approval by the imposition of additional or other terms as a condition to continuance of the pool, or to revoke its approval entirely if that action is deemed warranted.” *See TTX Company, et al. -- Application for Approval of the Pooling of Car Service With Respect to Flat Cars*, 1994 WL 467250, at *8. Pacer believes such conditions would be appropriate here as well.

threatens to open a "Pandora's Box." See TTX Application, at 44-45; Reardon Verified Statement at 16-18; Verified Statement of Thomas F. Wells, at 23-25.

The Board should retain jurisdiction to approve future changes to the TTX pooling agreement or car contracts, consistent with prior practice under the Board's 1974 decision.³ Prior notice to the Board allows the marketplace to consider whether the proposed changes maximize the efficiency of the pooling arrangement or threaten to have a detrimental effect on the marketplace and to so advise the Board in public comments. Allowing TTX to amend its agreements without prior Board approval would be an overly broad grant of authority and would be subject to easy manipulation.⁴

That the Board and marketplace could address any potentially anticompetitive amendments *post hoc*, as TTX suggests, is not a sufficient remedy. It is far more difficult to impose an effective remedy after conduct has begun, as Congress has recognized, for example, in merger review processes.⁵ As the Board's predecessor noted, its decisions should be consistent with "the generally accepted principle that grants of antitrust immunity are to be narrowly construed." *Trailer Train Company, et al. -- Pooling of Car Service With Respect to Flatcars*, 5 I.C.C.2d 552, 1989 ICC LEXIS 158 at *16 (June 14, 1989), citing *Niagara Tariff Bureau, Inc. v. United States*, 826 F.2d 1186, 1190 (2d Cir. 1987), citing *Square D Co. v. Niagara Frontier Tariff Bureau, inc.*, 476 U.S. 409 (1986), and *Abbott Laboratories, Inc. v. Portland Retail Druggists Ass'n*, 425 U.S. 1, 11-12 (1976). Given the number of intermodal equipment providers presently operating in the industry, ranging from international shipping lines to domestic transportation companies such as Pacer International, permitting TTX to amend its agreements without prior Board approval (or the opportunity for public comment) would create an unfair competitive advantage for TTX and its members over these other equipment providers, and would discourage other third-parties from entering the industry with equipment of their own.

³ If the Board is inclined to permit TTX without prior Board approval to make changes that do not alter the substance of the pooling agreement, such as those relating to flatcar allocation, flatcar interchange procedures or accounting or reporting matters, the Board should nevertheless clarify that TTX cannot without prior Board approval add equipment types that are not currently pooled by TTX.

⁴ We note that we find no explicit examples put forth by TTX in its Application of instances in which seeking prior Board approval materially harmed its ability to implement efficiency-maximizing changes, nor do we independently know of any. Moreover, we found no examples, and we are not otherwise aware of any, where the requirement of obtaining prior Board approval prevented or discouraged TTX from pursuing changes that would have benefited the public interest.

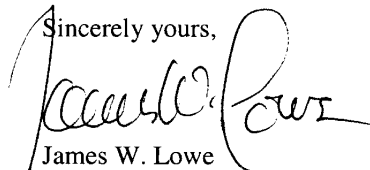
⁵ See, 49 U.S.C. § 11323 (prohibiting consolidation or merger of railroads without prior STB approval). See also Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390 (prohibiting consummation of transactions without prior agency approval).

Hon. Vernon A. Williams
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In principle Pacer International does not oppose the TTX Application. Certain aspects of the TTX Application, however, do cause concern. As one of the largest non-railroad owned intermodal transportation service providers in the United States, Pacer International believes that any grant of antitrust immunity that would result from the Board's approval of the TTX Application should be limited in scope to achieve the specific benefits inuring the marketplace as a whole, and should be subject to periodic review and oversight by the Board to assure that those benefits continue to inure to the marketplace and do not become subject to unfair and anticompetitive manipulation by those who enjoy such immunity. Pacer International appreciates the opportunity to provide these comments to the Board, and is grateful to the Board for its consideration of these comments in connection with the TTX Application.

Sincerely yours,



James W. Lowe
Counsel to Pacer International

cc: Michael E. Uremovich
Vice Chairman

C. Thomas Shurstad
President, Pacer Stacktrain Division

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