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CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND CN'S RAIL OPERATING SUBSIDIARIES – CONTROL – KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

APPLICANTS' REPLY TO COMMENTS ON PROPOSED VOTING TRUST AGREEMENT

EXPEDITED CONSIDERATION REQUESTED

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EXECUTIVE SUMMARY

A CN-KCS combination will increase customer options, enhance rail-to-rail competition with larger Class Is, and benefit both the global environment and local communities by converting truck traffic to rail. Applicants[1] look forward to demonstrating those benefits in a comprehensive current-rules application and to participating in a robust, careful review process that will allow full stakeholder input. The only question presented to the Board now, however, is whether Applicants' voting trust agreement satisfies the test for voting trust review established in *Major Rail Consolidation Procedures*.[2] It does.

Applicants demonstrated in their Motion that their proposed voting trust satisfies the Board's test. First, it precludes premature control of KCS during the trust period. Second, approval of the proposed voting trust is in the public interest, because it causes no harms and serves the public interest, including by placing CN on equal footing with other bidders in the market for KCS.

None of the comments on the voting trust agreement changes either conclusion. The first point is literally uncontested: No party contends that the voting trust would not fully insulate KCS from CN control during the trust period. Nor do the comments undermine Applicants' strong public interest

[1] "Applicants" are Canadian National Railway Company ("CNR"), Grand Trunk Corporation ("GTC"), and CN's rail operating subsidiaries (collectively, "CN") and The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, "KCS").

[2] *Major Rail Consolidation Procedures*, Docket No. EP 582 (Sub-No. 1) (STB served June 11, 2001) ("*Major Rail Consolidation Procedures*").

showing. Divestiture poses no risk of harm to KCS. The Board has oversight over the divestiture process; if CN were required to divest KCS, it will maintain KCS as an intact entity. There is no risk of financial harm to CN, either. CN's strong balance sheet and credit rating will allow it to handle and quickly retire the debt associated with this unique transaction.

Canadian Pacific Railway Company ("CP")—a self-interested party hoping to acquire KCS at an inferior price—tries to prove otherwise, often by arguing the opposite of what it said when seeking approval for its own voting trust. CP's efforts only underscore why approving Applicants' voting trust is in the public interest. The Board has specifically recognized the public interest in authorizing voting trusts so as not to tilt the market for railroad purchases in favor of a "pend[ing] . . . hostile takeover bid."[3] That is what CP seeks to do here.

CP's specific arguments are without merit. CP's suggestion that the Board's voting trust review requires a comparison between the merits of the CN-KCS proposal and CP's unsuccessful bid fails as a matter of fact, law, and public policy. On the facts, there is no CP transaction—KCS has rejected CP's inferior offer. On the law, the Board does not use the voting trust process to prejudge the merits of a proposed transaction (let alone two). Indeed, controlling STB precedent has rejected CP's claim that as part of the approval process, the Board

[3] *Major Rail Consolidation Procedures* at 29–30.

would contrast a merger before it with another hypothetical alternative merger.[4] And as a matter of public policy, CP's claim that the Board should bestow the privilege of using a voting trust on CP but not on CN contradicts both the Board's established view that it should allow the market to operate independently and the basic principle that agencies treat similarly situated parties the same.[5] Use of a voting trust is a privilege, but not one that should be conferred in a discriminatory fashion.

With regard to the relevant issue, CP has little to offer. In the face of the multiple public interest benefits CN has established—namely, ensuring KCS's independence, preserving the Board's ability to consider the significant public benefits that would flow from a CN-KCS combination, and ensuring an even playing field for the acquisition of KCS—CP has failed to show any public interest factors that militate against the use of a voting trust here.

First, there is no risk of harm to KCS during the voting trust period, nor is there any risk of harm if KCS is divested from the trust. No basis exists for CP's speculation that KCS could be broken up or sold to an unsuitable buyer in divestiture; both the Board's oversight of any divestiture and CN's commitment to maintain KCS as an intact entity preclude that outcome.

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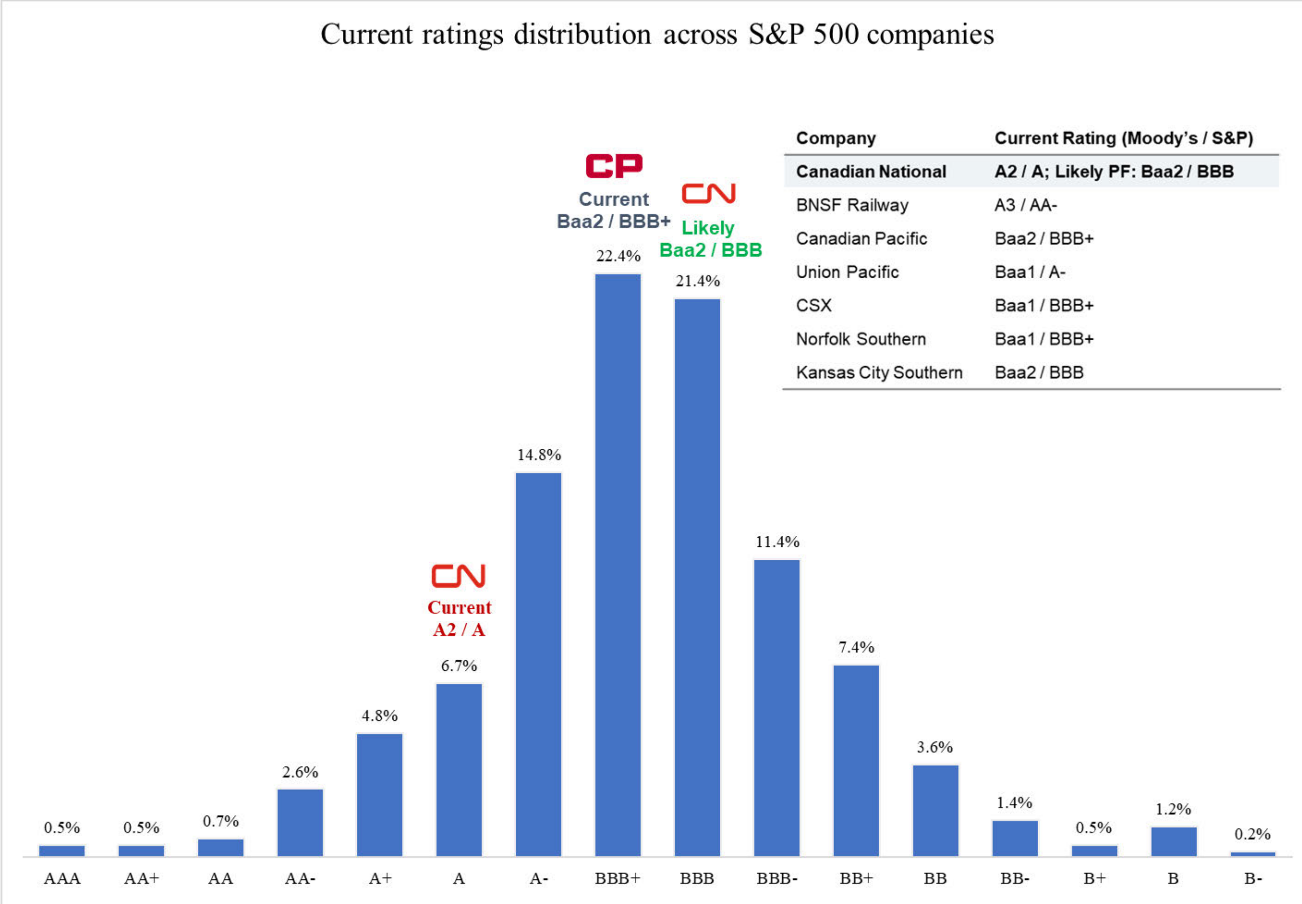
[4] *See, e.g.*, *Rio Grande Indus., Inc., et al.—Control—S. Pac. Transp. Co.*, Docket No. FD 32000, 4 I.C.C.2d 834, 855 (1988) ("each proposal must be regarded as unique and judged on its own merits").

[5] *See, e.g., Westar Energy, Inc. v. FERC*, 473 F.3d 1239, 1241 (D.C. Cir. 2007).

CP's alleged concern for CN's financial health if divestiture were required is similarly meritless. CN has shown through the verified statements of its Chief Financial Officer, Ghislain Houle, that the proposed combination poses no risk of financial harm to CN. This is confirmed by Professor Mark Zmijewski of the University of Chicago Booth School of Business, who determined that CN is financially strong enough to "service its debt and eventually reduce its leverage, while continuing to conduct its normal operations, maintaining its capital investment levels, and maintaining its investment grade credit rating" under worst case economic conditions, and "found no basis to conclude that CN or KCS would incur financial harm even if, after the STB's review, CN were required to divest KCS."[6] This conclusion is also bolstered by independent credit rating agencies. The S&P ratings confirm that even after taking on more debt, CN is projected to have an investment grade Baa2/BBB rating, right in the mainstream of other publicly traded companies and comparable to CP's rating without the transaction.

[6] Exhibit 4, Reply Verified Statement of Mark E. Zmijewski ("V.S. Zmijewski Reply") at 2–3.

Figure 1: CN Has Strong Credit Rating Now and Post-Merger

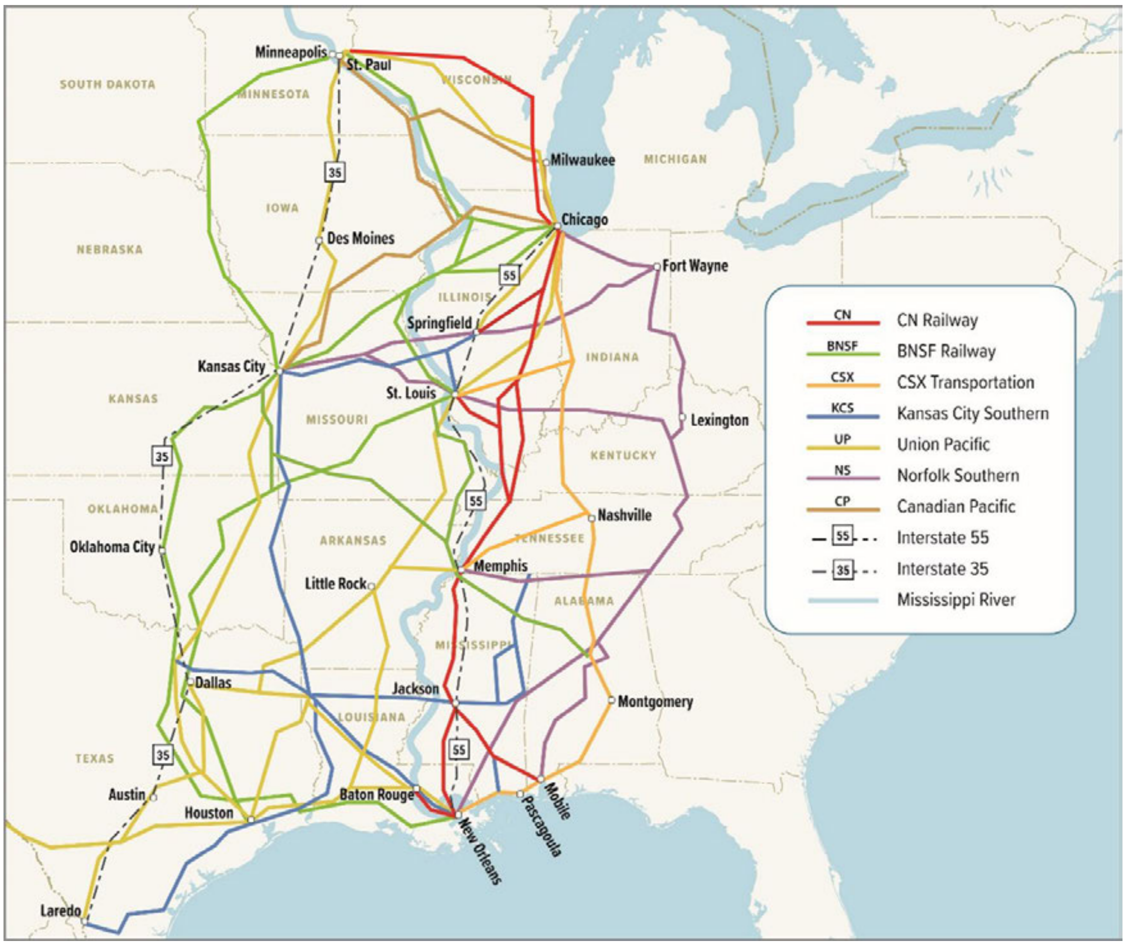


Source: S&P Capital IQ.

Nor would CN be harmed if it is necessary to divest KCS out of the voting trust. KCS is a valuable railroad and a desirable investment. The market has been persistently interested in it, and there is no basis to believe that this will change. Indeed, CP's original bid and subsequent actions only illustrate the market value of the KCS franchise. In sum, there is simply no realistic circumstance where CN cannot repay merger-related debt if forced to sell KCS.

There is no risk of competitive harm during the voting trust period. No party has challenged Applicants' opening demonstration of the pervasive competition facing a combined CN-KCS in the region that sees the fiercest modal competition anywhere in North America. The CN and KCS networks are literally surrounded on all sides by larger Class I railroads, highway corridors, and robust barge competition on the Mississippi River.

Figure 2: North-South Modal Transportation Competition in Mid-America



After more than two months of CP claiming that a CN-KCS combination would be "anti-competitive," CP's actual comments reveal that the emperor has no clothes. For example, CP has unveiled its list of customers that supposedly would face competitive losses from a CN-KCS transaction. All of the potential 2-to-1 and 3-to-2 customers on that list are in the New Orleans-Baton Rouge vicinity, and thus Applicants' commitment to divest that KCS line from Baton

Rouge to New Orleans would address any concern for those customers. The remaining "competitive reductions" that CP relies on all involve customers who would have access post-merger to <u>three, four, or even five different railroads</u>.

Moreover, CP's case rests on profoundly flawed economic testimony, with a witness who presents a BEA-based analysis similar to his prior *UP/SP* testimony, which the Board found to be "suspect" and "particularly flawed."[7] In short, with the commitment to divest the KCS line between Baton Rouge and New Orleans, the CN-KCS combination is an entirely vertical, end-to-end combination of two complementary railroads. Indeed, William Rennicke—a widely regarded industry expert who has engaged with the Board or its predecessor in every Class I merger since the passage of the Staggers Act—opines that he has "*never seen a merger of Class I railroads result in so few horizontal competitive issues*."[8]

CP implausibly claims that CN could behave anticompetitively by raising rates on the small number of 2-to-1 CN-KCS customers in the Baton Rouge-New Orleans vicinity during the voting trust period. This theory ignores CN's incentives to retain business from customers who will have multiple transportation options during and after the voting trust and the *actual* competitive pressures disciplining CN's rates. {{

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[7] *Union Pac. Corp., et al.—Control and Merger—S. Pac. Rail Corp., et al.*, *("UP/SP")*, 1 S.T.B. 233, 389 (1996).

[8] Exhibit 6, Reply Verified Statement of William Rennicke ("V.S. Rennicke Reply"), at 2 (emphasis added).

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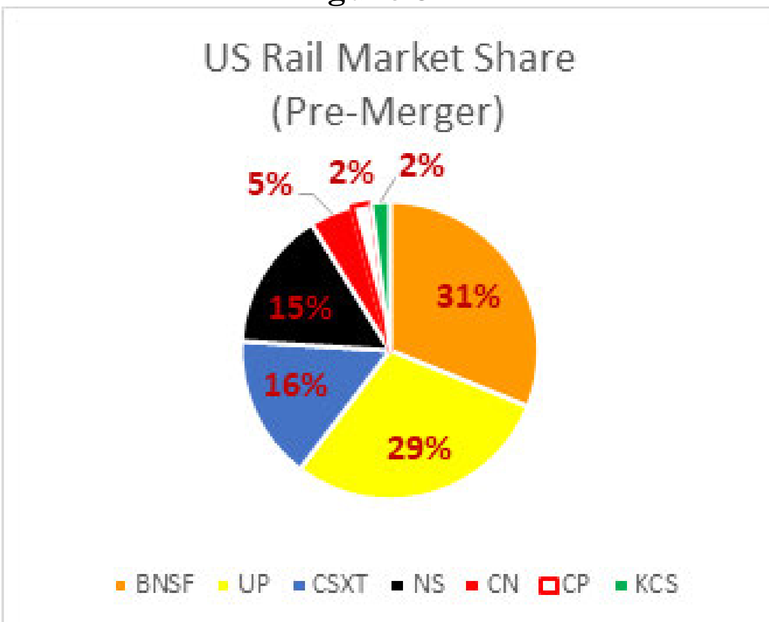
Indeed, Applicants will not just preserve existing competition, they will enhance it. The Reply Verified Statement of James Cairns elaborates on the important competitive commitments that CN has already made, such as its commitment to keep gateways open on commercially reasonable terms. Mr. Cairns also describes potential enhanced competitive commitments that CN has been discussing with shipper organizations, including a potential commitment to expanded bottleneck rates even where a shipper would not otherwise be entitled to one under the agency's narrow contract exception or the limited "bottleneck commitments" offered in prior mergers.

CP's speculation that an eventual CN-KCS combination might downgrade KCS's line between Kansas City and Shreveport is both irrelevant to the voting trust and baseless. The KCS line is a critical link in the KCS network and in a CN-KCS combination: it serves independent flows of traffic and is an essential element of Applicants' plan to create an improved "Kansas City Speedway" for traffic moving between customers on KCS's network to customers on CN's network in Detroit, Michigan, and Canada. Applicants are committed to continuing to invest in this valuable line.

Similarly, CP's claim that a CN-KCS voting combination could be the catalyst for further mergers is far-fetched. CN and KCS combined account for only 7% of Class I revenues in the United States, and this proposed North-South combination does nothing to alter the competitive balance of the industry.

Figure 3



In short, CP provides no reason why it is not in the public interest for Applicants to use the same voting trust that CP was permitted to use.

Applicants note that many other parties filed comments expressing interest in the voting trust. Many of these comments ask the Board to consider potential implications of the ultimate combination on stakeholders like rail labor, communities, and passenger rail. All these issues will be thoroughly considered in the application stage, but are not relevant to this voting trust decision. Other commenters have expressed concerns about particular aspects of the voting trust. To respond to these concerns, CN and KCS offer a series of commitments to their customers, employees, and communities that should erase any lingering doubts about the pro-competitive nature of this combination and the public benefits that can be achieved by permitting use of a voting trust. Some of these commitments were made previously, and some are set forth in the enclosed verified statements:

- **Current Merger Rules**: CN committed to using the current merger rules, including their requirements to demonstrate enhanced competition and to produce a full service assurance plan. KCS joined in that commitment when it accepted CN's bid.[9]

- **Divestiture of KCS Baton Rouge to New Orleans Line**: CN and KCS committed that the single overlap of the current CN and KCS networks would be remedied by divesting the KCS line from Baton Rouge to New Orleans, with the new entrant stepping into the shoes of any haulage that KCS has, and with a combined CN-KCS retaining trackage rights on the KCS line to ensure that customers on the line have two rail options, including single-line service by the combined CN-KCS network.[10]

- **Open Gateways**: CN and KCS are committed to keeping gateways open on commercially reasonable terms and have been discussing the terms of that commitment with shipper groups.[11]

- **Pricing Transparency**: CN and KCS are discussing ways to enhance competition through pricing transparency that would go far beyond the basic "bottleneck commitment" that has been made in past mergers.[12]

- **Kansas City to Shreveport Line**: Applicants commit that if the transaction is approved they will continue to invest in the years after the CN-KCS combination is consummated in the KCS mainline between

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[9] *See* CN Letter, *Canadian National Railway Co., et al.—Control—Kansas City Southern, et al.* ("*CN/KCS*"), Docket No. FD 36514 (filed Apr. 26, 2021), at 2; CN Letter, *CN/KCS*, Docket No. FD 36514 (filed May 3, 2021), at 1.

[10] *See* Joint Motion for Approval of Voting Trust Agreement, *CN/KCS*, (filed May 26, 2021) ("May 26 Voting Trust Motion"), at 33–34; *id.*, V.S. Ruest, at 5.

[11] *See* Exhibit 5, Reply Verified Statement of James Cairns ("V.S. Cairns Reply") at 11–13.

[12] *See id.* at 13–15.

Kansas City and Shreveport at levels comparable to KCS's investments in that line.[13]

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- **If required, divesture of KCS that maintains KCS as an intact entity to the highest bidder (or through a IPO) if merger approval is denied**: CN commits that, if divestiture is required, it will instruct the trustee—who himself is a former KCS CEO who understands the importance of keeping the KCS network fully intact—to divest KCS in a way that maintains KCS as an intact entity and that secures the best value for that entity.[15]

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[13] *See* Exhibit 1, Reply Verified Statement of Jean-Jacques Ruest ("V.S. Ruest Reply"), at 3–4.

[14] *See id.* at 5.

[15] *See id.* at 4. Applicants acknowledge that the Board would have ultimate oversight over a divestiture plan, and are committed to not asking the Board to approve any plan that would break up KCS.

ARGUMENT

Section I reviews the standard that the Board should apply[16] and refutes the incorrect assumptions that voting trust approval would prejudge the approval of a CN-KCS combination, or that the Board should consider ultimate merger conditions before it approves the voting trust.

Section II considers the factors relevant to the Board's voting trust approval: **Section II.A** recaps the undisputed evidence that the proposed voting trust would not create a risk of unlawful control; **Section II.B** explains that there is no evidence of financial harm from the voting trust—specifically, that neither KCS nor CN would be injured by a divestiture, and that CN has concretely demonstrated that the price it is paying has been carefully assessed by CN's Board of Directors, management, and advisors, is well supported by the growth prospects of a CN-KCS combination, can be appropriately handled based on CN's strong balance sheet and commitment to rapid debt repayment, and will not disrupt its current levels of service and investment; and **Section II.C** illustrates that no credible evidence has been presented to support theories that harm to competition would occur during the pendency of the Board's review.

Section III addresses comments on issues not affected by voting trust approval, such as assertions about the downstream effects of a CN-KCS combination (which are nonexistent), the alleged competitive harms of a CN-KCS combination (which are negligible and easily remedied), and the alleged

[16] 49 C.F.R. § 1180.4(b)(4)(iv).

damaging effects of a CN-KCS combination on KCS's Shreveport-to-Kansas-City line (which are unsupported and contrary to important KCS interests).

This Reply is supported by six verified statements. **Exhibit 1** is a verified statement from Jean-Jacques Ruest, CN's President and Chief Executive Officer, which addresses the tremendous public benefits of a CN-KCS combination and the value CN sees in that combination. Mr. Ruest also emphasizes CN's commitment to preserving the quality and integrity of the KCS network between Kansas City and Shreveport, CN's commitments to ensuring robust competition during the trust period, and respecting KCS's independence and fulfillment of its fiduciary duties, whether or not a CN-KCS combination is eventually approved. **Exhibit 2** is the verified statement of Michael J. Naatz, KCS Executive Vice President and Chief Marketing Officer, who emphasizes the importance of the Kansas City-Shreveport line to the KCS franchise and KCS's commitment to investing in that line and retaining the traffic that depends on the line. **Exhibit 3** is the verified statement of Ghislain Houle, CN Executive Vice-President and Chief Financial Officer, who responds to CP's incorrect allegations that CN's purchase price for KCS was unwarranted and would harm CN's financial position in a way that could lead CN to increase rates or decrease investments. **Exhibit 4** is the verified statement of Professor Mark Zmijewski of the University of Chicago Booth School of Business, who has assessed the financial metrics of the CN-KCS combination and concluded that CN can easily service the debt it will issue to finance the KCS acquisition, even under stress tested scenarios using pessimistic forecasts. **Exhibit 5** is the verified statement of James Cairns, CN Senior Vice-President, Rail-Centric Supply Chain, who describes the pro-competitive commitments that CN has made and those that it is exploring as potential "enhanced competition." **Exhibit 6** is the verified statement of William Rennicke, a Partner at Oliver Wyman, who demonstrates that CP's allegations of competitive harm are factually wrong and inconsistent with both Board precedent and economic principles.[17]

I. THE BOARD'S VOTING TRUST REVIEW IS FOCUSED ON THE VOTING TRUST AND DOES NOT PREJUDGE ITS ULTIMATE MERGER DECISION.

The Board reviews voting trusts to assess two issues: (1) "how the trust would insulate [Applicants] from an unlawful control violation"; and (2) whether "use of the trust, in the context of [Applicants'] impending control application, would be consistent with the public interest."[18] This public interest review is focused on whether the voting trust is in the public interest, not whether the ultimate merger is in the public interest.[19]

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[17] Confidential workpapers for the Houle, Rennicke, and Zmijewski statements have been submitted to the Board and will be made available to parties upon request.

[18] 49 C.F.R. § 1180.4(b)(4)(iv).

[19] See Exhibit 9, William Clyburn, Jr., "CN Voting Trust Clears STB New Merger Rules Tests. It Should Be Approved," RAILWAY AGE (June 8, 2021) (Former STB Member explaining that the 2001 voting trust rules focus on unlawful control and the public interest, by which "as explained in the merger rules themselves, the STB was concerned about the financial health of the applicants and the divestiture of the target railroad if the STB did not ultimately approve the transaction. . . . As such, the STB adopted a public interest standard designed to focus on the *financial fitness of the merging parties*") (emphasis in original); *see also* CSX Transportation, Inc.

This focus is clear from § 1180.4(b)(4)(iv)'s language and the Board's discussion in *Major Rail Consolidation Procedures*, which set forth a broad range of issues that it would consider in determining whether a combination is in the public interest—from service issues to competitive harm to passenger effects to environmental impacts. Applicants must address all those factors in detail so that the STB can consider them in due course. By contrast, in explaining how it would assess whether approval of a *voting trust* is in the public interest, the Board only identified issues directly related to use of the trust, including whether the trust will prevent unauthorized control and whether either party to the potential transaction would suffer potential harm from divestiture if the transaction were not approved.[20] Reflecting this tight focus, the Board's Part 1180 rules governing Class I mergers explicitly create a "brief period" for public interest review of "use of a voting trust"—far shorter than the lengthy and detailed public interest review of a major merger's ultimate merits.[21] The assertions of some commenters that the Board considers the merits of a combination in ruling on the voting trust is inconsistent with the Board's rules.

When CP sought approval of its own voting trust just three months ago, it argued correctly that approval does not "prejudge or foreclose" the Board's

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Comments Regarding Voting Trust Review, *CN/KCS*, Docket No. FD 36514 (filed June 28, 2021), at 2–4.

[20] *See Major Rail Consolidation Procedures* at 28–30.

[21] *Compare* 49 C.F.R. § 1180.4(b)(4)(iv) (prescribing narrow test for voting trust review), *with* 49 C.F.R. § 1180.1 (broad policy statement setting forth many factors that will be considered in review of ultimate combination).

ultimate review or otherwise "constrain the Board from reaching any decision it felt warranted by the record in the control proceeding."[22] So CP plainly understands that voting trust approval does not lead to prejudgment. Even so, it has spent the last two months using advertisements, web solicitations, and even a fake editorial cartoon to try to convince stakeholders that a voting trust would "pre-judge STB review" and "lock in" a CN-KCS combination.[23] Given CP's unequivocal statements to the Board that voting trust approval does not prejudge the outcome of the merger proceeding, this marketing campaign seems designed to mislead.[24]

Although CP does not repeat the claims of its marketing campaign here, it presses the equally incorrect position that the Board's current regulations impose

[22] *See* Canadian Pacific Applicants' Submission of March 22, 2021 Request for Review of Voting Trust, *CP/KCS*, Docket No. FD 36500 (filed May 10, 2021) ("CP March 22 Letter"), Ex. 1 at 9.

[23] *See, e.g.*, *Make Your Voice Heard*, CANADIAN PAC. RY. (June 28, 2020), https://futureforfreight.com/make-your-voice-heard/ [https://web.archive.org/web/20210601133407/https://futureforfreight.com/make-your-voice-heard/] ("Now is the time to speak up and voice your concerns about whether CN should be able to lock in its anti-competitive plan to buy KCS via a voting trust."); Wash. Post Cartoon Advertisement, Canadian Pac. Ry., Canadian National Is Attempting to Cut the Line and Lock In its Anti-Competitive Plan to Buy Kansas City Southern Using a Voting Trust, *available at* https://futureforfreight.com/wp-content/uploads/2021/06/CP_WaPOad_12x10.5_Round03_060821.pdf ("Allowing CN to close into trust would not be in the public interest because its approval would pre-judge STB review.").

[24] Indeed, the "voting trust opposition" letters that CP touts nearly all reflect this mistaken claim that voting trust approval would "prejudge" the outcome. The Board should not rely on opposition letters that rest on a (publicly cultivated) misunderstanding of the impact of voting trust approval.

a virtually categorical bar on voting trusts.[25] But again, CP previously took the opposite position. When attempting a hostile takeover of Norfolk Southern in 2016, CP argued (correctly) that under the Board's current voting trust regulations, public interest review of voting trusts addresses "concerns regarding the potential risk of financial harm to the carrier in trust in the event regulatory approval is denied and the carrier must be divested," and that the standard is satisfied by showing "either that the risk of financial harm from divestiture is low or that countervailing public benefits outweigh the risk."[26] CP similarly told the Board that the voting trust standard was based on "whether 'a proposed transaction would undermine the financial integrity of the applicant carriers.'"[27] CP provides no explanation for its complete change of position.

More recently, CP argued to the Board that a current-rules review of its proposed voting trust was not necessary because "[a]bsolutely nothing about the

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[25] *See* CP's Reply to CN & KCS Joint Motion for Approval of Voting Trust, *CN/KCS*, Docket No. FD 36514 (filed June 28, 2021) ("CP Reply"), at 7–9, 57–60.

[26] *See* Exhibit 12, Press Release, Canadian Pac. Ry., Effective Regulatory Approval Fact-Based and Free of Political Interference, CP Argues in White Paper (Feb. 3, 2016), https://www.cpr.ca/en/investors/effective-regulatory-approval-fact-based-and-free-of-political-interference.

[27] Canadian Pacific Petition for Expedited Declaratory Order, *Canadian Pac. Ry. Ltd.*, Docket No. FD 36004 (filed Mar. 2, 2016), at 14; *see id.* ("CPRL's proposal to hold the CP rail carriers, not NS, in trust is responsive to STB's indications it would take a 'more cautious approach to future voting trusts' based on whether 'a proposed transaction would undermine the financial integrity of the applicant carriers.'"); *id.* at 5 (arguing that "the concerns embodied in the 2001 rule change" could be addressed by "reducing the risk of harm should the transaction be rejected and divestiture ordered").

'plain vanilla' voting trust Applicants propose is remotely controversial."[28] It is impossible to reconcile this statement with its current claim that CN's use of an identical trust "will determine the course of competition for U.S. railroading and North American commerce for the next 150 years."[29]

While the Board made clear in the 2001 rules that voting trust approval for major mergers is "a privilege and not a right," it has not questioned its historical view that the voting trust mechanism can serve important public interests where it prevents unauthorized control and will not result in harm to the parties. As the Board recently explained, "the use of independent voting trusts in connection with the review of control transactions before the agency is a long-standing agency practice that is subject to regulatory requirements as well as an established body of agency precedent."[30]

That "long-standing agency practice" was not discarded when the Board adopted the 2001 rules—nor did it end the day after CP secured approval for its proposed voting trust. Rather, *Major Rail Consolidation Procedures* held only that the agency would take a "more cautious approach" by adopting a more formalized voting trust review, and requiring applicants to demonstrate that the

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[28] Applicants' Reply to Objections to KCS Waiver from 2001 Major Merger Rules, *CP/KCS*, Docket No. FD 36500 (filed Apr. 12, 2021), at 6.

[29] *See* Press Release, Canadian Pac. Ry., CP Responds to STB's June 28 Schedule for Public Comment on CN-KCS Voting Trust Proposal (June 8, 2021), https://futureforfreight.com/cp-responds-to-stbs-june-28-schedule-for-public-comment-on-cn-kcs-voting-trust-proposal/.

[30] *CP/KCS*, Docket No. FD 36500 (STB served May 6, 2021) ("*May 6 Decision*"), at 6 & n.9 (citing Board precedent).

voting trust would both prevent unlawful control and serve the public interest.[31] Critically, the Board noted that its primary concern involved potential financial harm to the applicant carriers if divestiture were necessary, and that applicants would need to show that such harm would be minimal or that it was outweighed by public benefits.[32] And the Board held that one such public benefit would be where the trust would help fend off "a potential hostile takeover bid."[33] The Board's regulations, adopted in a notice and comment rulemaking, are of course binding on all parties.[34]

CP's stance that § 1180.4(b)(4)(iv)'s public interest requirement creates an insurmountable hurdle also ignores that the Board conducted a "formal review" of CP's own voting trust application that addressed the significant issues encompassed by this requirement. At that time, CP argued that its voting trust would have the public benefits of making a CP bid competitive with private equity bids and allowing CP the opportunity to demonstrate the public benefits of its proposed merger.[35] And it argued that voting trust approval would not risk

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[31] *See Major Rail Consolidation Procedures* at 28–30.

[32] *See id.* at 29.

[33] *Id.* at 29–30.

[34] *See, e.g.*, *Nat'l Env't Dev. Ass'n Clean Air Project v. EPA*, 752 F.3d 999, 1009 (D.C. Cir. 2014) ("It is 'axiomatic' . . . 'that an agency is bound by its own regulations.'"); *Panhandle E. Pipe Line Co. v. FERC*, 613 F.2d 1120, 1135 (D.C. Cir. 1979) (holding that an agency does not have authority to "play fast and loose with its own regulations").

[35] *See* CP March 22 Letter at 3–4, 9–10.

potential financial harm to either CP or KCS from divestiture.[36] In the Board's formal review, it explicitly considered key factors identified in the 2001 rules, specifically including questions of unauthorized control and potential financial harm to CP and KCS.[37] As set forth in Applicants' Motion to Approve and this Reply, CN and CP are identically situated with respect to these key factors. And as discussed below, there is a powerful additional factor supporting approval of Applicants' voting trust: the public interest in not distorting the marketplace by approving one railroad's proposed voting trust and disapproving another's.[38]

II. THE KEY FACTORS RELEVANT TO THE VOTING TRUST REVIEW STRONGLY SUPPORT APPROVAL.

A. There Is No Risk of Unauthorized Control.

No commenters suggest that the proposed Voting Trust Agreement presents any risk of unauthorized control. Nor could they. Applicants' Motion to Approve demonstrates that the Agreement satisfies all guidelines set forth in 49 C.F.R. part 1013. Indeed, because the trustee would have fiduciary obligations to KCS and its shareholders, the trust itself creates structural and legal protections for independence *that would not otherwise exist* to protect competition between merging entities during the sometimes lengthy period when a merger application

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[36] *See id.* at 9–10.

[37] *May 6 Decision* at 5–6.

[38] Oddly, CP cites CN's *comments* in the 2001 *Major Rail Consolidation Procedures* rulemaking as supposed evidence that CN does not respect the final rules. CP Reply at 9, n.7. Comments in a rulemaking obviously bear no relationship to a parties' willingness to comply with those rules once they are adopted.

is pending.[39] Filings subsequent to the Motion to Approve confirm that KCS will remain independent: KCS has provided the Board with verified statements from both its Chief Executive Officer and Chief Financial Officer affirming that, from KCS's perspective, the Voting Trust Agreement prevents any unauthorized control.[40]

Further, CN's Voting Trust Agreement is identical to the agreement approved by this Board in its decision authorizing CP to use a voting trust for its proposed combination with KCS, including the modifications the Board required in that decision.[41] As CP said of its agreement, the "proposal will fully insulate

[39] CN and KCS contemplate the same three types of communication during the voting trust period referenced in the STB's decision approving the CP-KCS voting trust: (1) communications relating to the Board's review of the Transaction and related planning for post-approval integration that would be the focus of the public interest benefits of the Transaction; (2) communications between rail carriers in the ordinary course of their independent business relationships, such as in connection with their ongoing interactions as connecting carriers and participation in industry-wide U.S. regulatory matters; and (3) data exchange and communications required for the preparation of reporting to governmental and other entities by companies within a consolidated group, such as tax and financial reporting. Such communications would occur under the supervision of the trustee pursuant to guidelines the trustee would adopt. To the extent communications in the first category involve the exchange of confidential information, such communications would be subject to the protective order that has been entered in this proceeding. *See CN/KCS*, Docket No. FD 36514 (STB served April 20, 2021).

[40] *See* May 26 Voting Trust Motion, V.S. Ottensmeyer; Applicants' Response to Decision Number 4, *CN/KCS*, Docket No. FD 36514 (filed June 14, 2021), V.S. Upchurch.

[41] *See* Motion to Adopt Procedural Schedule for Renewed Motion for Approval of Voting Trust Agreement, *CN/KCS*, Docket No. FD 36514 (filed May 18, 2021), Attachment 1, Ex. A at § 10.

KCS from control by CP pending Board review"[42]; "Kansas City Southern and its affiliates will be managed by their existing management teams" which "will be free from influence by Canadian Pacific and will draw upon [KCS's] strong financial position and cash flow from operations to carry out their business plans adopted independently pre-transaction."[43] Applicants have indisputably satisfied this component of the Board's test for voting trust approval.

Indeed, the Board has already settled this question with respect to the exact form of voting trust proposed by CN. It has ruled with regard to the exact same trust that "the Voting Trust Agreement would comply with the guidelines at 49 C.F.R. part 1013, comport with past agency policy and practice, and ensure that the day-to-day management and operation of KCS will not be controlled by Canadian Pacific or anyone affiliated with Canadian Pacific."[44]

B. No Party Has Identified a Legitimate Risk of Harm From the Voting Trust.

1. KCS will not be harmed by divestiture.

Major Rail Consolidation Procedures indicated that the Board's public interest review for voting trusts would consider potential harm from the divestiture process.[45] Here, there is no prospect that KCS could be financially harmed during the trust period or through divestiture. And the Board's

[42] CP Reply to Comment of U.S. Dep't of Justice, *CP/KCS*, Docket No. FD 36500 (filed Apr. 13, 2021), at 2.

[43] CP March 22 Letter at 6.

[44] *May 6 Decision* at 6.

[45] *See Major Rail Consolidation Procedures* at 29.

continuing oversight over divestiture eliminates any concern that a potential divestiture might not be in the public interest.

The Verified Statement of KCS's Chief Financial Officer Michael Upchurch provided a detailed assessment and confirmation of KCS's financial strength.[46] Among other things, Mr. Upchurch explained how the trust would allow KCS to continue its long-range capital plan and even to invest over and above that plan.[47] No party has questioned that evidence.

Nor has any party questioned Applicants' evidence that the intense public interest in the KCS franchise suggests that many ready buyers would be willing to buy it. Indeed, CP's own statement that "there is no basis whatsoever for concern" about a KCS divestiture is underscored by CP's apparent intention to continue its pursuit of KCS after KCS terminated its transaction agreement with CP.[48]

With the exact same voting trust structure, terms, and trustee, there are no grounds to find any differently than the Board did in Finance Docket 36500. There the Board was clear that "in the event divestiture were necessary, there is

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[46] *See* Applicants' Response to Decision Number 4, *CN/KCS*, Docket No. FD 36514 (filed June 14, 2021), V.S. Upchurch.

[47] *Id.* at 3, 4.

[48] CP March 22 Letter at 10 ("Kansas City Southern is a thriving and profitable company on a stand-alone basis and it will continue to thrive while it is in Trust and run by the same management responsible for its previous successes, and there is no basis whatsoever for concern that it would not find a home in the hands of other owners were the proposed transaction disallowed.").

no significant risk that the financial strength or operational capabilities of Kansas City Southern would be compromised."[49]

CP nevertheless speculates that CN would "carve KCS's rail network up into pieces" in divestiture.[50] Some shipper organizations, perhaps concerned by CP's public statements, have echoed this speculation.[51] This concern is unfounded. The Board would have oversight over any KCS divestiture and thus the ability to prevent any divestiture contrary to the public interest. As the Board has explained, "in the event divestiture were required, the agency would have the authority to approve both a plan of divestiture and the sale (or other disposition) of the trust stock, whenever such divestiture and disposition take place, and whether or not the person acquiring the trust stock requires § 11323 authority to consummate that acquisition."[52] In short, the Board would have to approve any plan to divest KCS from the voting trust if there were ever a divestiture.

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[49] *See May 6 Decision* at 6.

[50] CP Reply at 61.

[51] *See* Comments of the Nat'l Indus. Transp. League, *CN/KCS*, Docket No. FD 36514 (filed June 28, 2021), at 5; Reply of The Fertilizer Inst., *CN/KCS*, Docket No. FD 36514 (filed June 28, 2021), at 3; Reply of the Am. Chemistry Council, *CN/KCS*, Docket No. FD 36514 (filed June 28, 2021), at 3.

[52] *See May 6 Decision* at 10 (citing "*CN/IC Op. Letter*, FD 33556, slip op. at 4 (citing "*Union Pac. Corp.—Request for Informal Op.—Voting Trust Agreement*, FD 32619, slip op. at 5 and *Santa Fe S. Pac. Corp.—Control—S. Pac. Transp. Co.*, 2 I.C.C.2d 709, 834 (1986) (noting that the jurisdiction of the agency "to oversee the orderly divestiture" of the trust stock is "inherently within [its] authority to approve consolidations and acquisitions of control."))."

To remove any doubt, if divestiture were required, CN commits that it would divest KCS in a way that maintains KCS as an intact entity, and to obtain the best potential value for KCS, as Mr. Ruest explains in his verified statement.[53] As such, there is no basis for any legitimate concern that KCS could be damaged in a divestiture.

2. CP's allegations that voting trust approval could cause other financial harms are baseless.

In approving the CP-KCS voting trust, the Board found "in the event that the Transaction is disapproved or not consummated and there is a need for divestiture, there is no reasonable basis to conclude that the financial strength or operational capabilities of the carriers would be compromised."[54] The Board should comfortably reach the same conclusion as to the CN-KCS voting trust.

In the Motion for Approval, CN demonstrated, through the Verified Statement of its Executive Vice President and Chief Financial Officer, Ghislain Houle, that the proposed combination poses no risk of financial harm to CN. Its showing rested on CN's strong financial profile, history of conservative fiscal policy, ability to retain an investment grade credit rating after the transaction, ample cash flow both to service its debt and to continue historic levels of capital investment, and commitment to suspend share repurchases to ensure the availability of cash for debt repayment.[55] Through Mr. Houle's Statement, CN

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[53] V.S. Ruest Reply at 4.

[54] *May 6 Decision a*t 2.

[55] May 26 Voting Trust Motion at 28–33; *id.*, V.S. Houle, at 4–9.

provided the Board with a detailed showing that CN would maintain a strong balance sheet even if it received *no proceeds* upon divesting KCS, an inconceivable eventuality.[56]

CN is well positioned to manage the debt issued for the transaction because it is currently on strong financial footing. CN has the lowest level of financial leverage of the Class I railroads and the second-highest credit rating.[57] Indeed, as Mr. Houle explained, CN built a strong balance sheet in part so that it can be positioned to capitalize on strategic investments when they arise—like the historic opportunity to create a North-South USMCA railroad.

CN has in place a plan to address the debt issued for purposes of making a competitive offer for KCS that will help CN prosper in the long run, as Mr. Houle explained in detail. And CN will be able to reduce that debt while not sacrificing any necessary capital investment, which will remain consistent with historical expenditures even as CN de-leverages.[58] CN will use its significant existing Free Cash Flow to de-leverage over time, and will suspend share repurchases in order to accelerate debt repayment.[59]

CP nevertheless alleges through the statement of its chief financial officer that the Board should be concerned about the financial terms of the CN-KCS

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[56] *Id.* at 31–32; *id.*, V.S. Houle at 15–18.

[57] *Id.*, V.S. Houle, at 8–9.

[58] *Id.* at 12–13.

[59] *See id.* (CN anticipates $2 billion of excess cash flow above capital investment and debt service in 2022, 2023, and 2024.); *see also id.* at 3.

transaction, alleging that CN is paying too much for KCS, that it is taking on too much debt, and that these debt levels might lead to some level of harm. CP's purported concern with CN's financial health should be viewed with extreme skepticism. And as the enclosed Reply Verified Statements of Ghislain Houle and Mark Zmijewski demonstrate, CP's arguments collapse upon examination.

Mr. Houle's statement explains that CN's purchase price for KCS, far from being an exorbitant premium,[60] is "comfortably support[ed]" by CN's balance sheet and reflects the fact that a CN-KCS combination "creates more value" than a CP-KCS combination by, *e.g.*, offering shippers new, attractive routings; expanding service offerings and synergies on the CN-KCS network; competing more vigorously with other Class I railroads for new traffic; and attracting traffic to rail that currently moves on trucks and barges.[61] Although CP speculates without basis about CN's motives for the KCS offer, in fact, CN's bid for KCS was a result of years of evaluating, analyzing, and monitoring the potential synergies and benefits of a CN-KCS combination, including the "unique opportunity . . . to harness new growth opportunities from new emerging markets" and to actualize CN's "long-standing vision" of being the premier end-to-end North American railway of the 21st Century.[62] Ultimately, CN based its purchase price on a

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[60] CP's claim that a 45% premium is "exorbitant" is belied by the fact that, in 2015, CP offered a significantly higher 77% premium to Norfolk Southern shareholders without blinking an eye. Exhibit 3, Reply Verified Statement of Ghislain Houle ("V.S. Houle Reply") at 5–6.

[61] *Id.* at 2–3; *see id.* at 12.

[62] *Id.* at 10–11.

financial assessment of KCS's "fundamental value," including the "growth in future cash flows" expected from the transaction, which is an approach "entirely consistent with industry practices (across industries)" and one that was ultimately "validated by [three] separate fairness opinions,"[63] as well as Wall Street research analysts.[64]

Mr. Houle also explains that there is "no significant financial risk" from the CN-KCS transaction, and CP's arguments that seek to cast doubt in this regard "are equally applicable to CP's proposed transaction, demonstrating that these are not true problems."[65] While CP urges the Board to find fault in CN's ability to afford a higher purchase price for KCS, the reality is that CN's "conservative fiscal policies and . . . best-in-class credit rating" were adopted "precisely [to enable CN] to act on unique strategic opportunities" like the CN-KCS combination.[66]

Mr. Houle also dispels CP's claims that CN is taking on too much debt. Contrary to CP's baseless characterization, "CN's projected level of debt . . . will not harm its ability to continue investing in the railroad and providing quality service to [its] customers."[67] Indeed, given CN's expected free cash flows, CN does

[63] As Mr. Houle notes, CP criticizes these fairness opinions for having similar limitations and qualifications as the very opinions CP relied upon for their offer to KCS. *Id.* at 4–5.

[64] *Id.* at 3–5.

[65] *Id.* at 13–14.

[66] *Id.* at 16.

[67] *Id.* at 18.

not intend to reduce its capital expenditure plans, either during the pendency of the Board's review, after Board approval, or upon divestiture of KCS, if required.[68] Ultimately, and "regardless of the various scenarios that could occur following closing into voting trust," CN's strong financial position will enable it to "easily withstand any potential outcome without limiting our ability to serve our customers, invest in our railroad, or maintain the integrity of CN's network."[69]

The Reply Verified Statement of Dr. Mark E. Zmijewski, a Professor Emeritus at The University of Chicago Booth School of Business, supports Mr. Houle's statement. Professor Zmijewksi analyzes the financial viability of CN and KCS during the trust period, and upon divestiture, if required. Professor Zmijewski's analysis and conclusions are similar to those presented by Mr. Houle in CN's May 26 Motion to Approve. Under the first scenario, where the merger is approved, Dr. Zmijewski demonstrates that, based on calculating the expected Free Cash Flow of the combined company, there would be adequate cash to achieve CN's debt reduction plan and maintain its capital commitments, even assuming (unrealistically) that the economic downturn occasioned by the COVID-19 pandemic continues indefinitely.[70]

While CP claims CN has chosen to pay too much for KCS, Professor Zmijewski notes that CN received multiple assessments of the fairness of the

[68] *Id.* at 18–19.

[69] *Id.* at 19.

[70] V.S. Zmijewski Reply at 15–19, 24, and Exs. V-1 through V-4.

price CN is paying, including from independent experts, who found the price reasonable.[71] Independent industry analysts to consider the question likewise came to the same conclusion.[72] Moreover, CN's projected post-merger credit rating (BBB) places it squarely within the bell curve of S&P500 companies.[73] Indeed, CN will have the same or less risk than 47% of S&P500 companies, and its post-merger credit rating will be investment grade, and only one step below CP's present credit rating.[74]

If this were not enough, Professor Zmijewski's analysis also shows that even if CN were required to divest KCS at significantly (unrealistically) lower prices than its purchase price, CN would maintain its investment grade credit rating and be able to continue to pay its debt and conduct its operations, including normal capital investment.[75] Assuming 2020 financial downturn conditions and a divestment of KCS at a 30% discount relative to KCS's unaffected stock price, the sale proceedings would be sufficient to enable CN be able to repay most of its merger-related debt and still maintain a leverage ratio in the same range as the other Class I railroads.[76] There is simply no basis to conclude that CN would not be financially sound under a divestiture scenario.

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[71] *Id.* at 8–10.

[72] *Id.* at 10–11.

[73] *Id.* at 12, Figure 1.

[74] *Id.* 12–14.

[75] *Id.* at 19–24 and Exs. V-5A through V-6B.

[76] *Id.* at 23–24.

Similarly, Professor Zmijewski determined that KCS would remain financially sound while in trust, even assuming the poor financial conditions of the 2020 economic downturn persisted during the pendency of the trust.[77]

The verified statements of CFO Houle and Professor Zmijewski show in a variety of different ways that CN can manage the debt it will incur from the transaction while continuing its current level of operations and capital investment. CN has provided the Board with evidence that CN will maintain its investment grade credit rating; its income will cover its interest payments; its obligation-to-income ratio is acceptable and will fall over time; and it is not unduly leveraged (even with unrealistically negative assumptions about the economy and KCS's value)—all of which are different ways of demonstrating that CN will not be harmed by the debt it will incur to purchase KCS, precisely the showing this Board's test requires.

CP feigns worry regarding CN's "margin for error" in accomplishing its deleveraging plan, but does not even concern itself with the details of that plan.[78] For example, CP completely ignores CN's repeated statements that it is pausing stock repurchases and its pledges to maintain capital investment.[79] And CP did

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[77] *Id.* at 25–26.

[78] CP Reply, V.S. Velani, at 9–11.

[79] *Compare id.* at 10 ("Even with CN's optimistic cash flow projections, all of CN's cash flow will be spoken for in order to pay down enough debt to reach CN's stated leverage target by 2024."), *with* May 26 Voting Trust Motion, V.S. Houle, at 6–7, 11–14 ("After fully accounting for CN's capital investment plan, which is entirely consistent with historical rates of capital expenditure, we expect to have more than

not bother to ask for Mr. Houle's workpapers, which were filed with the Board with the Motion for Approval and made available to other parties.[80] In his verified statement, Dr. Zmijewski modeled a downside case using market conditions from 2020 and showed that although CN's financial leverage would increase for a period of time after the merger, it would "still be able to service its debt payments" and "maintain an investment grade credit rating after the Merger."[81]

In yet another inconsistent position, CP also questions the price CN is paying for KCS. Three months ago, CP argued that concerns about the purchase price associated with a proposed CP-KCS transaction were a "red herring" because the "financial measure of the transaction is a function of KCS's share price plus a sharing with KCS shareholders of the expected growth synergies,

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enough cash flow to service both CN's existing debt and the new transaction-related debt on a standalone basis, even without the benefit of access to KCS cash flows.").

[80] *See* May 26 Voting Trust Motion at 27, n.74. Two other parties of record requested and received Mr. Houle's workpapers, but CP did not ask for them.

[81] V.S. Zmijewski Reply at 15–19 and Exs. V-1 through V-4. For the same reason, the concerns of the Freight Rail Customer Alliance and its co-commenters are misplaced. *See* Freight Rail Customer Alliance, National Coal Transportation Association, and Private Railcar Food and Beverage Association, Inc. Comments, *CN/KCS*, Docket No. FD 36514 (filed June 7, 2021). Applicants note that FRCA's allegation that "the voting trust itself facilitates a higher purchase price," *id.* at 2, is exactly backwards. Without the voting trust, any acquiring railroad would be forced to offer a significantly <u>higher</u> price in exchange for asking the target railroad's shareholders to wait until final Board approval to be compensated. The higher price would be necessary to compensate the target railroad's shareholders for the regulatory risk and the time value of money associated with waiting for the review process to occur. *See infra* section II.C.1.

nothing more."[82] That argument was correct. Here, too, the purchase price that CN is paying for KCS reflects "nothing more" than the greater growth synergies that a CN-KCS transaction would produce.

As Mr. Houle explained, CN's proposal for KCS is competitive but warranted because of the significant benefits of this transaction.[83] CN's CFO, other senior management, and Board of Directors all found the price justified after careful review and counsel from multiple outside advisors and supported by three separate financial fairness opinions.[84] Because of the shared growth opportunity, a significant portion of the consideration being paid to KCS shareholders is in the form of CN stock, which demonstrates the value of the transaction, a value the KCS Board of Directors recognized when it accepted CN's superior proposal.[85] The overall debt being issued (US$19 billion) to finance the transaction is also slightly *less* than KCS's unaffected market capitalization of US$20.5 billion on the last trading day prior to the announcement of the CP merger agreement (March 19, 2021).[86] That means the premium being paid will be fully funded by issuing CN equity.[87]

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[82] Applicants' Reply to Objections to KCS Waiver from 2001 Major Merger Rules, *CP/KCS*, Docket No. FD 36500 (filed April 12, 2021)¸ at 11.

[83] May 26 Voting Trust Motion, V.S. Houle, at 9.

[84] *Id.*

[85] *Id.* at 10.

[86] *Id.*

[87] *Id.*

It is certainly true that the extreme interest in the KCS franchise and the substantial long-term growth potential that CN saw from a CN-KCS combination supported a high purchase price. But that purchase price was well justified, and offered by the CN Board of Directors with the support of three separate financial fairness opinions. In past transactions, the Board has refused to "second-guess the purchase price that applicants have already agreed upon."[88] It has no cause to do so here, particularly in light of Applicants' detailed and concrete showing.

3. CP's claims that a voting trust would create incentives for CN and KCS not to compete are meritless.

CP's claims that a voting trust will lead to a reduction in competition are both utterly divorced from reality and largely irrelevant to the Board's voting trust decision. As discussed above, CN and KCS have made several major pro-competitive commitments designed to ensure not only that their combination would not harm competition, but that it will enhance it.[89] Moreover, approval of the voting trust will have no effect on competition. KCS and CN will be independently managed during the trust period, and the Board can comprehensively examine any alleged competitive harm during the trust period.

In contending otherwise, CP is arguing with itself, because once again it argued something different in Finance Docket 36500. In connection with the proposed CP-KCS voting trust, the U.S. Department of Justice ("DOJ") argued that

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[88] *CSX Transp., et al,—Control and Operating Lease/Agreements—Conrail, Inc. & Consol. Rail Corp.*, Docket No. FD 33388 (STB served May 2, 1997), slip op. at 3.

[89] *See supra* pp. 5–11.

the Board should not approve CP's voting trust because doing so could diminish competition between CP and KCS during the trust period.[90] DOJ specifically cited the potential for "taci[t]" coordination and lost geographic competition.[91] CP dismissed DOJ's concerns as irrelevant to the standard the Board employs in deciding whether to allow a voting trust.[92] The Board agreed, approving the voting trust for CP-KCS, notwithstanding the competitive concerns DOJ had raised.[93]

The Board rightly rejected DOJ's argument in Finance Docket 36500, and it should also do so here. In the first place, any hypothetical incentive for carriers proposing a merger not to compete vigorously during the trust period, *arises from the agreement to merge, not from the voting trust*.[94] Indeed, placing the target carrier into a voting trust *reduces* such a hypothetical incentive, by empowering an independent trustee with a fiduciary duty to ensure that KCS operates and continues to compete to win business.[95] As CN and KCS explained, "[a]pproval of the Voting Trust Agreement will not materially alter CN's and KCS's incentives to compete. The voting trust protects KCS's independence with an independent trustee and continuation of KCS's Board and management—the same safeguards the Board

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[90] Comment of U.S. Dep't of Justice, *CP/KCS*, Docket No. FD 36500 (filed Apr. 12, 2021), at 4.

[91] *Id*. at 9.

[92] CP Reply to Comment of U.S. Dep't of Justice, *CP/KCS*, Docket No. FD 36500 (filed Apr. 13, 2021), at 1.

[93] *May 6 Decision* at 6–7.

[94] May 26 Voting Trust Motion, V.S. Wright, at 7.

[95] *Id.*

found sufficient in approving the identical voting trust proffered by CP."[96] {{

}}[97] CP identifies no plausible basis for distinguishing its prior advocacy and no reason to believe that CN and KCS would pull punches rather than compete for business while the voting trust is in place.

Dr. Majure attempts to articulate a theory of short-term competitive harm attributable to the voting trust (as opposed to the merger itself), but that theory is implausible and ignores industry realities. In particular, Dr. Majure argues that, if the voting trust is granted, CN might raise its rates in 2-to-1 areas on the theory that CN's unhappy customers would take their business to KCS, whose shares CN will own.[98] Of course, CN would be greatly <u>harmed</u>, not benefited, if these higher prices drove long-term customers to KCS and the Board then disapproved a CN-KCS transaction. CN would similarly be harmed if the transaction were approved and the customers decided to give their business to the new entrant stepping into KCS's shoes in KCS's New Orleans – Baton Rouge line. Dr. Majure speculates, however, that CN might be able to capture the net present value of those lost

[96] May 26 Voting Trust Motion, at 38.

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[98] CP Reply, V.S. Majure ¶ 9.

customers anyway because, he says, driving them to KCS "would be expected to increase what a divestiture buyer may be willing to pay for KCS."[99]

This theory of harm is untenable. *First,* even on its own terms, it would prove *de minimis* at best. The concern expressed by Dr. Majure could arise only in contexts where (among other necessary conditions) CN and KCS compete head-to-head for the same customers and no other railroads (or other modes of transportation) will continue competing for the same customers once the merger closes.[100] Even if one were to ignore competition from other railroads and other modes of transportation, the possibility of such head-to-head competition between CN and KCS exists only in the New Orleans-Baton Rouge corridor, which accounts for approximately 70 miles of track and less than 1% of the combined CN-KCS network.[101] It is implausible to oppose a voting trust for an overwhelmingly vertical end-to-end merger simply because—like most end-to-end mergers—it includes a tiny area of competitive overlap, especially here, where Applicants have already committed to divest the overlap.

Dr. Majure is obviously reluctant to acknowledge that his theory of competitive harm is limited to this lone Louisiana corridor, and he thus appears to suggest that it extends even to areas where one or more other railroads will

[99] *Id.*

[100] *Id* ¶¶ 9–10.

[101] *See* May 26 Voting Trust Motion, V.S. Rennicke.

continue to compete with the combined company after the merger.[102] But that is nonsensical. In such areas, many or most customers would react to a CN price hike by taking their business to the other railroads, depriving *both* CN and KCS of any opportunity to recover the lost revenues. Any CN price hike in those areas would make no economic sense.

Second, even in 2-to-1 areas, much of the business lost to CN's theorized price hike would go not to KCS, but to intermodal competitors, and CN could never hope to recover those lost revenues either.[103] Dr. Majure, however, ignores intermodal competition altogether. Here, too, his analysis contradicts clear Board precedent. As the Board has repeatedly recognized, "effective intermodal alternatives do constrain a railroad's power."[104]

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[102] CP Reply, V.S. Majure ¶¶ 46–48 & Ex. 4 (including 3-to-2 areas as alleged instances of competitive harms).

[103] As Mr. Rennicke explained in his initial statement, CN and KCS face extensive intermodal competition:

> CN and KCS operate in Mid-America, which is one of the most competitive transportation regions in North America. They face extensive competition from other railroads, motor carriers, and barge operators. They also will now face additional rail-truck transload competition from Class I railroad CSX, which recently announced that it has agreed to buy and integrate the largest liquid bulk trucking company in North America.

May 26 Voting Trust Motion, V.S. Rennicke, at 4; *see also* V.S. Rennicke Reply at 16.

[104] *CSX Corp.—Control—Chessie Sys., Inc., & Seaboard Coast Line Indus., Inc.*, 363 I.C.C. 521, 568 (1980) ("*CSX/Chessie*"); *see also Union Pac. Corp., et al.—Control—Chi. & N. W. Transp. Co., et al.* ("*UP/CNW*"), Docket No. FD 32133 (STB served Mar. 7, 1995), 1995 WL 141757, at *52, *71, *77 (emphasizing the Board must consider "the array of independent options that shippers will retain following

Third, Dr. Majure's theory assumes away the significance of geographic competition in constraining rail rates.[105] The Board has repeatedly recognized that geographic competition can be a powerful force in constraining the rates that railroads charge customers, even for railroads that do not face direct rail competition.[106] And, as Mr. Rennicke explains, the Applicants face substantial geographic competition, including for products shipped to and from New Orleans-Baton Rouge.[107] Again, if CN (or KCS) were to decide to raise prices, the result would be to cause customers to ship to alternative destinations, in the short term as well as the long term.

Fourth, simply as a practical matter, it strains credulity to suppose—as Dr. Majure implicitly does—that mid-level CN sales personnel would jeopardize their

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approval of the transaction"—including the "viable competitive alternatives" of "intermodal competition" and finding there would be "no meaningful reduction in . . . transportation competition as exists today" because of "the role that intermodal competition . . . currently plays, and will play post-transaction").

[105] V.S. Rennicke Reply at 35; *see also infra* pp. 65–71 (discussing Dr. Majure's failure to actually consider geographic competition in greater detail).

[106] *See, e.g.*, *Union Pac. Corp., et al.—Control and Merger—S. Pac. Rail Corp., et al.*, *("UP/SP")*, 1 S.T.B. 233, 365 (1996) (concluding that, even where the proposed consolidation results in 2-to-1 points, "geographic or product competition may be sufficient to act as a constraint to prevent competitive harm"); *id.* at 396 ("protestants' contentions [of competitive harm] are flawed because of the continued availability of source competition to prevent the abuse of market power"); *CSX/Chessie*, 363 I.C.C. at 564 ("Adequate . . . source competition exists . . . to limit appropriately any undue market power the system as a whole may realize from the transaction."); *CP/DM&E*, Docket No. FD 35081 (STB served Sept. 30, 2008), slip op. at 9–10 (approving CP/DM&E merger despite reduction in competition based on, *inter alia*, evidence of geographic competition constraining the ability of Applicants to improperly exercise market power).

[107] V.S. Rennicke Reply at 40–42.

jobs by alienating customers with arbitrary rate hikes and losing them to other railroads or truck/barge competitors. In this respect, too, Dr. Majure appears to have overlooked the basic commercial realities of the railroad business.[108]

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C. Approval of the Voting Trust Will Serve Important Public Interests.

As demonstrated above, there is no risk of financial harm to CN or KCS from a voting trust divestiture, nor is there any risk of competitive harm from the voting trust. Even if there were harms, however, they would be outweighed by the substantial public benefits of voting trust approval.

1. Voting trusts allow railroad bids to be competitive.

The Board has already found that voting trusts serve the important public purpose of allowing railroad bids to be competitive. As the Board knows, voting trusts provide certainty to a target's shareholders while allowing sufficient time for thorough Board review. The necessity for careful and lengthy Board review creates a substantial disparity between the time required to close a transaction

[108] Dr. Majure also ignores the effect of long-term rail contracts, whose duration may extend beyond the trust period.

involving two railroads, and that required to close transactions involving non-carrier bidders for railroads. In turn, that disparity disadvantages railroad bidders because target shareholders and the target will prefer the certainty and speed of a transaction not subject to Board review, even where the railroad's offer would provide more value and has little regulatory risk. Voting trusts address this disparity and prevent the transaction costs and extensive delay of lengthy regulatory review from distorting the marketplace.[109]

Here, it was particularly important for CN to propose a voting trust because its bid sought to compete with a proposed CP-KCS merger agreement that *required* the use of a voting trust and was made against the backdrop of a non-carrier investor's bid.[110] In light of the market interest in KCS, CN had to propose to use a voting trust. And, once the Board approved the CP voting trust, CN had no alternative but to pursue a transaction with a similar voting trust.[111]

In essence, CP is arguing it was justified in using a voting trust to place itself on level ground with potential private equity acquirers, but that CN should not be allowed to use a voting trust to place itself on level ground with potential

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[109] May 26 Voting Trust Motion at 10–11.

[110] *Id.* at 11–12.

[111] *See id.*, V.S. Ruest, at 13 ("In order for KCS to be able to terminate its agreement with CP and accept CN's superior proposal, CN was required to provide KCS shareholders the same amount of certainty of closing into a voting trust and assurance of a closing in 2021. This is especially true since the KCS-CP voting trust had been approved by the STB.").

private equity acquirers and CP.[112] But to state that argument is to refute it: the Board's recognition that voting trusts are an important tool to place railroad purchasers on a level playing field with other bidders is true regardless of whether the other bidders are financial acquirers who would not need Board approval and/or other railroads who have an approved voting trust in hand (as CP did at the time that CN submitted its final bid to KCS).[113]

In any event, CP's claim that CN only became interested in KCS after the CP-KCS agreement was announced is refuted by its own exhibits. It makes no difference whether a railroad proposing to use a voting trust was the first carrier to bid for the target railroad—the Board should evaluate each proposed voting trust based on the relevant criteria, not on the basis of which acquisition proposal came first.[114] To do otherwise would tilt the playing field in favor of the first proposal and make it virtually impossible for the second carrier to present a superior offer. In any event, as page 43 of Exhibit 14 of CP's Reply explains, CN's CEO Mr. Ruest contacted KCS's CEO Mr. Ottensmeyer soon after private equity interest on KCS was discussed in the press, and informed Mr. Ottensmeyer that CN would look forward to exploring a combination if KCS were interested. Once

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[112] CP Reply at 16.

[113] CP's proposed voting trust was approved on May 6, 2021. CN submitted its final proposed agreement to KCS on May 13, 2021.

[114] CP suggests that once KCS was contractually bound to its bid, CN no longer had to be concerned about private bidders. *See id.* at 17. But that is not accurate. The CP-KCS merger agreement allowed superior offers to be submitted by any party, including private equity bidders.

CP and KCS announced their merger agreement—which explicitly contemplated that KCS could terminate in response to a "superior proposal"—CN knew that KCS was both interested in pursuing a railroad combination and open to considering superior offers. CN chose to submit a higher bid and KCS chose to accept it subject to CP's right to increase its offer (which CP chose not to do) and the payment of a $700 million termination fee to CP.

CP also contends that CN and KCS may eventually merge even if the Board declines to approve the voting trust, because CN and KCS could renegotiate their merger agreement in that circumstance.[115] This facile claim that CN could simply pay more to compensate KCS shareholders for a delayed closing is precisely the point: that would put CN at a serious comparative disadvantage with respect to both CP and financial investors. (It also undermines CP's claim that CN is already paying too much for KCS.) If CP can utilize a voting trust, but CN cannot, CP can offer certainty to KCS shareholders that CN cannot. To be sure, CN might try to make up for that lesser certainty by offering more money or other costly concessions. But it would be patently unfair to disadvantage one potential railroad buyer by requiring it to accept crippling conditions that a competing railroad buyer need not accept.

Moreover, voting trust approval also would serve the important public interest in respecting KCS's choice of a merger partner and more generally allowing the market to work. CP seeks to block approval of Applicants' proposed

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[115] *Id.* at 19–20.

voting trust to induce KCS to reconsider CP's inferior offer. The Board's voting trust inquiry should not be used to favor one competitive bidder and distort the market for KCS by creating a regulatory advantage for one would-be acquirer over another.[116] As explained in the Motion to Approve, "To approve one and deny the other in these circumstances . . . would likely work an injustice by effectively prejudging the review process, if not ending the viability of one party's bid outright. Such a decision would deprive the public of a competitive auction and in so doing likely harm the public interest."[117]

CP's principal response to Applicants' demonstration that the voting trust mechanism furthers public interests here is to claim that "the only rationale offered for approving a voting trust" is "the private interest of KCS's shareholders."[118] In so arguing, CP intentionally creates a strawman of Applicants' actual argument—which is identical to the argument <u>CP</u> made about the public interest benefits that would arise from its own voting trust.[119] The Board has long recognized that ameliorating the regulatory uncertainty that arises from lengthy review is a legitimate purpose of the voting trust mechanism, and necessary to level railroads' playing field with non-carrier investors. Here,

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[116] *See* May 26 Voting Trust Motion at 48–50; *see also Major Rail Consolidation Procedures* at 28–30; *St. Joe Paper Co. v. Atl. Coast Line R.R.*, 347 U.S. 298, 310 (1954) ("[O]ne carrier cannot be railroaded by the [ICC] into an undesired merger with another carrier.").

[117] May 26 Voting Trust Motion at 5; *id.*, V.S. Wright, at 9.

[118] CP Reply at 11 & n.12.

[119] *See* CP March 22 Letter at 9–10 (touting public benefits of proposed transaction).

approval of Applicants' voting trust would allow KCS shareholders to receive the merger consideration in the near term, <u>just as approval of CP's voting trust did</u>; but it would also serve the important public purposes delineated above. And of course Applicants agree with CP that the private interests of shareholders should not be placed above the public interest[120]—and they have never argued to the contrary. Instead, Applicants have shown that voting trust approval serves undoubted public interests—allowing railroads to compete on an equal footing and ensuring that merger decisions are made by capital markets, not by the Board—interests that coincide with shareholders' interests in certainty and near-term payment.[121]

Finally, CP baselessly claims that because CN is the highest bidder, it must be making its bid "for anticompetitive reasons," in order to "keep KCS out of CP's hands."[122] This rank speculation is false, as Mr. Ruest explains in his verified statement. CN's interest in KCS—which was conveyed to KCS long before a CP-KCS combination became public—was and is based on the unique growth opportunities presented by a CN-KCS combination.[123] CN chose to submit a bid after the CP-KCS agreement was announced not because of some

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[120] CP Reply at 13.

[121] CP's argument that CN is trying to "weaponize" its "large balance sheet" is absurd. *Id.* at 20. CN's superior offer was not a weapon; it is competition in the market for KCS.

[122] *Id.* at 14.

[123] V.S. Ruest Reply at 3.

hypothetical scheme to stop a CP-KCS merger, but because CN learned that KCS was open to a railroad combination and that KCS's merger agreement with CP specifically allowed KCS to consider other offers.[124] CN's management and Board of Directors, supported by external advisors, carefully considered the benefits to customers of merging with KCS, the value that could be created by the merger, and the growth it could generate by converting long-haul truck traffic to rail traffic and offered an appropriate price that reflects this potential value creation.

The higher bid that CN offered for KCS was justified by CN's own calculations of the long-term growth potential of a CN-KCS combination. Indeed, CP had the right under the canceled CP-KCS merger agreement to match CN's bid, and CN could not have "blocked" CP from doing so. The fact that CP chose not to match CN's bid is strong evidence that its rejected proposal would not create as much value as a CN-KCS combination.

2. Approval of the voting trust is important to achieving the substantial public benefits that will result from the CN-KCS combination.

As Applicants' more than 1,700 support letters demonstrate, a legion of interested stakeholders anticipate that the CN-KCS combination will generate substantial public benefits. In its Motion for Approval, Applicants concretely and meticulously set forth the competitive benefits that would result from longer single-line service (benefits that obviously would not flow from any purely financial transaction) and from increased rail-to-rail competition; the

[124] V.S. Houle Reply at 11.

environmental and safety benefits that would flow from the conversion of truck shipments to rail, thereby reducing greenhouse gas emissions and taking long-haul trucks off highways and out of communities; and the economic benefits that would result from enhanced trade within North America (USMCA) and internationally out of the many ports which the combined railroad would serve. And there is a substantial benefit to the national interest in promoting north-south trade as envisioned by the USMCA.[125]

Mr. Rennicke's Reply Verified Statement describes some of these public benefits, explaining that a CN-KCS combination would "create new opportunities for shippers in the combined network to reach new customers in more efficient and direct ways, enhancing competition to the benefit of all involved parties."[126] He details specific ways in which longer single-haul service and more efficient interchange options would improve service and enhance competition.[127]

CP does not seriously dispute that these public interest benefits would flow from the transaction. Instead, it argues that potential benefits of a transaction can be ignored because they would result from a final approval and not the voting trust. But this misses the point. Denial of a voting trust (after approving one for CP) could prevent the Board even from <u>considering</u> the enormous public interest benefits of the transaction that have attracted so much stakeholder support.

[125] *See generally* May 26 Voting Trust Motion at 3, 20–21.

[126] V.S. Rennicke Reply at 5.

[127] *See id.* at 7–8.

The many parties advocating for the public interest benefits of a CN-KCS combination thus stand on a fundamentally different footing than those parties claiming that an ultimate combination might cause harm. Parties alleging that they might be harmed by an ultimate CN-KCS combination are not impacted by a voting trust approval. They will have the chance in future proceedings to demonstrate their claims of harm, and to ask the Board to use its conditioning authority to mitigate any proven harm or to deny approval altogether.

The same is not true for parties supporting the CN-KCS combination because of the public benefits they see. The Board cannot recover the potential public benefits that may be lost if the trust is not approved. The chance for Applicants to present evidence to demonstrate the benefits that they and so many stakeholders believe would result from an ultimate combination is a distinct public interest benefit that favors approval of Applicants' voting trust.[128]

3. Substantial public support demonstrates that the voting trust is in the public interest.

The public interest benefits of the voting trust are confirmed by overwhelming support from customers, suppliers, partners, government officials, and communities in which CN and KCS operate. CN and KCS have to date

[128] CP also claims that the public interest benefits of a CN-KCS combination can be discounted because they could be achieved by a hypothetical CP-KCS combination. As discussed, the Board does not "compare and contrast" different merger proposals to pick its favorite. *See supra* pp. 2–3 and *infra* section III.G. Moreover, CP's premise is false—the Reply Verified Statement of William Rennicke shows that a hypothetical CP-KCS combination would produce substantially inferior public benefits to the actually proposed CN-KCS combination. *See* V.S. Rennicke Reply at 6–7 & Ex. 1.

submitted more than 1,750 letters of support across ten filings with the STB. 1,375 letters have supported the transaction itself, while more than 1,000 have expressly supported CN's proposed voting trust (many letters have supported both).[129] Many other parties have filed with the STB on their own to voice support for the merger, the trust, or both.

These support letters have come from eleven members of Congress, three governors, more than two dozen mayors and city executives from communities all across the networks of CN and KCS, nearly twenty state legislators, county and parish officials, the Premier of Nova Scotia, and the Chief of the Choctaw Nation of Oklahoma.

Support has been particularly notable from the states of Louisiana and Illinois. Governor Edwards of Louisiana and Mayor Weston Broome of Baton Rouge have expressed their support for the CN merger, voting trust, or both. These leaders have been joined in their support by community organizations such as the Baton Rouge Area Foundation, the Joliet Chamber of Commerce and Industry, nine Illinois cities and villages, and major public entities such as the Port of New Orleans.

Major support has also come from Missouri and Kansas, including a letter from Congressman Sam Graves, the representative from Missouri's Sixth District

[129] These letters have been submitted previously in CN-4, CN-9, CN-10, CN-12, CN-13, CN-14, CN-17, CN-19/KCS-2, CN-21/KCS-4, CN-23/KCS-6, CN-24/KCS-7. An index of these previously submitted voting trust support letters is included as Exhibit 7. An additional 38 letters that were recently received are included as Exhibit 8.

and Ranking Member of the House Committee on Transportation and Infrastructure. Congressman Graves "urge[s] approval of the voting trust" and notes that the "CN/KCS trust should meet the unlawful control test, and also meet the public interest financial test."[130] He also observes that "KCS is well-established and well respected within the Kansas City area and merging with CN will create new opportunities for trade and economic growth in the metro area and beyond. From a national and international perspective, the CN/KCS merger has the potential to improve commerce and access to markets by creating a single railroad that will streamline the movement of goods among Canada, the United States, and Mexico."[131] Ranking Member Graves is joined in support by several other members of the Missouri and Kansas delegations, including Governor Mike Parson of Missouri and Congressman Emmanuel Cleaver. Most recently, Mayor Quinton Lucas of Kansas City, Missouri, urged "approv[al] of the voting trust" and expressed his "excit[ment] about the prospect of the CN-KCS transaction as it will strengthen competition by adding a stronger rail competitor in the north-south lanes in the industrial center of the country."[132]

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[130] Joint Submission of 186 Additional Statements Supporting Voting Trust, *CN/KCS*, Docket No. FD 36514 (filed June 28, 2021), Statements Supporting Proposed Voting Trust Letter 2.

[131] *Id.*

[132] Joint Submission of 27 Additional Statements Supporting Voting Trust, *CN/KCS*, Docket No. FD 36514 (filed June 28, 2021), Statements Supporting Transaction Letter 1.

Entities from a wide array of industries have also been eager to support the CN-KCS merger and voting trust. More than ninety agriculture-related companies and associations have voiced support for either the merger, the trust, or both. Hundreds of letters have also come from companies in the energy, intermodal, and manufacturing sectors. Supporters uniformly express their excitement at the prospect of a combined CN-KCS network which will bring faster, safer, and more reliable rail service that will reduce greenhouse gas emissions.

Many hundreds of supporters from Mexico and Canada have also voiced their support for a new combined CN-KCS rail network which will help realize the promise of the new U.S.-Mexico-Canada trade agreement. Numerous supporters also state that the proposed voting trust will permit the Board to carefully evaluate the proposed combination while also benefiting KCS shareholders and the entire rail industry.

The 967 letters which explicitly support the CN-KCS voting trust highlight the value that supporters see in the Board granting approval to the proposed arrangement. All ask the Board to approve the voting trust and allow CN and KCS to demonstrate that the merger will be pro-competitive and beneficial to stakeholders all across the North American rail network.

III. MANY COMMENTS RAISE ISSUES NOT RELEVANT TO THIS VOTING TRUST REVIEW.

A number of comments were filed expressing concerns about a final CN-KCS combination or asking the Board to consider conditions to be placed on that combination. For the reasons addressed in Section I, these comments are premature until an application is filed. The Board's consideration of this voting trust will not reach any final conclusions about the effects that a proposed merger might have on competition or about conditions on approval—those decisions will only be made after considering the full record regarding the competitive effects of the proposed transaction. Nor will the voting trust decision address service consequences, environmental effects, or labor impacts. All those issues will be the subject of evidence in the application and comments from interested parties; none is implicated by a voting trust designed to keep KCS independent until the Board decides whether the combination is in the public interest.

Even if the Board were to consider arguments about the ultimate merits of the combination, CP's claims here are misguided. Its claims of competitive issues are utterly baseless, ignoring both the substantial pro-competitive commitments that CN and KCS have made and CP's prior admissions. Its claims that CN and KCS would somehow "downgrade" a critical part of the KCS network are fiction and ignore CN's and KCS's public explanations about the growth they see over that Kansas City to Shreveport corridor. And its claims that a CN-KCS combination would be bad for Chicago willfully ignore the positive impact that transferring long-haul truck traffic to rail would have on both the environment and on highway congestion.

A. A CN-KCS Combination Does Not Change the Competitive Balance of the Industry and Would Have No Negative Downstream Effects.

CP's claims that Applicants' voting trust should be disallowed because it might prompt future consolidation in the rail industry is misguided. Placing KCS in a voting trust does not prejudge the outcome of a CN-KCS merger; it simply preserves the status quo so that the Board can consider whether the combination is in the public interest. While the Board will consider the potential for downstream effects in its ultimate decision, that is not relevant to the voting trust.

In any event, there is no basis for CP's claims that a CN-KCS combination would alter the competitive balance of the industry. Indeed, just a few months ago CP argued that "KCS's network is uniquely small and regional, such that an acquisition of KCS—unlike any transaction among the other Class Is—does not prompt a final round of musical-chairs-style consolidation."[133]

Now, CP reverses itself once again, claiming that a CN-KCS combination would touch off "calamitous" responsive transactions and "clear the way for almost any conceivable combination of Class I railroads."[134] This is baseless hyperbole. A CN-KCS combination would be a North-South merger involving two

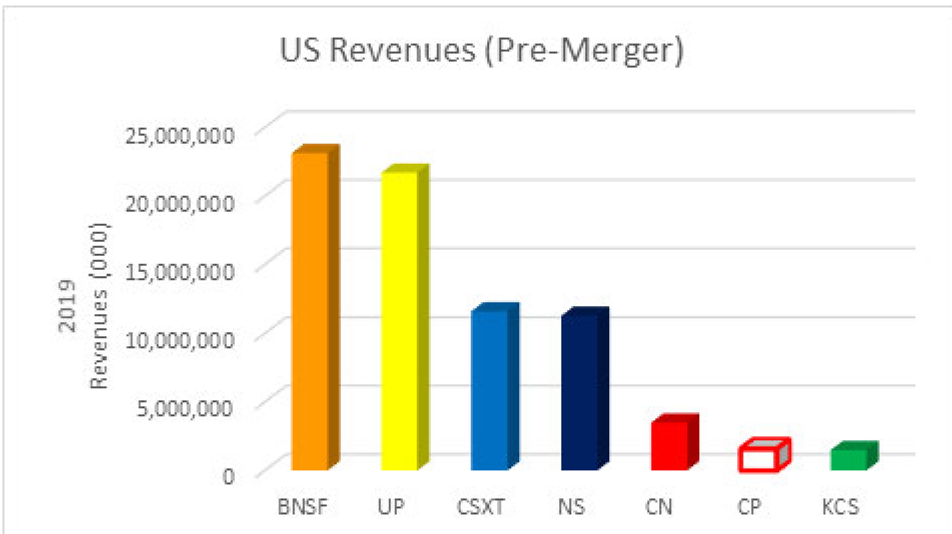
[133] Applicants' Reply to Objections to KCS Waiver from 2001 Major Merger Rules, Docket, *CP/KCS*, Docket No. FD 36500 (filed Apr. 12, 2021), at 12.

[134] *See* CP Reply at 49–50.

of the three smallest Class I railroads and would do nothing to change the basic East-West competitive balance of the U.S. rail industry.

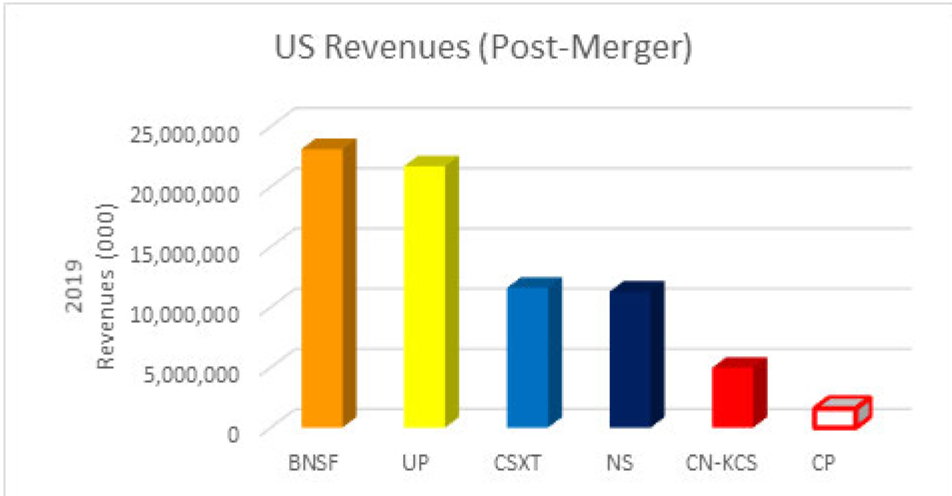
Figure 4 below illustrates the relative size of Class Is by U.S. revenues, as reported in 2019 R-1s. It shows the significant gulf in U.S. market share between revenues of the four largest Class I railroads and those of CN and KCS.

Figure 4



A combination of CN-KCS, if approved by the Board, would result in a carrier that is still much smaller than the largest four railroads, as Figure 5 demonstrates.

Figure 5



In short, a CN-KCS combination would merge railroads with U.S. market shares of 5% and 2%, respectively, into an entity with 7% market share—less than half that of the Eastern Class Is, and less than a quarter that of the Western Class Is. Nothing about CN-KCS would alter the fundamental East-West competitive balance of the industry. On the contrary, the merger would enhance competition because a combined CN-KCS would be better able to compete with larger Class Is for North-South flows of traffic.

CP's assertion that approval of CN's proposed voting trust would mean that every voting trust could be approved is plainly wrong.[135] As explained, the voting trust that Applicants request here is justified by the particular factors of the transaction, including a competitive bidding process with both a private equity bidder and another railroad that had already obtained voting trust approval before CN submitted its final bid. Those circumstances are unlikely to

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[135] *See* CP's Reply at 50–52.

repeat themselves. Moreover, the scale of the proposed CN-KCS combination is significantly smaller than any hypothetical future proposed transaction could be.

CP's assertion that a CN-KCS merger might be the cause for it to consider other Class I mergers is simply not credible. CP's interest in a potential merger is a constant feature of recent history. Over the past seven years, CP has publicly pursued combinations with CSX, and then NS, and then KCS.[136] But no other Class I has suggested that it is considering a responsive merger, perhaps because the nature of a north-south merger between the fifth- and seventh-smallest Class I railroads plainly does not upset the balance of the industry.[137]

CP asserts that it would be "strand[ed] . . . north of Kansas City," but it already terminates at Kansas City and has operated successfully within its current geographical footprint. CP has interchange connections with other Class I carriers at Kansas City, the Twin Cities, and Chicago. Moreover, the gateway protections that CN and KCS are committed to providing will give CP customers

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[136] *See* Press Release, Canadian Pac. Ry., Canadian Pacific terminates efforts to merge with Norfolk Southern (April 11, 2016), https://www.cpr.ca/en/investors/canadian-pacific-terminates-efforts-to-merge-with-norfolk-southern; Euan Rocha, *Canadian Pacific Railway Ends Merger Talks With CSX*, REUTERS (Oct. 20, 2014), https://www.reuters.com/article/us-csx-m-a-canadianpacific/canadian-pacific-railway-ends-merger-talks-with-csx-idUSKCN0I913A20141020.

[137] CP's claim that a CN-KCS combination would provoke a "'Final Round'" of consolidation is particularly disingenuous in light of its comments during its last failed hostile takeover of a Class I railroad. Then, CP claimed that the combination with NS that it sought to force "does not create a dominant carrier that would necessitate a reflexive merger in response" and argued that a combined CP-NS would only be the third largest carrier by revenues. *See* Exhibit 11, CP December 15, 2015 White Paper. CP is now arguing the opposite—with respect to a combination that would leave CN-KCS as the fifth-largest Class I carrier.

continued commercial access to destinations on the KCS network. To take an example, North Dakota grain could continue to move on CP-KCS routes through Kansas City, and Applicants have committed to keeping the Kansas City gateway open to provide competitive interline service for that traffic.

Furthermore, while CP threatened that it might stop investing in its Chicago-to-Kansas City line if a CN-KCS combination were approved, it has every reason not to do so.[138] Applicants are committed to investing in the KCS line south of Kansas City and maintaining its high quality, to keeping the Kansas City gateway open on reasonable terms for interchanges with CP and other carriers, and to working hard to provide quality interline service for any traffic to or from CP-served destinations.[139]

At bottom, an ultimate CN-KCS combination would create no impetus for potential future mergers and change nothing about the basic structure of the industry. Mere approval of a voting trust would certainly not do so.

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[138] *See* CP Reply, V.S. Creel ¶¶ 24–25 (speculating that "with CP's path south of Kansas City blocked by CN's ownership of KCS, our lines north of Kansas City (the "Y" between Kansas City and Chicago/LaCrosse) would be of limited utility" and threatening that "[i]t would certainly not make sense for us to make investments to improve them, and in all likelihood service on these lines would be greatly diminished over time").

[139] *See* V.S. Ruest Reply at 4 (describing CN's commitment to "continue to invest at a similar level or higher as KCS in the mainline between Kansas City and Shreveport after the CN-KCS combination is consummated"); V.S. Cairns Reply at 11, 16 (reasserting CN's commitment to keep major gateways open on commercially reasonable terms and explaining that it will "clearly be in CN's best interest to work with CP to connect CP-served points in the Dakotas, as well as elsewhere in the upper Midwest and Canada, with Gulf and Mexico destinations routing over Kansas City, the longest haul gateway on the CP network").

B. Claims That CN-KCS Would Cause Competitive Harm Are Incorrect.

With the single exception discussed in Section II.C.3 above, CP's competition claims do not even purport to be relevant to the approval of the voting trust and are thus not properly presented here. Instead, these allegations relate to the ultimate public interest determination the Board will make on review of the merger application itself. Applicants nonetheless briefly explain why those general competition arguments are meritless.

1. End-to-end mergers like CN-KCS pose few competitive issues.

As CP's own economist has stated, "[e]nd-to-end railroad mergers have typically been recognized as posing lower risks of competitive concerns and a higher likelihood of improving overall quality and competition as single-line service is extended between two distinct arenas."[140] This concession is well taken in light of the Board's precedents.[141] CP asserts, however, that CN-KCS is not really an end-to-end merger because there are *some* areas where CN and KCS overlap.[142] In

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[140] CP Reply, V.S. Majure, App'x B ¶ 7.

[141] *See, e.g.*, *CSX Corp., et al.—Control and Operating Leases/Agreements—Conrail Inc. & Consol. Rail Corp. ("CSX/NS/Conrail")*, 3 S.T.B. 196, 248 (July 20, 1998) ("We have adopted a presumption . . . that vertical combinations will not result in competitive harm."); *Burlington N. Inc. & Burlington N. Rail Co.—Control and Merger—Santa Fe Pac. Corp. & the Atchison, Topeka & Santa Fe Ry. Co.*, *("BN/SF")*, 10 I.C.C.2d 661, 725 (1995) ("We have recognized that consolidations of end-to-end railroads rarely raise competitive concerns." (citation omitted)).

[142] CP Reply at 36–37; *id.*, V.S. Majure ¶¶ 27–48. Ironically, Mr. Creel's statement *contradicts* CP's arguments by showing that CN and KCS's north-south routes are not competitive. V.S. Rennicke Reply at 23–24.

reality, however, the only 2-to-1 overlap consists of a single line between Baton Rouge and New Orleans, and CN has committed to divesting that KCS line. What remains, therefore, will be a purely end-to-end merger.

In all events, CP's unwillingness to call this merger what it overwhelmingly is—a vertical, end-to-end combination of two complementary rail systems—is sophistry. The Board has aptly characterized many mergers as end-to-end even if they have some overlaps or parallel lines that were far closer than CN's and KCS's north-south lines. For example, CP described its acquisition of the DM&E as "end-to-end" even though merger involved five 2-to-1 stations, 25 3-to-2s, parallel routes, and significant overlap in Minnesota.[143] The Board agreed with that assessment.[144] Indeed, Board precedent similarly defeats CP's claim that this cannot be an end-to-end merger because CN and KCS have parallel north-south lines (separated by the Mississippi River and more than two hundred west-to-east miles). Multiple transactions deemed "end-to-end" had some geographically parallel lines, including the UP-Chicago and North Western, Burlington Northern-Santa Fe, CSX-Norfolk

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[143] *See* Application by Canadian Pacific Railway Company, et al. for Approval of Control of Dakota, Minnesota and Eastern Railroad Corporation, et al., *CP/DM&E*, Docket No. FD 35081 (filed Oct. 5, 2007), at 4 ("The transaction is a classic 'end-to-end' acquisition of control. . . . [T]here is minimal overlap in their current operations"); *id.* at Ex. 12 at 8–15; *id.* at V.S. Williams at 11–19 (describing 30 commonly served stations, including five 2-to-1s and 15 3-to-2s.); *id.* at Ex. I-A (map illustrating route overlap and parallel east-west lines).

[144] *See CP/DM&E*, Docket No. FD 35081 (STB served Sept. 30, 2008), at 11 ("The evidence demonstrates that this essentially end-to-end transaction will benefit shippers by enabling CPRC/DM&E/IC&E to provide single-system service where none currently exists.").

Southern-Conrail, CSX-Chessie-Seaboard, and N&W-Southern mergers. The Board or its predecessor rightly characterized all of these as essentially end-to-end, vertical mergers.[145]

That characterization applies here, too, for the reasons set forth in Mr. Rennicke's comprehensive assessment of *every* origin-destination pair served by CN and KCS.[146] As he shows, the merger "is clearly end-to-end,"[147] particularly given the commitment to divest the KCS line between Baton Rouge and New Orleans. CP thus cannot plausibly argue that a different competitive framework should apply to this merger than to CP's own failed effort to acquire KCS.

2. CN-KCS's divestiture commitment removes all concerns about "horizontal competition."

CP claims that CN and KCS have competitively significant overlap outside the narrow Baton Rouge-New Orleans corridor (the subject of the parties' divestiture commitment). Those claims, however, are patently false.

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[145] *CSX/NS/Conrail*, Docket No. FD 33388, 3 S.T.B. at 248 ("With very minor exceptions, the combination of NS and Conrail and of CSX and Conrail lines will be end-to-end and not parallel."); *BN/SF*, 10 I.C.C.2d at 740 ("The primarily end-to-end (vertical) integration of the rail operations conducted by BN and Santa Fe will enable the consolidation carrier to reduce the costs it incurs and to improve the services it provides."); *Union Pac. Corp., et al. – Control – Chi. & N.W. Transp. Co. & Chi. & N.W. Ry. Co.*, Docket No. FD 32133 (STB served Mar. 7, 1995), 1995 WL 141757, at *52 ("The proposed UP/CNW common control transaction is largely an end-to-end one[.]"); *CSX/Chessie*, 363 I.C.C. at 529 ("The proposal will enable CSX to consolidate control of two railroad systems which geographically meet end-to-end, with minor exceptions, and will enable the operation of single-system service connecting the East and Midwest with the Southeast.").

[146] V.S. Rennicke Reply at 24–27.

[147] *Id.* at 27.

Dr. Majure's flawed BEA-level Analysis. Citing Dr. Majure, CP asserts that "horizontal" competitive concerns extend beyond New Orleans-Baton Rouge and that "overlap areas are also concentrated in Mississippi, and found in Alabama, Missouri, Illinois, Iowa, and Nebraska."[148] As an initial matter, CP failed to include Dr. Majure's workpapers with its Comments and delayed producing them to Applicants until after 4:00 pm on July 1, long after CP's comments were due and after Applicants asked to see them.[149] That delay prejudiced Applicants by truncating the period in which they could scrutinize Dr. Majure's work. Even so, some of Dr. Majure's errors are so obvious and material that his analysis can be rejected on that basis alone.

First—and remarkably—Dr. Majure has repeated the same basic conceptual error that led the Board to reject his similar competitive analysis in a prior merger challenge as "particularly flawed."[150] As Mr. Rennicke explains, Dr. Majure bases his analysis upon Bureau of Economic Analysis (BEA) Economic Areas.[151] Dr. Majure effectively assumes that if CN and KCS both operate lines in a BEA Economic Area, their merger will reduce competition for <u>all</u> shipments originating in that BEA. That approach could be valid only if two railroads' coexistence within a BEA implies that every individual shipper within that BEA are, or feasibly could

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148 CP Reply, V.S. Majure ¶¶ 49–50; *see also id.* ¶¶ 46–48 & Ex. 4.

149 *See* Exhibit 13 (June 29, 2021 Email Chain Among Counsel).

150 *UP/SP*, 1 S.T.B. at 389.

151 V.S. Rennicke Reply at 27–28.

be, served by both railroads. As Mr. Rennicke explains, however, coexistence within a BEA implies no such thing, particularly given the real-world obstacles to connecting shippers to railroads that are many miles distant (albeit within the same BEA).[152]

An examination of competitive conditions in Mississippi illustrates the deep flaws in Dr. Majure's BEA-level approach. While he claims "concentrated" overlap between CN and KCS in the state, in actuality:

- CN and KCS serve entirely different customers.[153]
- CN and KCS ship to and from different locations in Mississippi.[154]
- CN and KCS primarily ship different commodities to and from Mississippi.[155]
- CN's mainline runs north-south and is focused on traffic moving from the Midwest to the Gulf Coast, whereas KCS's mainline runs east-west and is focused on traffic moving between the Southeast and Texas.[156]

This is not the first time that Dr. Majure has used this "suspect" and "particularly flawed" methodology to overstate competitive issues in a merger.[157] In evaluating Dr. Majure's evidence in the Union Pacific merger with the Southern Pacific, the Board found that his "use of BEAs and SPLCs to measure traffic flows leads to an overestimate of the amount of traffic that would face the loss of one of

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[152] *Id.* at 28.

[153] *Id.* at 40.

[154] *Id.* at 40–41.

[155] *Id.* at 41.

[156] *Id.* at 23.

[157] *UP/SP*, 1 S.T.B. at 389.

three direct rail competitors."[158] The Board further observed that "[t]he ICC [likewise] has found that BEA-to-BEA rail traffic flows are often far too broad to measure accurately potential merger-related competitive harm."[159] Remarkably, CP and Dr. Majure do not even acknowledge the Board's prior criticisms of his work, let alone try to explain why the Board should now accept a methodology it has found to be "particularly flawed."

Dr. Majure's analysis also ignores Board precedent in other significant respects. For example, as noted above, he even *assumes* competitive harms *at all* 3-to-2 corridors.[160] But, as the Board has recognized, two-railroad competition is generally sufficient to ensure robust competition.[161]

For example, even for the UP-SP merger—which, unlike the proposed consolidation between CN and KCS, would have caused widespread competitive harm absent the Board's remedial conditions—the Board declined to impose conditions to preserve three-railroad competition at 3-to-2 points. In that proceeding, the Board explained that 3-to-2 points "present[ed] little potential for significant, merger-related competitive harm," as "[m]ost of [that] traffic [was] either intermodal or automatic traffic that enjoy[ed] vigorous motor carrier

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158 *Id.*

159 *Id.* at 392, n.130 (quoting *SF/SP*, 2 I.C.C.2d at 768).

160 V.S. Rennicke Reply at 22 (noting Dr. Majure's 3-to-2 assumption). As noted, Dr. Majure incorrectly considers an entire BEA to be a location served by a railroad.

161 *See BN/SF*, 10 I.C.C.2d at 776.

competition."[162] Likewise, in the BN-SF merger proceeding, the Board explained that it would "not necessarily be concerned" with 3-to-2 points because "two independent railroads, we think, can provide strong, effective competition provided that, among other things, neither is subject to any artificial restrictions."[163]

In the *CP-DM&E* merger proceeding, CP itself highlighted for the Board how 3-to-2 points were not competitively significant by noting that no competitive harm would result from its proposed merger with the DM&E because "*no shipper . . . that currently has access to competitive rail service will be left without at least two competitive rail options as a result of the proposed transaction*."[164] The Board ultimately approved the proposed transaction based, in part, on this evidence.[165]

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[162] *UP/SP*, 1 S.T.B. at 387; *see id.* at 388 (DOT urged the Board to "refrain from remedial action to maintain three railroad service[.]").

[163] *BN/SF*, 10 I.C.C.2d at 776. In the BN-SF merger proceeding, the Board provided a competitive remedy (trackage rights) to what, at first glance, seemed to be a 3-to-2 point but that was, due to a blocking provision, really a type of 2-to-1 point that left the customer with only a single carrier that could handle certain of its traffic. *See id.* 776–77 ("[T]he 3-to-2 reduction in competitive alternatives . . . is in reality more complicated than a simple 3-to-2 description would indicate . . . [due to] the blocking provision, [which means the] competitive alternatives faced by GNBC can more accurately be described as [going] from three (two of which can handle only such traffic as BN itself cannot handle) to two (one of which can handle only such traffic as BN itself cannot handle)[,] . . . [meaning] GNBC . . . will not really be left with two unrestricted competitive alternatives.").

[164] Application by Canadian Pacific Railway Company, et al. for Approval of Control of Dakota, Minnesota and Eastern Railroad Corporation, et al. (Vol. 1), *CP/DM&E*, Docket No. 35081 (filed Oct. 5, 2007), Ex. 12 at 7 (emphasis in original); *see* Supplement to Application by Canadian Pacific Railway Company, et al. for Approval of Control of Dakota, Minnesota and Eastern Railroad Corporation, et al., *CP/DM&E*, Docket No. FD 35081 (filed Dec. 5, 2007), Supplemental V.S. of John H. Williams, at 1.

[165] *CP/DM&E*, Docket No. FD 35081 (STB served Sept. 30, 2008), slip op. at 10.

As Mr. Rennicke has explained, the Board's "focus[] on 2-to-1, rather than 3-to-2 situations" "makes good sense give the dynamics of freight competition."[166] This is because, in the Department of Transportation's words, "two-railroad markets generally result in rivalry rather than collusion."[167] In particular, "[t]he presence of a single rail alternative can provide effective competition because of the characteristics of rail competition," primarily the fact that the rail industry is "characterized by large fixed and sunk costs," which incentivizes competition even in duopoly markets: "railroads will have incentive to compete by reducing prices toward the relatively low incremental cost of providing service" while shippers will maintain their ability to "negotiate in private and play competing railroads off against each other" and enjoy the competitive pressures of intermodal, source, and geographic competition.[168] The D.C. Circuit has likewise affirmed the Board's conclusion in a prior case that a merger resulting in "two-railroad competition" will not "result in duopoly pricing" or otherwise harm competition.[169]

As noted, Dr. Majure completely ignores intermodal and geographic competition, despite the Board's consistent findings that those sources of competition are integral to any sound merger analysis.[170] As Mr. Rennicke

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[166] May 26 Voting Trust Motion, V.S. Rennicke, at 9.

[167] *Id.*

[168] *Id.* at 9–10.

[169] *W. Coal Traffic League v. STB*, 169 F.3d 775, 778–80 (D.C. Cir. 1999).

[170] For example, Dr. Majure could not reasonably assert, as he does, that the merger will result in harms in Baton Rouge-New Orleans without considering geographic

demonstrates, CN-KCS will face strong intermodal competition from trucks on interstate highways and barges using long-distance waterways (including the Mississippi River) in the areas served by CN and KCS.[171] The parties also face substantial geographic competition for many of the most significant products in the corridors considered by Dr. Majure.[172]

Dr. Majure's flawed corridor analysis. Dr. Majure also tries to conjure up broader horizontal overlap by purporting to examine corridor-level impacts.[173] But that analysis suffers from all of the fundamental flaws in his primary "revenue" analysis, as Mr. Rennicke explains in detail. Here, too, Dr. Majure ignores Board precedent and commercial realities by assuming that railroads in the same BEA necessarily compete with each other, that two-railroad competition is insufficient to protect shipper interests, and that intermodal and geographic competition are

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competition for oil shipments to terminals in that region. An oil terminal located on KCS in Louisiana competes with oil terminals served not only by other railroads, but also by pipelines and barges, in the Gulf Coast and elsewhere. In those circumstances, KCS must set its price so that the delivered price of the oil to terminal on its railroad is competitive with the delivered price of oil from various sources across North America served by multiple forms of transport. Otherwise, oil, being a commodity, will just be diverted to terminals with reasonable transportation rates. V.S. Rennicke Reply at 33. Nowhere does Dr. Majure conduct this, or any other relevant geographic competition analysis for the areas where he claims the merger will diminish competition.

[171] V.S. Rennicke Reply at 16.

[172] *Id.* at 34–42.

[173] *See* CP Reply, V.S. Majure ¶¶ 52–61.

nonexistent and competitively irrelevant.[174] Indeed, Dr. Majure effectively assumes that CN and KCS compete with each other even if they serve different customers, originate and terminate different commodities in different locations of a large state, run in different directions, or face other important operational constraints in serving the same customers.[175] Of course, they do not.[176]

Messrs. Gameiro-Harmon customer location and short line analysis. Messrs. Gameiro and Harmon purport to identify hundreds of customers that would lose competitive options from the merger.[177] But they largely repeat the same errors as Dr. Majure. For starters, they simply ignore CN's divestiture commitment, which will ensure that shippers on the KCS line between New Orleans and Baton Rouge "will continue to have two competitive options: one that covers all origins and destinations of the combined CN-KCS . . . and the other by the railroad that acquires the divested line."[178]

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174 V.S. Rennicke Reply at 3 ("[Dr. Majure's] generalizations based solely on [BEA-derived] geographic location lead him to make erroneous claims about the effect of the proposed merger on market shares, geographic competition, and commodity-specific competition.").

175 *Id.* at 28 ("Dr. Majure appears to assume that if CN and KCS both operate on parts of a movement between BEA Economic Areas, then a merger would lead to a loss of routing options").

176 *Id.* at 32 ("It is clear that merely calculating the percentages of originations and terminations in commonly served locations has very limited analytical value and does not indicate that competitive harm would result from this merger.").

177 *See generally* CP Reply, V.S. Gameiro-Harman.

178 V.S. Rennicke Reply at 18.

Outside of New Orleans-Baton Rouge, Messrs. Gameiro and Harmon treat any reduction in the number of rail options as significant. But there are no locations outside of New Orleans-Baton Rouge that will have fewer than *three* rail options post-merger, and many would be serve by four or five railroads, not to mention intermodal options:[179]

Figure 6: Post-Merger Competitive Options in Terminal Areas[180]

Terminal Area	Served by Terminal Railroad?	Physically Serving Carriers	3 Class I Connections After Merger	4 Class I Connections After Merger	5 Class I Connections After Merger
St. Louis, MO-IL	✓	TRRA, UP, NS, BNSF, ALS		✓	✓
New Orleans, LA	✓	NOGC, NOPB, NS, KCS, UP		✓	✓
Mobile, AL	✓	TASD		✓	
Springfield, IL		IMRR	✓		
Council Bluffs/ Omaha, IA-NE		BNSF, UP, CN	✓	**4 connections if IAIS is included** (service to Chicago and connecting to all Class I carriers)	

Messrs. Gameiro and Harmon also assert that this merger will deprive short-line railroads of competitive options. They claim to identify numerous instances where a short line will lose an interchange option it had prior to the merger. As Mr. Rennicke shows, however, this claim has absolutely no basis in fact, and it illustrates CP's biased analysis. For example, many of the rail lines identified by Messrs. Gameiro and Harmon are neutral terminal railroads serving all connected

[179] V.S. Rennicke Reply at 11.

[180] May 26 Voting Trust Motion, V.S. Rennicke at 12 & Ex. 4. Iowa Interstate Railroad (IAIS) is a Class II railroad connecting Council Bluffs/Omaha with Chicago. IAIS connects with all Class I railroads except KCS at Chicago. In St. Louis and New Orleans, post-approval some customers would have access to four Class Is, and others would have access to five.

railroads.[181] Another fundamental flaw is that Messrs. Gameiro and Harmon have included instances where the short line does not even connect with KCS, and so the merger obviously has no impact on the interchange options available to such a short line railroad.[182] Finally, Messrs. Gameiro and Harmon have included instances where the short line connects to CN and KCS at different locations and where CN and KCS do not compete, and thus where CN and KCS were not "alternatives" at that location for the short line.

3. The merger will enhance, not reduce, geographic competition.

As noted, Dr. Majure failed to consider geographic competition, either in connection with his argument that the voting trust would lead to a reduction in competition or that the merger itself would.[183] He never examined, as the Board's precedents require, whether a shipper can avoid using CN or KCS "by obtaining the same product from a different source, or by shipping the same product to a different destination."[184]

As noted above, and explained in greater detail by Mr. Rennicke,[185] were Dr. Majure to conduct a traditional analysis of geographic competition he would have found that it would be an effective check on the rates of a combined CN-KCS system

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181 V.S. Rennicke Reply at 14.

182 *Id.*

183 *See supra* pp. 39, 65–67.

184 *Market Dominance Determinations—Product & Geographic Competition*, 3 S.T.B. 937, 937 (1998).

185 V.S. Rennicke Reply at 37–40.

for many types of products that the railroads ship. Instead, while Dr. Majure does discuss what he calls "geographic competition," that is a misleading label. In reality, what Dr. Majure calls a "geographic competition" analysis is just a rehash of his flawed assumptions that if CN and KCS operate lines in the same large "geography" (a BEA or a state) they must compete with each other and that the proposed merger will reduce competition. As discussed above, and by Mr. Rennicke in more detail, the fact that two railroads operate lines in the same broad geography does not mean that they are the sole transportation options available or that they even serve the same customers.[186]

In actuality, the merger will enhance geographic competition. Overall, in the 28 BEAs served by KCS, KCS and CN account for a trivial share of tonnage of products terminated in those BEAs—whereas truck and barge are the mode used for over 75% of terminated tons.[187] CN and KCS also tend to ship different commodities.[188] At the same time, the merger will improve access to origin and destination markets for existing CN and KCS customers, create new single line services where no single line service exists, provide competition where other

[186] *See supra* pp. 37–38 and section III.B.2; V.S. Rennicke Reply at 35–37. Dr. Majure's specific examples of supposed geographic competition for certain commodities, CP's Reply, V.S. Majure ¶¶ 69–78, suffer from not only this same basic flaw, but a number of addistional errors as well. *See* V.S. Rennicke Reply at 43–47. In no case does Dr. Majure actually identify instances where the combination of CN and KCS will reduce competition, and instead without foundation minimizes CN's commitment to divest the KCS line between New Orleans and Baton Rouge. *Id.* at 19–21.

[187] *Id.* at 37.

[188] *Id.* at 41.

railroads that have single line services, and enable more interchange opportunities, which will improve the efficiency of routes—particularly between KCS-served locations and eastern North America.[189] And through the divestiture of the KCS New Orleans-Baton Rouge line, the merger will provide new opportunities for customers to both ship and source commodities through the CN-KCS network and the railroad buyer that will be acquiring that line.[190]

4. CN-KCS's gateway commitment eliminates all concerns about vertical foreclosure.

CP does not even suggest that vertical competitive issues are a basis for opposing this voting trust, perhaps because the voting trust here is identical to the one the Board approved for CP and because CP's own merger with KCS would have raised all the same vertical issues. Indeed, CP effectively acknowledges that vertical concerns are *not* a basis for opposing this voting trust. Dr. Majure himself explains that a vertical merger "would only warrant scrutiny if it combined one firm's

[189] *Id.* at 48–49.

[190] Citing no evidence, Dr. Majure asserts that divesting the KCS line in New Orleans-Baton Rouge may prove difficult, and thus the divestiture may not "resolve the horizontal issues created by a CN-KCS combination." CP Reply, V.S. Majure ¶¶ 62–68. Again, Dr. Majure shows his lack of knowledge of the rail industry. V.S. Rennicke Reply at 20. Based on his decades of experience, Mr. Rennicke explains "CN will have no shortage of qualified buyers for the KCS line" which is "an uncommonly attractive acquisition for a Class I railroad or any of the shortline operators." *Id.* Further, in seeking to denigrate shortline railroads, Mr. Majure does not appear to understand that many shortline holding companies operate large and complex rail networks. *Id.* at 21. For example, the Genesee & Wyoming operates five times more mileage than KCS (and more than CP). *Id.* Several others operate freight and commuter service in dense urban corridors. *Id.* In all events, the Board will have regulatory authority over the divestiture. *Id.*

incentives with the control of another firm's ability to influence markets," but that "a voting trust . . . effectively insulates [such] control from being acquired."[191]

Beyond that, vertical theories of harm present no plausible basis for opposing this transaction even on its ultimate merits. CN and KCS have pledged to keep existing major gateways affected by the transaction open on commercially reasonable terms.[192] This pledge will encompass, for example, the major gateway of Kansas City, which will remain open for joint routings with other carriers including CP. The Board has repeatedly found that open gateway commitments are sufficient to address any vertical foreclosure issues in a merger.[193] Indeed, CP has in the past acknowledged that "vertical foreclosure . . . concerns are fully addressed by Applicants['] pledge to keep open all gateways affected by the proposed transaction

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191 CP Reply, V.S. Majure ¶ 24; *see also id.* ¶ 11 ("an effective voting trust . . . prevent[s]" any anticompetitive "vertical effects").

192 Indeed, as noted by the Board's former chief economist, not only will CN and KCS's open gateways commitment preserve competition, but it will also enhance it. *See* Exhibit 10, Dr. William Huneke, *Why CN's Open Gateways Offer Is a Big Deal*, RAILWAY AGE (June 22, 2021), https://www.railwayage.com/regulatory/why-cns-open-gateways-offer-is-a-big-deal/ ("CN's open gateways offer is a big deal. It means new, enhanced, rail-to-rail competition.").

193 *Canadian Nat'l Ry., et al.—Control—Wisc. Cent. Transp. Corp., et al., ("CN/WC")*, 5 S.T.B. 890, 902 (2001) (holding Applicants to their word that they will "not engage in 'vertical foreclosure' by closing efficient gateways" and will "keep all existing active gateways affected by the Transaction open on commercially reasonable terms"); *Canadian Nat'l Ry., et al.—Control—Illinois Cent. Corp., et al. ("CN/IC")*, 4 S.T.B. 122, 159 (1999) (imposing "a condition holding applicants to their representation to keep th[e Chicago CP/IC] gateway open and competitive" and declining to impose the "more extensive remedy sought" of haulage rights because it was "unnecessary").

on commercially reasonable terms."[194] This case-by-case approach to monitoring a railroad's open gateway pledge best facilitates the reality recognized by the Board, that customers benefit most when merging entities have "flexibility to determine what routes are most efficient given the newly restructured system."[195]

C. KCS's Shreveport-Kansas City Line Would Be Critically Important to a CN-KCS Combination and Would Not Be Downgraded.

CP similarly tries to stoke concern that, if a CN-KCS transaction were approved the combined railroad would "downgrade" KCS's north-south line between Kansas City and Shreveport, Louisiana.[196] There is no basis for this concern either. In the first place, this argument has nothing to do with voting trust approval. KCS will continue to be operated independently under its current management during the trust period, and it is committed to continuing its normal capital investment program.[197]

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[194] Applicants' Response to Comments and Requests for Conditions and Rebuttal in Support of Application, *CP/DM&E*, Docket No. FD 35081 (filed Apr. 18, 2008), at 24 (collecting examples).

[195] *CN/WC*, 5 S.T.B. at 904; *Canadian Nat'l Ry. & Grand Trunk Corp.—Control—EJ&E W. Co. ("CN/EJ&E")*, Docket No. FD 35087 (STB served Dec. 24, 2008), at 17 (expressing preference for using an operational monitoring condition to regain jurisdiction "to determine on a case-by-case basis, when raised by an affected party, whether CN has failed to honor its [open gateway] commitment").

[196] CP Comments, *CN/KCS*, Docket No. FD 36514 (filed April 27, 2021), at 6, n.6 ("CP is very concerned that CN would downgrade KCS's mainline north of Shreveport, undermining potential future CP-KCS interline options regardless of any commitment CN might make to keep the Kansas City gateway 'open.'").

[197] *See* Applicants' Response to Decision Number 4, *CN/KCS*, Docket No. FD 36514 (filed June 14, 2021), Upchurch V.S., at 3, 4.

Moreover, CP's made-up allegations that CN and KCS have a secret plan to "downgrade" the Kansas City-Shreveport line are frivolous. As Michael J. Naatz, KCS's Executive Vice President and Chief Marketing Officer testifies, the line has customers who are served on the line directly or through short line connections, is a critical part of the KCS network used for important flows of current traffic, and is a key route to the Kansas City gateway.[198] As Mr. Naatz and Mr. Rennicke explain, Kansas City is a key gateway for interchange traffic exchanged between KCS and UP, BNSF, and CP. Applicants plainly would have no incentive to impair their ability to compete for that traffic. Indeed, CN and KCS plan to create a "Kansas City Speedway" to run between Kansas City, Springfield, Gilman, Chicago, and Detroit, and better facilitate the movement of that traffic to points further south on KCS's network.[199] These plans are completely inconsistent with CP's speculation that a CN-KCS combination would result in a downgraded line south of Kansas City. Indeed, as explained in Mr. Ruest's Reply Verified Statement, Applicants are committed to continuing KCS's historical levels of investment on this line if the CN-KCS combination were approved.[200]

[198] Exhibit 2, Reply Verified Statement of Michael J. Naatz at 3.

[199] V.S. Rennicke Reply at 49.

[200] V.S. Ruest Reply at 3–4.

D. Amtrak's Interest in Potential Future Passenger Service Over KCS's Baton Rouge-New Orleans Line Is Not Relevant to the Voting Trust.

Amtrak's comments are similarly focused on the implications of an eventual CN-KCS combination for potential future passenger service between New Orleans and Baton Rouge. But that subject is similarly not relevant to voting trust approval. While Amtrak states that it opposes a voting trust, its filing does not discuss the proposed voting trust or identify any particular harm from a voting trust. Instead, Amtrak focuses exclusively on its desire to potentially introduce passenger service to KCS's Baton Rouge to New Orleans line, and Amtrak's belief that its ability to do so might be prejudiced if the line were divested to a new entrant with the combined CN-KCS retaining trackage rights. Approval of a voting trust does not implicate any of these issues, which could only arise from a final and approved CN-KCS combination and thus will be studied during review of the merger application..

Applicants thus emphasize that the potential impacts of a CN-KCS combination on passenger service and the conditions of the proposed divestiture of KCS's Baton Rouge-New Orleans line are each important issues that will be fully addressed in the CN-KCS application and in the Board's ultimate approval process. Applicants have initiated discussions with both Amtrak and stakeholders in Louisiana about these issues, and they look forward to continued engagement during the approval process. And as Mr. Ruest notes in his verified statement, potential purchasers of the KCS Baton Rouge-New Orleans line "will be asked to explain their willingness to work with potential future passenger and commuter service operators."[201]

Moreover, Amtrak's concern that CN-KCS retaining trackage rights over a line that is owned by another carrier could impair potential passenger service is not well founded. Amtrak operates all over the country on freight rail lines on which other railroads have trackage or haulage rights, or on which other commuter operations occur. There is no reason to deprive existing and future freight rail customers on the divested line of direct access to two railroads because of Amtrak's mistaken belief that dual access would be an obstacle to adding potential passenger service on this line at some future date.

E. Any Traffic Impacts from a CN-KCS Combination Will Be Fully Addressed in the Board's Environmental Review and Are Not Relevant to the Voting Trust.

Several communities in the Chicago suburban area have voiced concerns about the potential impacts from increased freight train movements resulting from a CN-KCS merger.[202] Applicants will work closely with local officials and stakeholders to identify impacts from the CN-KCS combination and discuss these concerns. That said, the decision whether to approve the voting trust has no immediate impact on rail traffic patterns in Chicago or elsewhere.

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[201] V.S. Ruest Reply at 6.

[202] Applicants note that many of these letters are identically worded, and that the Board's service list indicates that nearly all have been filed by the same lobbyist. It is not clear who funded this lobbyist's efforts.

The Board's merger rules call for thorough study of a transaction's potential environmental impacts, which includes its effects on communities such as noise, blocked crossings, and safety matters, as well as on intercity passenger service. That process provides ample opportunity for stakeholders to voice their concerns and questions about the practical effects of the transaction. The Board may impose conditions on the transaction to mitigate those concerns where appropriate. Authorizing the CN-KCS voting trust in no way impedes this important environmental review, nor does it pre-determine the Board's ultimate decision on whether to approve the transaction at all or whether to impose particular conditions.

Applicants have begun discussions with the Board's Office of Environmental Analysis, and they look forward to a thorough review process. Applicants believe that thorough process will help to alleviate many communities' concerns and will illustrate the overwhelming environmental benefits of a CN-KCS combination. For example, while converting 300 long-haul trucks into a single intermodal train will have substantial positive benefits for greenhouse gas emissions, air quality, and highway congestion and safety, that one additional intermodal train would have minimal impact on the communities through which it travels. The positive impacts of the proposed transaction will prove to be a net benefit for the environment and for highway congestion in many communities.

F. No Rail Employees Are Affected by the Voting Trust, and Impacts of a CN-KCS Consolidation Will Be Thoroughly Reviewed in the Application.

Finally, Applicants note the interest of rail employees, some who have expressed support for a CN-KCS combination and some who have opposed it (in many cases, the latter group are employees of CP). Of those who have opposed a voting trust, no harms have been identified which result from the voting trust itself. Instead, they express concerns about potential consolidation of lines and lost jobs. As Applicants have explained, this is a pro-growth merger, not a cost-cutting merger. More growth from converting long-haul truck traffic to rail traffic means more jobs and more opportunities for railroaders, not less. Applicants look forward to addressing the transaction's potential impact on employees in the application and subsequent approval process.[203]

G. Voting Trust Approval Does Not Affect CP's Ability to Present an Inconsistent Application If It Chooses to Do So.

CP also claims that voting trust approval might cause CP to abandon its hostile takeover efforts and thus prevent the Board from considering a CP-KCS transaction as an "alternative" to a CN-KCS transaction. This is not a cognizable public interest harm. If anything, a CP decision to abandon its quixotic effort to proceed with a separate hostile takeover application would serve the public interest by preserving the Board's resources to consider transactions based on actual merger agreements, and not a nonconsensual transaction premised on the notion that a

[203] Moreover, standard labor protective conditions would apply to mitigate any harms for employees who were adversely affected by a CN-KCS combination.

canceled agreement might someday be resuscitated. Moreover, CP misunderstands the law. If CP were to present a competing application, the Board would not compare or contrast the two applications and simply pick its favorite proposal. Rather, the Board's precedents indicate that it would apply the applicable public interest standard to <u>all</u> applications—primary or inconsistent—and *approve <u>any and all</u> applications that are found to be in the public interest*, thereby leaving the ultimate choice between transactions that satisfy the standards of Section 11323 to the private sector.[204]

As the ICC explained in 1966:

> [W]e wish to make quite clear that *this proceeding does not*, as appears to have been assumed by the parties and most of the intervenors, *merely involve a selection between the applications* and the awarding of control of Western Pacific to either Southern Pacific or Santa Fe. *Such an approach would not be in conformity with our mandate under the act.* We must here, as in any case brought before us under the provisions of section 5(2), carefully apply the accepted principles for testing *whether <u>any</u> of the proposals before us is consistent with the public interest*."[205]

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[204] *See, e.g.*, *Norfolk & W. R.R. Co. & Baltimore & Ohio R.R. Co. – Control – Detroit, Toledo, & Ironton R.R. Co.*, FD 28499 (Sub-No. 1), 360 I.C.C. 498, 507 (1979) ("This proceeding does not involve merely a selection between the applications of the joint and inconsistent applicants. We must carefully apply accepted principles and determine whether *one or both* of the proposals before us is consistent with the public interest. (emphasis added) (citation omitted)); *id.* at 535 (Commissioner Trantum, concurring) ("While I view the inconsistent application as being in the public interest, I am not persuaded that the public interest would be harmed by approval of the joint application. Therefore, it would appear to me that *the most equitable manner for resolving this issue is to have both carriers bid for the DTI.*" (emphasis added)); *Matter of Chi., Milwaukee, St. Paul & Pac. R.R. Co.*, 756 F.2d 508, 510, 515 (7th Cir. 1985) (noting that the *ICC approved two out of the three applications* to acquire the Milwaukee Road).

[205] *S. Pac. Co.—Control—W. Pac. R.R. Co.*, 327 I.C.C. 387, 397 (1966) (emphasis added). In the SP/WP proceeding, the ICC ultimately denied both applications as not consistent with the public interest. *See id.* at 405–06.

CP's pledge to abandon its hostile application efforts if a voting trust is approved will thus have no impact on the Board's ultimate public interest assessment of a CN-KCS combination.

CONCLUSION

Applicants request that the Board approve their proposed Voting Trust Agreement.

Respectfully submitted,

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Dated: July 6, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July 2021, a copy of the foregoing Applicants' Reply to Comments on Proposed Voting Trust Agreement was served by first class mail or email on the service list for Finance Docket No. 36514.

/s/ Matthew J. Warren
Matthew J. Warren

Exhibit 1

Reply Verified Statement of Jean-Jacques Ruest

(Public Redacted Version)

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36514

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND CN'S RAIL OPERATING SUBSIDIARIES
—CONTROL—
KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

VERIFIED STATEMENT OF JEAN-JACQUES RUEST

My name is Jean-Jacques Ruest. I am the President and Chief Executive Officer ("CEO") of Canadian National Railway Company (CN). I have described my background with CN in my prior verified statement on May 26, where I set forth the unique public benefits that can only be realized if the STB approves the use of a voting trust for the CN-KCS combination.

CN appreciates the importance of the public comment exercise to help the STB vet our position that use of a voting trust should be approved. And we are committed to addressing the legitimate concerns of every stakeholder in the application process. I have reviewed the comments submitted by the various interested parties, particularly the heated claims by Canadian Pacific. Many of their concerns are addressed by others. Our CFO Ghislain Houle together with Professor Mark Zmijewski of the University of Chicago Booth School of Business should dispel any concerns about our financial soundness or ability to divest the KCS network if required by the STB. Mr. William Rennicke—a widely regarded industry expert—dismisses the wild accusation by CP that our merger is anticompetitive. Indeed, Mr. Rennicke has never seen a merger of Class I railroads result in so few competitive issues. James Cairns should assure our customers that CN is wholly committed to the STB's current merger rules and will "enhance competition" with new single line service, new competition against trucks and our larger Class I brethren, expanded choices and a firm promise to keep gateways open on commercially reasonable terms, and enhanced pricing transparency with Rule 11 rates.

I would like to personally clarify some confusing, misleading or irrelevant themes that have surfaced, and offer **four new commitments** to assure the STB that approval of this voting trust is clearly in the public interest.

1. The STB should reject CP's desire to transform a privilege into a weapon – to use an STB-approved voting trust to create an asymmetric structural and competitive bidding advantage, when they could not compete on the merits with a weaker balance sheet and lower value creation. CP's 500+ page submission is a transparent attempt to reserve the use of a voting trust for itself in an effort to force KCS to consider CP's inferior bid that KCS has already terminated.

2. CP's allegation that CN is pursuing this unique opportunity for the purpose of thwarting CP is preposterous. The sole reason CN is pursuing a combination with KCS is to enable the creation of the true North American Railway for the 21st Century, and its superior offer reflects the value that it expects to realize from this powerful idea. We are excited about the opportunity to create the North American Railway for the 21st Century—and offer our customers single-line service over the combined CN-KCS network in the United States, Canada, and Mexico. We believe that by doing so we will help to realize the potential of the US-Mexico-Canada Trade Agreement (USMCA). The outpouring of support from over 1700 stakeholders is the highest testament to the tremendous opportunity presented by our proposal. They can imagine the value and potential, even if CP can only view the world as revolving only around CP.

3. A union committee that represents KCS employees as well as some CP union stakeholders have asked about our future plans for the KCS line between Kansas City and Shreveport.[1] That line is one of the crown jewels of KCS, and serves important markets CN cannot serve today. KCS explains the critical strategic importance of that line between Kansas City and Shreveport. See KCS' Reply Verified Statement of Michael J. Naatz. I wholeheartedly agree. The KCSR line between Kansas City and Shreveport presents many opportunities to compete with the north-south routes of other Class I railroads serving the same markets as well as truck traffic along Interstates 35 and 55. This is a unique growth opportunity for CN-KCS. Today, CN does not have single-line service to Kansas City. In addition to new options for direct moves on the CN-KCS network, KCSR's line between Kansas City and Shreveport is important to interchange cars with other carriers. Moreover, we want to expand the Kansas City gateway, not contract it. For example, CN wants to invest in the route between Kansas City, Missouri and Springfield, Illinois to create a new high-quality line that will create faster, safer and more economical rail option. This will create a new competitive option for customers between Kansas City and both Detroit, Michigan and the Port of Montréal who currently rely on trucks. This "Kansas City Speedway" will be the connection between the KCS and CN networks to offer a new competitive alternative to compete with trucks for traffic moving from Mexico, through the U.S. heartland to Canada. Indeed, CN has committed that it will maintain the U.S. headquarters of the combined network in Kansas City, Missouri. But to assure KCS employees on that line, and the customers it serves, **I can commit that CN has no plans**

[1] Letter from General Chairperson, S.A. Habjan, SMART-TD General Committee GCA-457, at 1–2 (filed June 28, 2021) (indicating there would be "no need" for the KCS line running south from Kansas City); Letter from General Chairman – Leader, SMART-TD GO-256, at 2 (filed June 28, 2021) (representing yardmasters on CP).

to downgrade or divest that line and will continue to invest at a similar level or higher as KCS in the mainline between Kansas City and Shreveport in the years after the CN-KCS combination is consummated.

4. The American Chemistry Council and the Fertilizer Institute question whether, in the event our application is denied, that CN might attempt to sell KCS' network in pieces or sell KCS to an unsuitable owner. This would be inappropriate. KCS is worth more than the sum of its parts, and the STB has made clear it would maintain oversight over any divestiture. Value for a potential divestiture of KCS would be maximized by selling KCS as integrated franchise or holding an initial public offering for KCS as a whole. I have explained that it would be unlikely that CN would be required to divest KCS out of the voting trust because CN is committed to finding workable solutions to legitimate concerns regarding the CN-KCS combination, as demonstrated by our commitment to sell the KCS line between Baton Rouge and New Orleans. I am confident CN will address any such concerns and obtain ultimate approval for our pro-competitive CN-KCS combination. Nevertheless, if CN is required to divest KCS out of trust, **CN commits that it would divest KCS in a way that maintains KCS as an intact entity, and to obtain the best potential value for KCS.**

5. CP also raises an odd claim that CN will for some reason stop competing with KCS for traffic between Baton Rouge and New Orleans during the voting trust period. I find this idea baffling. The entire point of the voting trust is to preserve the competitive status quo because KCS continues to operate independently. Voting trusts have been used in prior mergers with far more extensive competitive overlaps with no evidence of any such misconduct. Many customers with facilities on the CN line from Baton Rouge to New Orleans have long-term contracts. CP's claim also ignores the highly competitive markets we help those customers reach. And CN and KCS have committed to divest the KCS line to

enhance those customers' competitive options. This means that if approved, those customers will be served by both the combined CN-KCS and a new competing railroad. There is simply no factual basis to assume CN would deliberately drive customers away during the voting trust process. But it is important to me that all 2-to-1 customers in Louisiana have confidence that they will suffer no harm after the merger, or during the period of the voting trust. To assure those customers, {{

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6. Finally, Amtrak urges the STB to deny this voting trust because it has concerns about its ability to restore intercity passenger rail service between Baton Rouge and New Orleans. CN appreciates the interest from Amtrak and some other stakeholders regarding potential for future passenger service on the KCS line between Baton Rouge and New Orleans that CN has committed to divest. CN looks forward to continuing to engage with these stakeholders. Our primary objective must be to protect the competitive options and service for freight customers on that line, and to preserve sufficient capacity to meet their current and future needs. But we welcome discussions with Amtrak regarding its desire to use as yet unobtained funding to restore intercity passenger rail service, while other stakeholders may propose different concerns. While the precise circumstances regarding the sale of the KCS line between Baton Rouge and New Orleans are premature

at this stage, the future use of that line will be addressed in detail in the ultimate merger proceeding. To assure Amtrak that its concerns will be considered, **I can commit that potential purchasers of the divested line will be asked to explain their willingness to work with potential future passenger and commuter service operators**.

In sum, CN did not propose to use a voting trust lightly. We know it is a privilege, not a right, and to be carefully permitted. However, use of the voting trust in this instance is necessary to place a CN-KCS transaction on a level playing field given the particular circumstances in this case: specifically, the unusual setting of a competitive bidding process with a merger agreement that required CN to utilize a voting trust and the Board's prior decision to approve the CP-KCS voting trust demanded that our offer—which was ultimately accepted by KCS—use an identical voting trust.

Approval of the proposed CN-KCS voting trust will not prejudge the merits of the Application. It will simply move this proceeding to the next stage, where the STB will fully vet the public benefits that will flow from this exciting merger. CN will demonstrate the overwhelming benefits of the CN-KCS combination to enable the creation of the North American Railway for the 21st Century. But those benefits can only be realized if the STB approves the voting trust for the CN-KCS combination. The "plain vanilla" voting trust prevents premature control of KCS and maintains KCS's independence while it is in trust during the STB's review of the combination under the STB's current rules that require enhanced competition. CN therefore respectfully requests the STB's approval for the CN-KCS voting trust.

VERIFICATION

I, Jean-Jacques Ruest, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 6th day of July, 2021.

Jean-Jacques Ruest
President and Chief Executive Officer of
Canadian National Railway Company

Exhibit 2

Reply Verified Statement of Michael J. Naatz

BEFORE THE SURFACE TRANSPORTATION BOARD

FD 36514

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND CN'S RAIL OPERATING SUBSIDIARIES

CONTROL

KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

VERIFIED STATEMENT OF MICHAEL J. NAATZ

BACKGROUND

My name is Michael J. Naatz. I have been Executive Vice President and Chief Marketing Officer for Kansas City Southern (KCS) since October 2018. KCS is a non-carrier holding company that owns and controls The Kansas City Southern Railway (KCSR), The Texas Mexican Railway (Tex Mex), Gateway Eastern Railway, Kansas City Southern de Mexico (KCSM), and other non-rail subsidiaries. I joined Kansas City Southern in 2012 as Senior Vice President and Chief Information officer. In 2014, I was promoted to Senior Vice President of Operations Support & Chief Information Officer. I held that position until being promoted to my current position. Before joining KCS, I was president of YRC Holland, a division of YRC Worldwide (YRC). Prior to that role, I served in a variety of executive leadership positions at YRC, including the role of YRC’s chief customer officer. I hold a master of business administration from Northwestern University’s Kellogg School of Management and a bachelor of arts in economics from the University of Illinois.

The combination of Canadian National (CN) and KCS is incredibly exciting. It is also clearly exciting to the more than 1700 stakeholders who have filed in support of this combination. They see what I see – compelling benefits. I recognize that today the question is the approval of the voting trust, which I hope will be expeditiously approved to place the CN-KCS combination in a position to move forward to the application phase of review, where the pro-competitive benefits of the transaction are relevant. Suffice it to say for now that the combination will connect the Midwestern United States to markets in Mexico and Canada. It will connect the Midwestern United States to dozens of ports throughout North America. It will connect both sides of the Mississippi River and route traffic around Chicago to Detroit and Eastern Canada. It will offer a competitive single-line route to other railroads operating in the North-South corridor from Mexico to the United States to Canada. It will take trucks off congested highways and promote a global push towards corporate environmental responsibility. It will reduce shipping costs and increase efficiency to make our customers more competitive. In short, it will create a rail network that is competitive and will meet the service demands of our customers and the economy.

PURPOSE AND SUMMARY

The purpose of this Verified Statement is to address the baseless speculation that a CN-KCS merger would result in either reduced investment in or the divestiture of the KCS mainline between Kansas City and Shreveport, which I will call the KCS Line for simplicity, following the merger. The basis for this conjecture may lie in an incorrect notion that the Shreveport line is duplicative with CN's line between Chicago and New Orleans line, which I will call the CN Line for simplicity. An examination of the facts does not support this belief.

For starters, while the KCS Line and the CN Line both run north and south, they are hundreds of miles apart and serve different markets. On the one hand, the KCS Line connects Kansas City with markets to the north and west of Kansas City with key markets in Texas, Louisiana, and Mexico. On the other hand, the CN Line connects Canada, Chicago, and the Great Lakes region with the Gulf Coast. It is exactly this combination that creates many of the growth opportunities that make this merger so attractive. Thus, the two lines are used to serve different customers and different markets.

In addition, because Kansas City is, and will remain, a critically important gateway for KCS and the customers we serve today, there should be no doubt about the critical importance of the KCS Line in the future. In fact, Kansas City is one of KCS's largest carload interchange points. In 2019, total traffic moving in and out of Kansas City represented nearly 25% of the company's total US carloads and approximately 35% of US revenue. Grain, coal, crude oil, and a host of other commodities are either interchanged in or accessed via haulage rights through Kansas City. Kansas City is a critical interchange point with UP, BNSF, and CP. Of the total traffic interchanged in Kansas City, greater than 90% of this traffic is received by KCS from interline partners. It will be in everyone's best interest to keep this very important gateway open to interchange, and CN has committed to doing so. Of course, keeping it open to interchange means the KCS Line that feeds the interchange is critically important. In support of this, I refer to the op-ed published by Railway Age on June 22nd, whereby Dr. William Huneke, the former Director of the Office of Economics and Chief Economist at the Surface Transportation Board ("STB") described CN's open gateways commitment as a "big deal."[1]

Further, the KCS Line is vitally important in that it provides access to customers who are either directly served by KCS or who are served through connections with our short line partners and trans-loaders located on that line. Direct connections include grain and feed mills. Such shortline partners include, but are not limited to, the Arkansas Southern Railroad, the Arkansas-Oklahoma Railroad, the Missouri and Northern Arkansas Railroad, the South Kansas and Oklahoma Railroad, and the DeQueen

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[1] https://www.railwayage.com/regulatory/why-cns-open-gateways-offer-is-a-big-deal/?RAchannel=home

and Eastern Railroad. In fact, over 11,000 carloads were interchanged in 2019 from short line railroads along this line.

Traffic traversing over the KCS Line impacts approximately 40% of KCS US revenues. If CN were to divest or otherwise de-emphasize the KCS Line, it would be foregoing sizeable volumes and revenues. Foregoing those revenues and losing the opportunity to connect different markets simply does not make economic or operational sense. Including traffic that moves through Shreveport, the 2019 volume and revenue comprise approximately 50% of KCSR revenue and volumes.

Certainly, some of the baseless speculation arises from CP's unsubstantiated rumormongering. CP is the only party talking about turning a line "into a downgraded, lower-density 'redundancy line'" or about "reduced service levels". [2] For the reasons above – the KCS Line and the CN Line serve different customers and markets and Kansas City's importance to rail traffic that is interchanged to and from other railroads, CP's commentary – which is made out of whole cloth – should not be given any weight.

Improperly investing in or selling the KCS Line is inconsistent with CN's growth objectives and puts their investment at risk. And, I believe CN clearly understands this. CN has publicly indicated that it is committed to operating both north-south routes into the future and maintaining Kansas City as its US headquarters. In fact, as we look at synergies identified as part of this combination, it is very clear that CN plans to utilize the Kansas City to Shreveport route as a major component in achieving its $1 billion of synergies. The reality is that to support the existing traffic and the tremendous synergies identified in this merger, both lines will be required to capitalize on the kind of transit times and service levels that will be required to effectively serve this expanded traffic and compete in these markets. I believe that

[2] STB Finance Docket No. 36514, Canadian National Railway Company, et al. – Control – Kansas City Southern, et al., Canadian Pacific's Reply to CN and KCS Joint Motion for Approval of Voting Trust (filed June 28, 2021) at 53.

CN made these statements seeing the potential of combining the two different markets to provide better, more competitive service options for customers that will allow growth.

Any argument – indeed baseless speculation -- to the contrary is simply being used to create confusion in support of other objectives.

VERIFICATION

I, Michael J. Naatz, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 6th day of July, 2021.

Michael J. Naatz
Executive Vice President and Chief Marketing Officer
Kansas City Southern

Exhibit 3

Reply Verified Statement of Ghislain Houle

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36514

CANADIAN NATIONAL RAILWAY COMPANY,
GRAND TRUNK CORPORATION, AND CN'S RAIL OPERATING SUBSIDIARIES
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GATEWAY EASTERN RAILWAY COMPANY, AND
THE TEXAS MEXICAN RAILWAY COMPANY

VERIFIED STATEMENT OF GHISLAIN HOULE

My name is Ghislain Houle. I am the Executive Vice President and Chief Financial Officer ("CFO") of Canadian National Railway Company ("CN") and its United States rail operating subsidiaries. My background with CN is described in my prior testimony in this proceeding.

On May 26, 2021, I filed a Verified Statement to explain the overall impact of CN's proposed transaction with Kansas City Southern ("KCS") on CN's financial health. In that statement, I explained that although the acquisition of KCS will be financed in part by additional debt, CN will retain its strong financial posture. I offered the following observations:

- CN's strong financial position today sets up the company well to maintain financial strength, notwithstanding the incurrence of additional debt;
- CN expects to retain an investment grade credit rating throughout the transaction approval process and beyond, an expectation that has been validated by the two major credit rating agencies;

- CN will have more than enough free cash flow on a standalone basis to service both existing and transaction related debt while continuing to invest in the railroad at levels consistent with our historical practice;
- CN has suspended share repurchases indefinitely to bolster cash available for debt service; and
- CN would remain financially sound if ultimately forced to divest KCS – indeed, even if KCS is sold at a steep discount, our leverage ratio would be reduced to levels in line with the current leverage levels of other Class 1 railroads and consistent with an investment grade credit profile.

In his June 28th verified statement, the Chief Financial Officer of Canadian Pacific Railway ("CP") offered his contrary opinion that our proposed acquisition is fraught with financial risk. Mr. Velani's testimony makes several inaccurate and misleading statements about the financial impacts of CN's acquisition of KCS. It is evident from his statement that CP's motivation is not to ensure that the public interest is served. Rather, CP is intent on serving its own interests by attempting to block CN and KCS's joint voting trust application in order to revive a CP bid that KCS terminated as inferior. Notably, CP was the only Class 1 railroad to register any objection to CN and KCS' joint voting trust application. To that end, Mr. Velani's statement includes unfounded allegations about the motives of CN management in undertaking this transaction and our intent for a combined CN-KCS.

I address Mr. Velani's claims in detail below. But at the outset I would stress two fundamental points. First, CN was able to offer a superior proposal for KCS because the combination of CN and KCS creates more value than a transaction between CP and KCS. We believe that a combined CN-KCS can offer shippers new, attractive routing options. We will be better positioned to compete with other Class

1 railroads and to take traffic back from truck and barges. The notion that CN paid more than CP because it would allow us to exploit our customers is simply untrue and never factored into our decision making. It also makes no sense as there is little overlap between the CN and KCS networks and we immediately announced our commitment to divest the sole overlapping KCS line between New Orleans and Baton Rouge.

Second, while it is true that we offered KCS more consideration than CP did, CN's balance sheet comfortably supports our offer. CN will have the ability post-merger to not only maintain KCS' operations, but to expand our combined service offering. We will not degrade KCS' operations or the quality of CN service to pay for this merger.

The remainder of my statement amplifies these points and addresses the specific points made by CP in greater detail.

I. CN Is Not Paying an "Exorbitant" Premium, and the Size of the Premium Is Not an Appropriate Measure of Financial Return.

In determining CN's offer price for KCS, we focused on assessing KCS' fundamental value, not on the size of the premium being paid to KCS shareholders relative to its unaffected share price. This approach is entirely consistent with market practice (across industries) and appropriate for an acquisition of this nature.

In evaluating our offer for KCS, we considered various analyses, factors, and data points, including a discounted cash flow analysis (which provides an implied value for a company by calculating the present value of its estimated future unlevered free cash flows) as well as the pro forma value creation for CN shareholders. The results of our financial assessment, and the growth in future cash flows we expect to generate through this transaction, support our purchase price.

Our analysis was based on CN management's well-informed views of the historical performance and future prospects of both CN and KCS on a standalone basis, projections provided by KCS management, and our assessment of the synergy opportunities afforded by the combination. At no point did we ever attribute any value to some "unstated set of strategic benefits" or "strategies that may not be compatible with the long-term interest of the public," as CP has posited (*see* Velani V.S. at 2 and 26). As we have stated publicly, we anticipate significant value creation from synergies stemming from new growth opportunities presented by truck-to-rail conversion and USMCA tail winds.

Our confidence in the appropriateness of the purchase price for KCS was validated by the separate fairness opinions our Board received from three respected banks. Each of J.P. Morgan Securities Canada Inc., RBC Dominion Securities Inc. and Centerview Partners LLC concluded that the merger consideration to be paid to the holders of KCS common stock is fair, from a financial point of view, to CN. Despite Mr. Velani's criticism of the value of fairness opinions (*see* Velani V.S. at 24-25), CP itself relied on similar opinions (which were subject to similar limitations and qualifications as the opinions provided to CN) from their own financial advisors when evaluating their offer for KCS[1]. Our proposed purchase price and the value creation opportunity from a combined CN-KCS is further supported by the reaction

[1] CP/KCS merger agreement fairness opinion (Section 4.16)

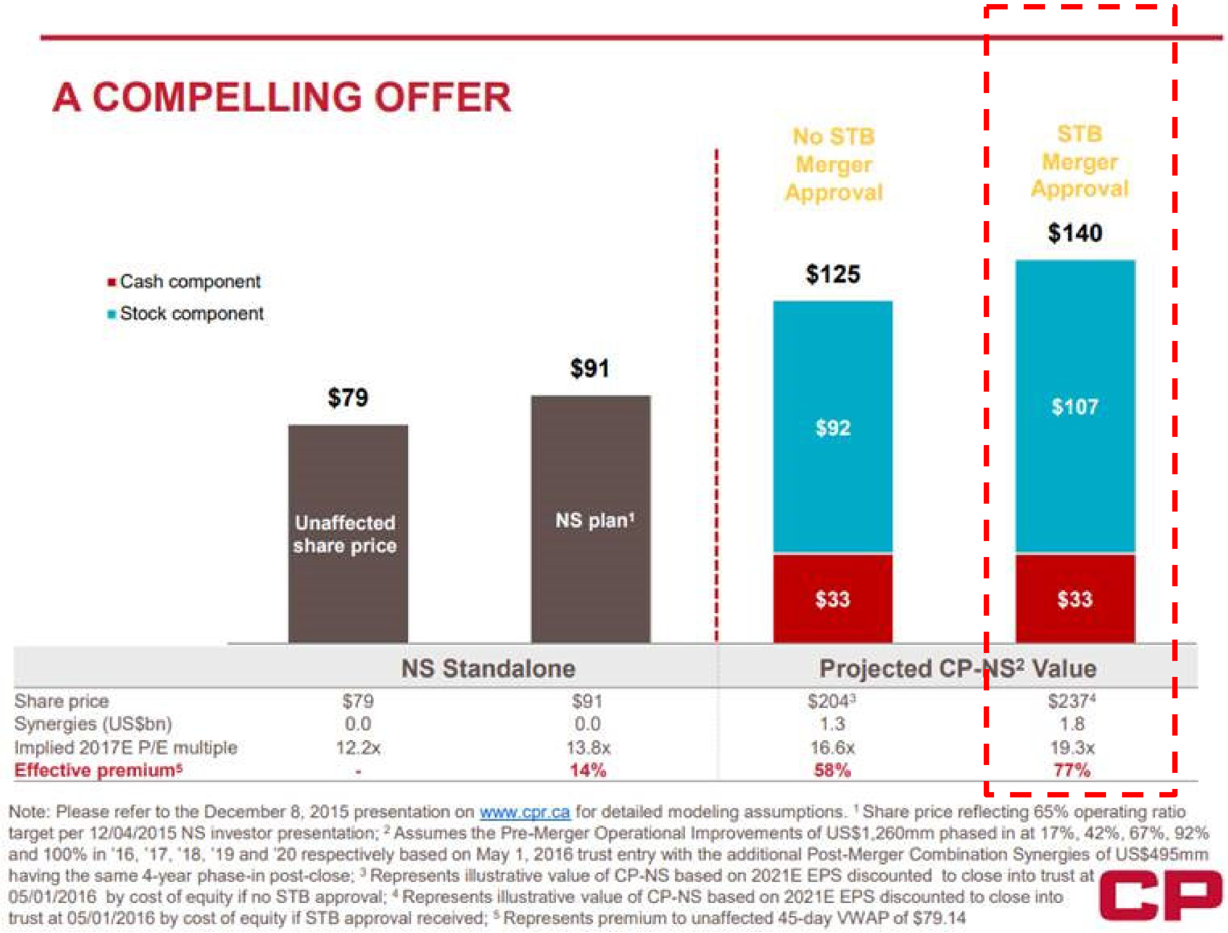
of Wall Street research analysts to the announcement of our transaction, examples of which are included below.

Selected Wall Street Research Commentary

"The connectivity created between CN and KCS creates an addressable synergy market of over \$10B. Based on our analysis of underlying commodity flows, the synergy opportunity is realistically 20% higher than CN's targets and if achieved could result in the deal being 19% accretive in 2025." *Bernstein, June 30, 2021*
"CN expects synergies of ~US\$1B annually over a three-year period (from closing), which would infer ~\$14B in EBITDA for the combined entity. Assuming net debt of ~\$27B in 2025, 15x EV/EBITDA multiple and discounting back 3 years (2022 is our target year) at 5.9%, this would infer equity value of \$180+/share, or a ~47% return from CN's current share price" *CIBC, May 25, 2021*
"We see limited downside risk in CNR, even under a conservative KSU divestiture scenario, but see attractive upside potential if the KSU merger closes successfully." *Scotiabank, May 27, 2021*
"In addition, opportunities for CNR to convert truck freight to rail are significant, particularly for U.S.-Mexico cross-border traffic. We think the company's initial synergy estimates could grow as due diligence uncovers additional opportunities. That notwithstanding, we estimate that the current deal structure implies an attractive levered return of ~16% (for perspective, CNR's internal hurdle rate is ~12%)." *Veritas, June 21, 2021*

Finally, while CP claims that a 45% premium is "exorbitant," CP had no reservations offering an even higher premium to Norfolk Southern shareholders during their unsuccessful pursuit in December 2015, advertising an effective premium as high as 77%.

Extract from CP Investor Presentation (Dec. 16, 2015)



Note: Sourced from CP Investor Presentation dated December 16, 2015 (page 7)

II. CP Misconstrues CN's Return on Invested Capital ("ROIC") Metric and How It Is Used to Evaluate Projects.

CP's argument that CN's acquisition of KCS will not be able to achieve a certain "target" investment return demonstrates a fundamental misunderstanding of the way we measure investment returns and financial performance.

Mr. Velani's argument rests on a narrow interpretation of a comment I made during an April 20, 2021 investment call in which I stated that the return on investment of our offer for KCS was "more or less in line with our internal threshold" for new projects "in the range of about 12%" (*see* Velani V.S. at 15). CP then concludes that, based on their own estimates of CN's return on investment, we could not possibly achieve that 12% return threshold.

CP's analysis is misguided for several reasons.

First, CP conflates CN's historical enterprise-wide ROIC targets of 12-15% with project-specific investment returns targets. We evaluate each new investment opportunity on its own strategic and financial merits, not based on any fixed company-wide measure. The table below shows CN's estimated Internal Rate of Return ("IRR") on investment for the KCS transaction, with a comparison to similar returns calculations for CP's now-terminated transaction.

CN vs. CP Estimated KCS IRRs

	CN	**CP**
Unlevered IRR	7.8%	8.4%
Levered IRR	12.7%	10.6%

Note: Based on public filings and CN analysis

As shown above, CN's levered IRR is 12.7%, more than 200 basis points higher than CP's. CN's unlevered IRR of 7.8% is only 60 basis points lower than CP's (despite a higher purchase price). These projected returns were more than sufficient in the judgment of our senior leadership team and Board of Directors – and supported by three fairness opinions – given the long-term strategic value of the KCS network and the surging new market opportunities created by USMCA. There is simply no basis to suspect nefarious intent from levered and unlevered IRR's that are virtually identical to those that would have resulted from the rejected CP bid.

Moreover, CP's analysis focuses on their estimate of ROIC at just the beginning of our investment in KCS. ROIC levels tend to increase over time as synergies are realized, cash flows grow, and financial debt is repaid. The time horizon for CN's investment in KCS is expected to be perpetual in nature, which has an important and positive impact on our expected returns. Solely focusing on day-one ROIC is therefore misleading.

Finally, CP makes the preposterous assertion that CN may make efforts to "boost returns in other ways, such as through cost-cutting, or – more plausibly – reaping the benefits of reduced competition" in order achieve executive bonus targets (*see* Velani V.S. at 11). These claims are totally unsubstantiated and disingenuous.

ROIC is just one of many metrics that CN uses to assess business performance in our efforts to generate value for our shareholders, and, more fundamentally, CN management does not operate the business to achieve targeted results on specific financial metrics. ROIC is a financial metric that takes into consideration profitability relative to investment – which makes it a relevant metric given our extensive annual capital investments. ROIC captures a more long-term perspective, as opposed to a metric like Operating Ratio ("OR"), which is commonly used in the industry and is more susceptible to short-term decision making (it is my understanding that CN is the only Class 1 railroad that does not use OR to measure financial performance for management compensation).

To suggest that CN might manage the business to achieve certain financial results is totally unfounded and ignores actual facts. As demonstrated in the table below, CN has a track record of capital investment at levels higher than all other Class 1 railroads (measured as capital expenditure as a percentage of revenue) over the past five years. From 2016 to 2020, CN invested an average of 23% of revenue, versus our Class 1 railroad peers[2] who invested an average of 18% ranging from a minimum average of 16% of revenue to a maximum average of 21% of revenue.

In fact, CN has continued to invest even when doing so resulted in missing financial targets that are tied to executive compensation. In 2019, we invested at the highest levels in our history both in absolute dollar value and as a percentage of revenue, despite missing our financial targets which resulted in 0% payout of our Annual Incentive Bonus for executives. In 2020, we similarly invested at levels consistent with past practice despite the negative impact on our business from the economic downturn caused by the COVID-19 pandemic, leading to just 20% payout of our Annual Incentive Bonus.

[2] Class 1 peers include CP, Union Pacific, CSX, Norfolk Southern, Kansas City Southern and BNSF.

CN and Peer Capex as a % of Revenue

CN	2016A	2017A	2018A	2019A	2020A	2016-2020 Average
Capex	$2,695	$2,673	$3,531	$3,865	$2,863	
Capex as a % of Revenue	22%	20%	25%	26%	21%	**23%**
Class 1 Peer Capex as a % of Revenue	**2016A**	**2017A**	**2018A**	**2019A**	**2020A**	
CP	19%	20%	21%	21%	22%	21%
UP	18%	15%	15%	16%	15%	16%
CSX	22%	18%	14%	14%	15%	17%
NS	19%	16%	17%	18%	15%	17%
KCS	24%	23%	19%	20%	16%	20%
BNSF	19%	15%	13%	15%	15%	16%
Class I Average (ex-CN)	**20%**	**18%**	**17%**	**17%**	**16%**	**18%**

Source: Company filings.

III. CN's Bid for KCS Was Prompted by an Important Strategic Opportunity.

CN has been candid and transparent to its shareholders, its customers, its employees and the general public regarding what motivated its bid for KCS. KCS is a highly strategic and synergistic acquisition for CN and one which we have evaluated and analyzed over many years. Our combined companies will offer unparalleled benefits for our key stakeholders and will establish the premier end-to-end USMCA network for the 21st century, which drives our assessment of the value to be created. We firmly believe the CN-KCS combination presents a unique opportunity that will create meaningful value for our combined companies, employees, customers, and other stakeholders.

CP asserts that CN's superior offer can only be explained by nefarious reasons—supposedly that the combination will increase our market power or that the offer was made to block a CP/KCS combination. Mr. Velani asserts that "CN must have based its investment decision on some unstated set of strategic benefits CN expects to realize." (*see* Velani V.S. at 26).

I can state unequivocally that this assertion is false. There was no unstated set of strategic benefits, just the plainly evident benefits that prompted such a fierce competitive bidding situation, including from a private equity bidder, then a series of CP bids, and finally the manifestly superior CN bid. Like CP itself, CN recognized a unique opportunity to partner with KCS, to harness new growth opportunities from new emerging markets, and complete its long-standing vision for an integrated North American railway.

CN has been monitoring KCS as a potential partner for several years. It has long been at the very top of our list of potential strategic and transformational opportunities. Any strategic acquisition requires an alignment of intrinsic value, strategic alignment, and a willing seller. We initially contacted KCS to express our interest in an acquisition last year when there were media reports of a potential take-over bid but received no signal at that time that KCS was receptive to an offer. When we learned of the publicly announced transaction with CP, we were able to move very quickly given the amount of work and analysis we had previously done on a potential acquisition scenario. Our strong balance sheet, earned through years of consistent, disciplined, and conservative financial policies, also enabled us to quickly secure the required financing support to submit our winning proposal. In fact, we were able to assemble a fully financed and superior bid for KCS within roughly 30 days of the announced CP transaction. All of this is explained in the Background of the Transaction section of the KCS proxy statement filed with the Securities Exchange Commission on July 2, 2021.

There are also very important Environmental, Social, and Governance ("ESG") benefits from our combination; a criteria that is core to CN's decision making. Together with KCS, we will shift thousands of long-haul truckloads off the road and onto rail, which will yield significant environmental benefits.

From a financial perspective, we firmly believe that the combination will create material value for CN and KCS' shareholders. We, along with our advisors, have conducted rigorous and comprehensive financial analyses, including on multiple scenarios, to support that conviction. Our combination is expected to generate approximately $1 billion in Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") synergies and be significantly accretive to CN's Adjusted Diluted Cash Earnings Per Share ("EPS").

On behalf of CN and our Board, I can state unequivocally that we seek to combine with KCS because we firmly believe that it is a highly strategic transaction that will provide new services to customers, take trucks off the highway, realize environmental benefits, and create material value for our shareholders and other stakeholders. There is no other motive. We are a proven acquirer of complementary railroads and have demonstrated over many decades that we have a rigorous and disciplined acquisition strategy. Together CN-KCS will be a better, stronger, and safer railroad, and one that can compete even more fiercely and create sustained stakeholder value for the long-term.

IV. The Financial Risks of CN's Offer Are no Greater Than CP's now-Terminated Transaction.

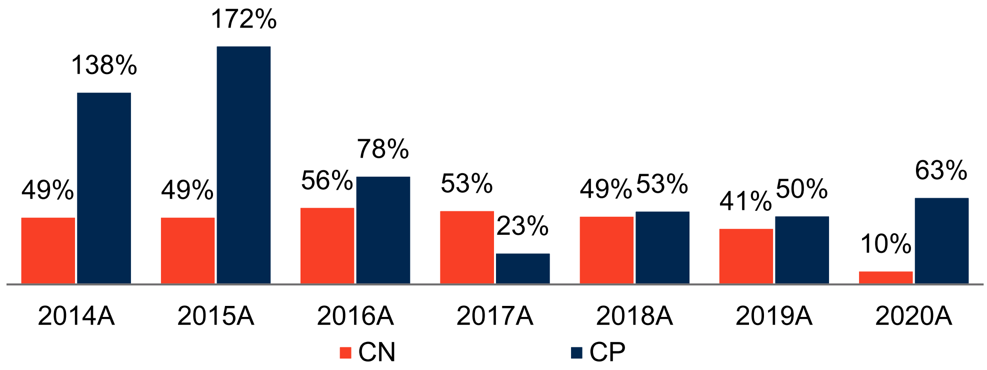
Several of the complaints registered by CP about the financial viability of CN's transaction are equally applicable to CP's proposed transaction, demonstrating that these are not true problems. First, CP complains that after purchasing KCS, CN's leverage will be too high. In fact, CP's leverage would have been comparably high had it purchased KCS. Second, CP complains that CN's acquisition debt will equate to its past 9 years of capital investment; CP's debt similarly would have constituted 8 years of investment. Third, CP claims that CN's credit rating will fall; in fact, CN's expected credit rating after the transaction will be comparable to CP's now, even without its transaction. Each of CP's points is a red herring, designed to mislead the Board.

My verified statement submitted with the Joint Motion for Approval of Voting Trust makes it very clear that CN is in a strong financial position and that there is no significant financial risk to our strong balance sheet during the trust period, after the merger is approved, or in the unlikely event of a divesture of KCS from the voting trust.

Nonetheless, CP has offered a number of misleading financial metrics and observations to attempt to spread confusion and support a different conclusion. CP's reliance on these metrics to criticize the potential CN deal is ironic because the concerns they raise would have applied equally to the now-terminated CP-KCS agreement.

CP entered into this competitive bidding process with a weaker balance sheet in part because of its strategic decision to maintain higher leverage levels in order to return more cash to shareholders through repurchases of stock. From 2014 to 2020, CP repurchased C$10.2 billion of stock (C$1.5 billion annual average) representing 78% of the C$13 billion of Adjusted Net Income it generated over that period and 25% of its current market capitalization. During this same period, CN repurchased C$11.3 billion of stock (C$1.6 billion annual average), representing only 43% of the C$26 billion of Adjusted Net Income it generated over that period and 19% of its current market capitalization. Between 2014 and 2019, CN consistently repurchased stock between 41% and 56% of its Adjusted Net Income while maintaining a Leverage Ratio of 2.0x or less. Over that same timeframe, CP repurchased as much as 172% of its Adjusted Net Income, even when doing so resulted in a Leverage Ratio as high as 3.0x. In 2020, CN suspended share repurchases at the onset of the COVID-19 pandemic and only repurchased C$400 million of stock representing 10% of Adjusted Net Income. CP, however, repurchased stock for C$1.5 billion representing 63% of its Adjusted Net Income.

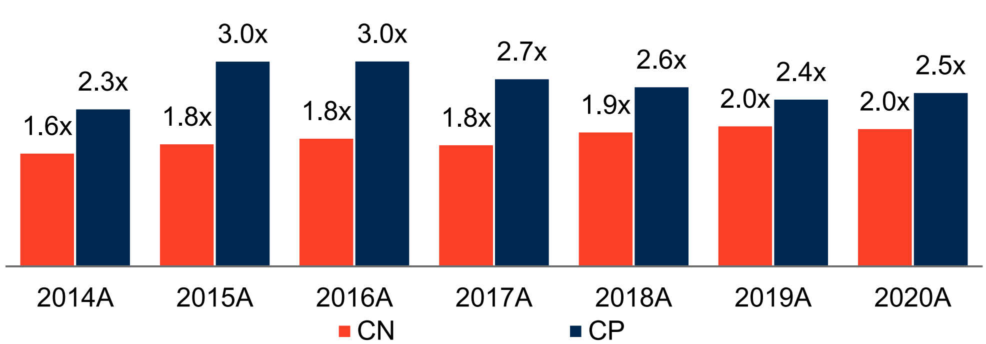
CN and CP Share Repurchases as a % of Adjusted Net Income[3]



Note: Sourced from CP and CN's historical public filings

As a result of its more aggressive share repurchases discussed above, CP's Leverage Ratio[4] has consistently been higher than CN's.

CN and CP Historical Leverage Ratio



Note: Sourced from CP and CN's historical public filings

Contrary to CP's complaint that CN has "weaponized its balance sheet" to outbid CP (Creel V.S. at 11), CN has simply been prudent in its capital allocation

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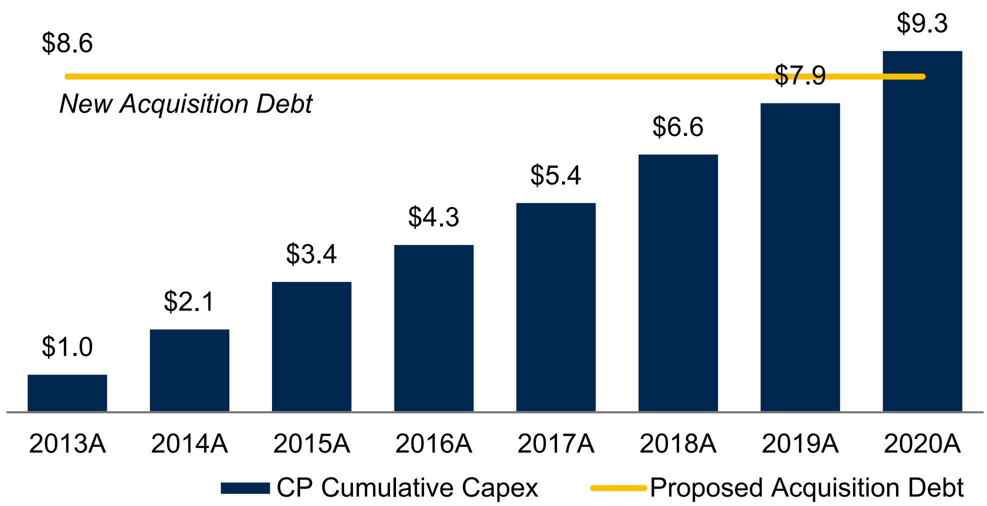
[3] Adjusted Net Income as defined by CN and CP.

[4] Leverage Ratio defined as adjusted debt to adjusted EBITDA. Refer to Non-GAAP Measures, unaudited, at 2, https://www.cn.ca/financial-results.

policies, putting us in a stronger position to enable our offer for KCS. The reason any company (like CN) adopts conservative fiscal policies and maintains a best-in-class credit rating is precisely so it has the ability to act on unique strategic opportunities. CP's strategy of maintaining higher leverage in order to fund distributions to shareholders left it in a weaker financial position when it made its bid for KCS. As a result, many of the financial "risks" raised by CP would only be amplified by its own failed bid.

CP tries to support its claim that CN is taking on an excessive level of debt to acquire KCS by explaining that $19 billion of acquisition debt is comparable to CN's capital expenditures over the past nine years (*see* Velani V.S. at 6-7). But it failed to mention that the $8.6 billion of acquisition debt that CP planned to raise for its (now rejected) transaction would have been comparable to approximately eight years of CP's own capital expenditures. The chart below compares CP's cumulative capital expenditures since 2013 to the acquisition debt it had proposed in its offer.

CP Cumulative Capex vs. Acquisition Debt (US$B)



Note: Sourced from CP's historical public filings

CP has claimed that CN's deleveraging strategy leaves "no margin for error" (*see* Velani V.S. at 9). And yet, the leverage profile that our plan proposes is similar to CP's own plan. On a comparable basis, CN's pro forma total debt / EBITDA target for 2021E is 4.2x[5] whereas CP announced a 2021E target of 3.8x in its investor presentation on March 21, 2021. Moreover, while CP has noted that CN's credit rating might be downgraded in the context of a KCS deal, they conveniently leave out the fact that CN would retain an investment grade rating and, even if downgraded, would end up with a rating that is comparable to CP's current rating even without a transaction.

CP points out that in the event of economic or regulatory developments, CN would be left with a massive debt burden (*see* Velani V.S. at 18). However, had CP's

[5] Total Debt / EBITDA is shown to be comparable to the leverage metric CP disclosed on page 8 of its March 21 investor presentation. On an adjusted basis, CN's pro forma Leverage Ratio is expected to be 4.5x in 2021E.

transaction been successful, they would have been left in a similar financial position in such a downside scenario. As noted above, CP's transaction was targeting 2021E total debt / EBITDA of 3.8x, very similar to CN's 4.2x. Furthermore, CN's greater diversification by commodity type and geography, as well as its US$75 billion market capitalization that is almost 50% greater than CP's market capitalization of US$51 billion, provides a much more substantial "margin of error" in terms of access to debt and equity capital.

CP has also trivialized the CN-KCS combination as a "gamble," referencing the public comments of one of CN's shareholders, TCI Fund Management (*see* CP-11 at 34). While CN values the input of all shareholders, it is noteworthy that TCI Fund Management is also CP's single largest shareholder. With an ownership stake in CP that is worth over C$5 billion, TCI may, quite understandably, be motivated by its economic interest in a CP bid prevailing over CN's agreed-to transaction.

If these various financial observations raised legitimate red flags, they would cast doubt on the financial wisdom of either the failed CP bid or the accepted CN bid. But they do not. As I presented in my opening comments, CN's projected level of debt is manageable for a company of CN's size, scope, and overall financial health and will not harm its ability to continue investing in the railroad and providing quality service to our customers and power the North American economy. And to reiterate, CN does not intend to reduce its own capital expenditure plans during the pendency of the voting trust or after Board approval of the transaction, nor would we reduce our own capital expenditure plans even if we were required to divest KCS out of trust. There is simply no need to do so, as our expected free cash flows—even if held to the levels observed during the pandemic—are ample to continue to invest in our railroad, cover fixed charges, and still reduce our debt leverage. *See* Zmijewski VS (filed July 6, 2021).

V. Conclusion

In conclusion, CP has attempted to distort the truth with their CFO's verified statement. Furthermore, as demonstrated by my prior verified statement, regardless of the various scenarios that could occur following closing into voting trust, CN's financial health will allow us to easily withstand any potential outcome without limiting our ability to serve our customers, invest in our railroad, or maintain the integrity of CN's network.

VERIFICATION

I, Ghislain Houle, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 6 day of July, 2021.

Ghislain Houle
Executive Vice President and Chief Financial Officer
of Canadian National Railway Company

Exhibit 4

Reply Verified Statement of Mark Zmijewski

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36514

CANADIAN NATIONAL RAILWAY COMPANY,
GRAND TRUNK CORPORATION, AND CN'S RAIL OPERATING SUBSIDIARIES
—CONTROL—
KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY, AND
THE TEXAS MEXICAN RAILWAY COMPANY

VERIFIED STATEMENT OF

PROFESSOR MARK E. ZMIJEWSKI

JULY 6, 2021

Table of Contents

I. INTRODUCTION

1. My name is Mark E. Zmijewski. This Statement pertains to Canadian National Railway's ("CN's") Motion[1] to use a voting trust to hold the shares of Kansas City Southern ("KCS") during the pendency of the Surface Transportation Board's ("STB's") regulatory review of a yet-to-be filed merger application. In this Statement, I show that, based on the fairness opinions of CN's financial advisors, independent credit agency reviews, and unaffiliated industry analysts, the proposed price[2] (and premium) CN has offered to acquire KCS is reasonable. While Canadian Pacific Railway Company ("CP") claims that CN's price (premium) is too high,[3] to the contrary, CN's price (premium) is reasonable given the substantial value expected to be created by the Merger and the competitive bidding process allowing KCS to capture much of that value.

2. In this Statement, I also show that CN is able to service the debt it will issue to finance the KCS acquisition. I stress test this conclusion by using pessimistic forecasts based on numerous conservative assumptions. Based on these pessimistic forecasts, I find that CN will be able to service its debt and eventually reduce its leverage, while continuing to conduct its normal operations, maintaining its capital investment levels, and maintaining its investment grade credit rating. I conduct the same analyses for KCS and I also demonstrate that KCS – whose financial

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[1] Joint Motion For Approval of Voting Trust Agreement, STB Finance Docket No. 36514, filed May 26, 2021 by Canadian National Railway and Kansas City Southern.

[2] Agreement and Plan of Merger by and among Canadian National Railway Company, Brooklyn Merger Sub, Inc. and Kansas City Southern, dated as of May 21, 2021 ("Merger Agreement"). In the proposed transaction ("Transaction" or "Merger"), CN will acquire all of KCS's outstanding common shares for consideration consisting of $200 cash per KCS share and 1.129 shares of CN stock per KCS share. I note that the acquisition also includes the purchase of a small amount of preferred stock. Throughout this Statement, when I refer to "stock" and "per share," I am referring to common stock and per common share.

[3] On June 28, 2021, Canadian Pacific Railway filed a Reply to CN and KCS's Motion For Approval of Voting Trust ("CP Reply"), including a Verified Statement by CP's Chief Financial Officer ("CFO") Nadeem Velani ("Velani V.S.") attached as Exhibit 2 to CP Reply. See, Canadian Pacific's Reply to CN and KCS Joint Motion For Approval of Voting Trust, STB Finance Docket No. 36514, filed June 28, 2021 by Canadian Pacific Railway.

performance would be unaffected because it will operate independently while in trust during the STB review process – will not be adversely affected during the voting trust period or afterward, regardless of whether the Merger is ultimately approved. In sum, I have found no basis to conclude that CN or KCS would incur financial harm even if, after the STB's review, CN were required to divest KCS.

3. I specialize in the areas of accounting, economics, and finance as they relate to financial analysis, valuation, and securities analysis, or more generally, financial economics. I am Professor Emeritus at The University of Chicago Booth School of Business. I am also a Senior Consultant to Charles River Associates. In my practice, I have consulted in matters related to assessment of the valuation, financial performance, capital structure/financial leverage, and financial health of companies and in merger and acquisition transactions. I have also taught courses on these topics as part of my academic career (financial accounting, mergers and acquisition accounting, financial analysis, corporate valuation, and financial strategy). I discuss my qualifications and present my curriculum vitae in Appendix A.

4. I understand the closing of the Transaction is contingent on, among other things, the STB's approval of the creation of a voting trust ("Voting Trust")[4] to hold the ownership interests of KCS ("STB Voting Trust Approval").[5] Under the terms of the proposed Voting Trust Agreement, KCS's management and board will continue to control and operate KCS

[4] I understand that the Voting Trust Agreement requires that "all of the outstanding shares of capital stock of [KCS] will be deposited into the [Voting Trust] in accordance with the terms and conditions of the voting trust agreement. The trustee will agree to act as voting trustee in respect of the voting trust . . . and CN will be unable to exercise control over KCS while the trust stock is held by the trustee." This structure "will insulate the [KCS] from control by CN and . . . [t]he management and board of directors of KCS will continue to manage the surviving corporation while it is in trust, pursuing its independent business plan and growth strategies." Preliminary Proxy, pp. 4-5.

[5] Merger Agreement, Section 5.8.(c) defines STB Voting Trust Approval as "the approval or authorization of the STB . . . to consummate the proposed deposit of all outstanding shares of the Surviving Corporation into an irrevocable voting trust . . . immediately following the Effective Time."

independently from CN during the Voting Trust Period, and CN's interactions with KCS would be limited during that time.[6] However, CN would be permitted to: obtain information about the financial performance of KCS (by receiving the periodic reports that KCS will provide to the Trustee); obtain information from KCS as necessary to prepare its control application and to prosecute its STB case (which includes working with KCS to plan future operations and integration within the context of the STB control application); exchange (receive from and provide to) certain information as required to prepare tax returns; and receive dividends that are authorized by the KCS board of directors during the Voting Trust period.[7]

5. CP asserts, among other things, that:[8]

(a) CN does not have an independent check on the proposed price for the acquisition (see, for example, Velani V.S., Section VI, "CP's Independent Check Assertion").

(b) CN's proposed acquisition price for KCS and the resulting premium are too high (see, for example, Velani V.S., Section I, "CP's Excessive Premium Assertion");

(c) the debt CN plans to issue to finance the Merger will create too much risk (see, for example, Velani V.S., Section III, "CP's Debt Level Assertion");

(d) CN did not consider the impact of a potential downturn in the economy (see, for example, Velani V.S., Section V, "CP's Stress Test Assertion").

6. I understand that the STB has the discretion to grant or deny CN's Motion for Voting Trust. In making that decision, I understand that the STB will carefully review whether CN and KCS would be financially sound while KCS is held in the Voting Trust and afterwards, regardless of whether the Merger is approved or not. I have been asked by counsel for CN to

[6] CN would not be permitted to take certain actions. For example, it is not permitted to: directly or indirectly influence KCS's rates and pricing, marketing efforts or day-to-day rail operations or business decisions; remove or replace KCS board members or management, or otherwise exercise corporate control over KCS; or directly or indirectly influence the Trustee's actions. See the Voting Trust Agreement. I understand the Trustee can be replaced only for a material violation of the Voting Trust Agreement, or if the Trustee becomes incapacitated, and that under the Voting Trust Agreement, the Trustee is required to vote the KCS shares in a manner that promotes the intent of the Merger Agreement (*i.e.*, to secure approval for the merger).

[7] See Voting Trust Agreement.

[8] CP Reply, Exhibit 2.

conduct analyses that may be helpful to the STB's review and to address the above claims raised by CP.

7. The remainder of this verified statement is organized as follows. I summarize my opinions in Section II. In Section III, I discuss certain financial characteristics of the Merger. In Section IV, I analyze the premium offered to KCS shareholders and the effects of the additional debt of $19.3 billion that will be used to finance the Merger. In Section V, I analyze (stress test) CN's financial risks from the Merger assuming the Merger is ultimately approved and CN is not required to divest KCS; and in Section VI, I analyze (stress test) KCS's financial risks from the Merger assuming the Merger is ultimately not approved and CN is required to divest KCS. Lastly, in Section VII, I summarize my conclusions.

II. SUMMARY OF OPINIONS

8. In this section, I briefly summarize my overall opinions based on my review and analysis of the available evidence. In the remainder of this verified statement, I identify the facts and data I used, and the analyses I conducted, to form the bases for these and other opinions I discuss in this verified statement. As stated above, I was asked by counsel for CN to conduct analyses that may be helpful to the STB's review and to address the claims made by CP as summarized in paragraph 4. Based on the information I reviewed and the analyses I conducted, I have formed the following opinions:

a. **Opinion 1:** The financial aspects of the Merger have been reviewed by three financial advisors for CN ("CN Fairness Opinions"), all of whom conclude that the proposed consideration offered, and thus the premium to KCS shareholders, is fair from a financial point of view.

b. **Opinion 2:** The Merger has been reviewed by multiple financial analysts who follow[9] CN and who viewed the proposed consideration offered to KCS shareholders as reasonable.

c. **Opinion 3:** CN currently has a very high (A) investment grade credit rating, which is substantially higher than all of the other Class I railroads, except BNSF. With the proposed increase in CN's debt, the credit rating agencies have stated that CN will be downgraded but will continue to maintain an investment grade credit rating (BBB), and thus, CN will be well within the credit ratings of other S&P 500 companies and other Class I railroads.

d. **Opinion 4:** Based on the CN Fairness Opinions, financial analyst commentaries about the Merger, and CN's expected credit rating, the proposed merger consideration and premium are reasonable given the substantial synergies the Merger is expected to generate and the competitive bidding process in which CN participated.

e. **Opinion 5:** Even applying pessimistic forecasts (stress test) based on economic conditions mirroring those that existed during the COVID-19 pandemic, CN would be financially sound while KCS is held in the Voting Trust.

f. **Opinion 6:** Even applying pessimistic forecasts (stress test) based on economic conditions mirroring those that existed during the COVID-19 pandemic, CN would be financially sound if the Merger is ultimately approved.

g. **Opinion 7:** Even applying pessimistic forecasts (stress test) based on a divestiture sale of KCS at a distressed price, CN would be financially sound if the Merger is ultimately not approved and CN has to divest KCS.

h. **Opinion 8:** Even applying pessimistic forecasts (stress test) based on economic conditions mirroring those that existed during the COVID-19 pandemic, KCS would be financially sound while KCS is held in the Voting Trust and afterwards, if the Merger is approved or not approved.

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[9] Financial analysts who issue reports analyzing a company from an economic and financial standpoint are often referred to as analysts who "follow" that company.

III. SUMMARY OF CERTAIN ASPECTS OF THE MERGER

9. In this section, I summarize certain aspects of the Merger.

A. Merger Consideration

10. As merger consideration, each KCS shareholder will receive, for each share of KCS stock, a combination of $200 cash and 1.129 shares of CN stock.[10] In Exhibit III-1, I present a summary of the merger consideration per KCS share. I also present KCS's stock price as of March 19, 2021, the day before the announcement of the potential merger between KCS and CP ("CP Transaction").[11] To finance the cash portion of the merger consideration, CN intends to use "a combination of cash-on-hand and approximately $19 billion of new debt."[12] CN also intends to assume KCS's debt such that "[u]pon closing of the transaction and including the assumption of approximately $3.8 billion of KCS debt, [CN] expect[s] to have outstanding debt of approximately $33 billion."[13] In Exhibit III-2, I calculate the implied equity and enterprise value of KCS.[14]

B. Financial Forecasts

11. In Exhibit III-3 and Exhibit III-4, I present stand-alone forecasts for CN and KCS, respectively. As shown in those exhibits, each company was profitable on a stand-alone basis,

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[10] Form-4 Registration Statement filed by CN with the SEC on June 22, 2021("Preliminary Proxy"), pp. 4-5. I note that CN filed its final Form-4 Registration Statement with the SEC on July 2, 2021 with no change in the numbers.

[11] The closing price of KCS on March 19, 2021 was $224.16 per share, and its total market capitalization (stock price x shares) was $20.4 billion.

[12] https://www.cn.ca/en/news/2021/05/cn-to-combine-with-kansas-city-southern/.

[13] https://www.cn.ca/en/news/2021/05/cn-to-combine-with-kansas-city-southern/.

[14] I note that my calculation of KCS's enterprise value is approximately $400 million lower than the enterprise value in the press release announcing the Transaction because I calculated equity value based on basic shares outstanding (https://www.cn.ca/en/news/2021/05/cn-to-combine-with-kansas-city-southern/). (Enterprise value is equal to the value of a company's common stock – *i.e.*, stock price x shares – plus the value of its debt and other securities used to finance the firm, minus the value of its cash and marketable securities.)

both from the perspective of adjusted EBITDA[15] (an accrual, or accounting, based measure of profitability) and free cash flow ("FCF")[16] (a cash flow-based measure of profitability). In Exhibit III-5, I present a forecast of the synergies expected from the Merger. As shown in this exhibit, low and high forecasts of synergies and costs were modelled assuming "a phase-in of synergies over the three years following CN's receipt of final control approval from the STB."[17] As also shown in this exhibit, even after deducting the expected dissynergies and costs of synergies, the combined company was expected to realize positive net synergies in each year.[18]

IV. CLAIMS OF AN EXCESSIVE MERGER PREMIUM (PRICE), TOO MUCH DEBT, AND NO INDEPENDENT CHECKS ARE UNFOUNDED

12. In this section, I address three claims made by CP, namely: that CN does not have an independent check on the proposed price (premium) and financing for the Merger; that CN's proposed Merger price for KCS and the resulting premium are too high; and that the debt CN plans to issue to finance the Merger will create too much risk.

A. The CN Merger Is Subject to Multiple Financial "Checks"

13. The CN Merger proposal has been subjected to multiple "checks," all of which conclude that the Merger price (premium) is reasonable. Proposed merger transactions involving publicly traded companies face multiple "checks" for example:

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[15] Earnings before interest, tax, depreciation, and amortization.

[16] Unless I specify otherwise, whenever I refer to FCF, I am referring to unlevered FCF (that is, FCF before interest expense but after tax). Unlevered free cash flows, often just called free cash flows, "are the cash flows generated by the company after the collection of its revenues, payment of its expenses, and after making its investments, including investments in working capital. They are the cash flows the company would generate if it was entirely financed with equity. We use the word 'free' to describe these cash flows not because they were costless to generate, but because the company is 'free' (or able) to distribute these flows to its investors without interfering with the execution of its strategy." (Robert W. Holthausen and Mark E. Zmijewski, *Corporate Valuation: Theory, Evidence and Practice*, Second Edition, Cambridge Business Publishers, 2020, p. 11. ("Holthausen and Zmijewski"))

[17] Preliminary Proxy, p. 81. I assume that an equal percentage of the synergies and dissynergies (negative synergies) are phased in over each of those years.

[18] I note that the synergies from the Merger cannot be realized while KCS is held in the Voting Trust, and will not be realized if the Merger is not ultimately approved.

a. The most common "check" are the fairness opinions issued by the financial advisors retained by the merging parties. While not always legally required, the financial advisors offer the merging companies' Boards of Directors and/or specially formed committees an objective third-party analysis to assess whether the proposed merger price is reasonable.

b. Another common "check" are the opinions expressed by unaffiliated analysts who follow that industry. When a proposed merger is announced publicly, financial analysts, who are often viewed as representing the views of the market, analyze the proposed merger and publish reports, which are used by investors. Analysts typically study various aspects of the proposed merger including the merger consideration, the merger premium, potential synergies from the merger, and potential financial risks from financing the merger.

c. Regarding financial risks from financing the merger, a third "check" are the credit rating agencies' assessments of the financial risks to debtholders resulting from the merger (ability of the company to cover its interest payments and to pay its debts as they become due), which includes analyzing the financing of the merger and the financial risks after the merger closes.[19]

14. In this section, I review the CN Fairness Opinions, financial analyst commentaries about the Merger, and the expected credit rating of CN after the Merger. The CN Fairness Opinions and commentary from multiple financial analysts indicate that the merger consideration and premium are reasonable given the strategic nature of the acquisition by CN; and even after considering the additional debt CN would issue to finance the Merger, the credit rating agencies expect CN to maintain an investment grade (low risk) credit rating, which is the same or higher credit rating as 47% of the S&P500 companies with rated debt.

[19] The three main credit rating agencies are: Standard & Poor's (S&P), Moody's, and Fitch. Each has its own rating system. For example, Standard & Poor's uses "AAA" for the highest credit quality with the lowest credit risk, "AA" for the next best, followed by "A," then "BBB," etc. An important way credit agencies' ratings are partitioned are investment grade (low risk) and non-investment or speculative grade credit ratings (high risk). Investment grade credit ratings indicate that there is a high probability that the issuer of debt will meet its financial commitments (low risk debt).

B. The CN Fairness Opinions Indicate that the Merger Price and Resulting Premium Are Reasonable

15. Despite not being legally required to do so, CN obtained three fairness opinions, one each from J.P. Morgan ("JPM Fairness Opinion"), RBC Capital Markets ("RBC Fairness Opinion"), and Centerview Partners ("Centerview Fairness Opinion").[20] Two of the CN Fairness Opinions are from CN's financial advisors for the Merger; however, CN also obtained a third fairness opinion from Centerview Partners, who was not a financial advisor for the Merger but was engaged to provide its view about the reasonableness of the price (premium). All three fairness opinions concluded that the merger consideration (and resulting premium) is fair from a financial point of view.

C. Commentary about the Merger by Unaffiliated Financial Analysts

16. CN is followed by various financial analysts. After the announcement of the Merger, several analysts expected that CP would raise its offer to compete with CN, indicating that these analysts viewed CN's offer as reasonable, and that the potential long-term synergies of a combination of KCS with either company would outweigh the risk of issuing the additional debt to finance the Merger.[21] Financial analysts from Wolfe Research and National Bank of Canada

[20] Preliminary Proxy, Annex A, p. A-42.

[21] Several analysts wrote that they expected CP to raise its offer to compete with CN's offer, due to the potential benefits for either company of a merger with KCS.

For example, Cowen wrote that, "we suspect this will not be the last offer made for KSU given the opportunities/synergies associated with this combination" and "we fully expect a counter bid from CP as KSU appears too good of a property to give up without a fight." (Cowen and Company, "Canadian Face Off; Competing Bid for KSC," April 21, 2021).

Similarly, Credit Suisse wrote that "CN's strategic merger case is similar in nature to that of CP (*e.g.,* pro-competition and in the public interest)" and that "we think it is reasonable to assume the [sic] CP will raise its bid to $315 (Credit Suisse, "Rail Merger Mania 2021," April 21, 2021).

Desjardins' reaction was that, "ultimately, while it is difficult to assess whether CP will need to fully match CNR's offer to be considered a superior proposal, our analysis demonstrates that it would make sense for CP to do so (we derive 11% adjusted EPS accretion in 2025, in line with CNR)." (Desjardins, "Another buyer in town – additional thoughts on CNR's proposed counteroffer for KSU," April 21, 2021) viewed the proposed Merger as more accretive than the CP Transaction.[22] In addition, UBS and National Bank of Canada estimated that the increased CN leverage from borrowing the $19.3 billion could normalize in the first half of 2023 and fall to 2.8x by 2024.[23] Moreover, approximately one week after the Merger announcement, when CN reported its quarterly earnings for Q1 2021 and raised its full-year 2021 EPS guidance,[24] several analysts observed that these results put CN in a position to responsibly manage its Merger-related debt and leverage.[25]

D. The Addition of $19.3 Billion Debt from the Merger Creates No Risks Beyond Those Observed for Companies with Investment Grade Credit Ratings

17. In this section, I review CN's current credit rating, and its expected credit ratings after the Merger. Figure 1 below shows the distribution of credit ratings of the S&P500 companies as of

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TD Securities' report also indicated that "we anticipate that CP will respond with a higher offer." (TD Securities, "CN Makes Superior Proposal to Acquire KCS", April 21, 2021)

[22] Wolfe Research, April 20, 2021 analyst report: "Even with the higher purchase price, we estimate slightly more accretion initially for CNI since it's using a much bigger mix of debt (62%) than CP (33%)."

National Bank of Canada, April 20, 2021 analyst report: "Based our first pass on the pro-forma financials, assuming full potential synergies (which CN pegs at US$1.0 billion), we estimate potential EPS accretion to CN at ~16%. . . . We previously estimated that CP's proposal would be ~15% accretive to CP's EPS with full synergies. However, if CP were to match the total value of CN's offer, we estimate accretion to CP would fall to ~10%."

[23] UBS, April 21, 2021 analyst report: "Below the line, we assume $5 bn of the initial $19.3 bn (~2.75% interest rate) of deal-related debt is paid down as follows: $1.0 bn each in 2022 and 2023, and $1.5 bn each in 2024 and 2025 (we believe CN could generate stand-alone FCF of over $1 bn after dividends in 2022 and 2023). Assuming this pay down schedule, we estimate CN could reach 3.5x leverage in 1H23 and leverage could fall to 2.8x by 2024, after which CN may consider restarting its share repurchase program."

National Bank of Canada, April 20, 2021 analyst report: "CN's deal envisages US$19.3 billion in new debt to finance the cash component of the offer with financing already committed. CN's leverage would spike to 4.6x at the end of 2021 but would fall to 3.5x in 2023 once the deal closes."

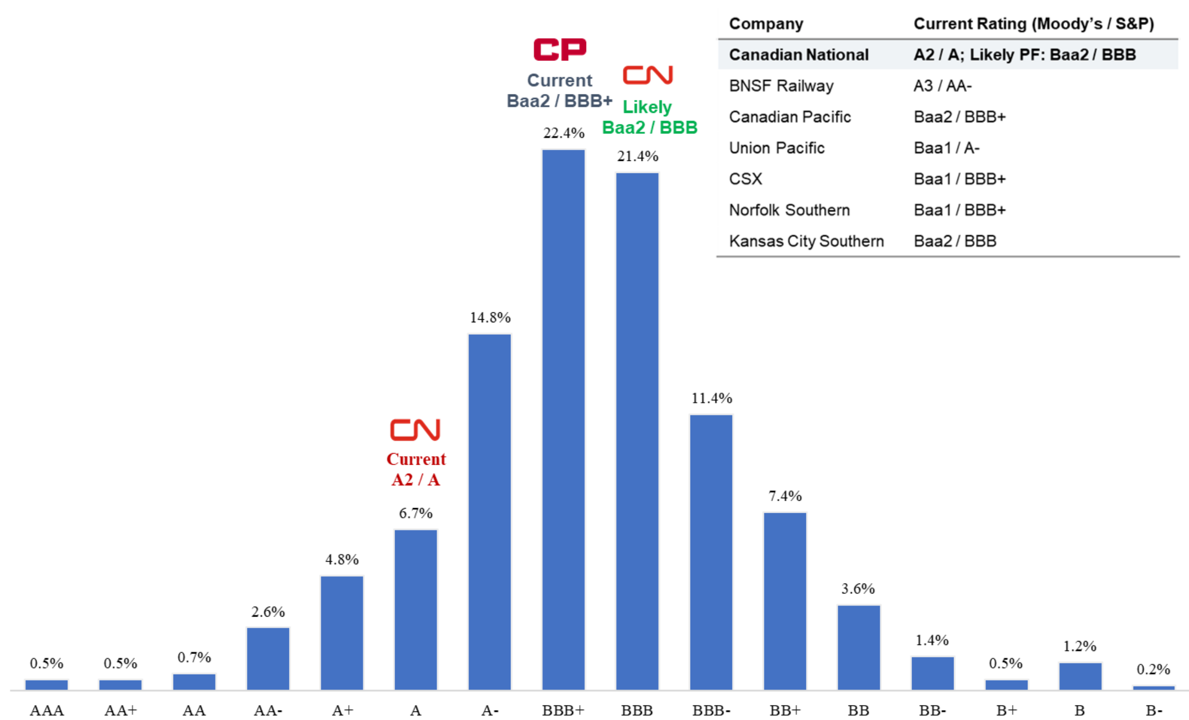
[24] Evercore ISI, "Conservative Guide Finally Laid Bare, If You Still Care (and You Should)," April 27, 2021.

[25] For example, Evercore noted that "if CN didn't suspend its buyback program (for obvious reasons) the upside to next year would be substantially higher as we had previously forecasted about C$1.5 billion of annual repurchases" and that "with C$3.0-3.3 billion of free cash flow guided for 2021 . . . CN retains the wherewithal to continue to de-lever its balance sheet and return capital to shareholders (when conditions allow it)." (Evercore ISI, "Conservative Guide Finally Laid Bare, If You Still Care (and You Should)," April 27, 2021).

July 1, 2020 and the credit ratings for the Class I Railroads (see the box on the right side of the figure).[26]

Figure 1

Current ratings distribution across S&P 500 companies



Source: S&P Capital IQ.

18. Currently, CN has the second highest credit rating of the Class I Railroads (see the box in Figure 1). After the Merger, CN is expected to be downgraded but nevertheless remain at an investment grade rating reflecting a lower risk credit profile in the context of credit ratings.[27] As seen in the figure, CN's expected post-Merger BBB credit rating is only one credit rating below

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[26] The credit ratings are the credit ratings available in the Capital IQ database on July 1, 2021. A total of 420 S&P500 companies had debt ratings available.

[27] See Moody's at https://www.moodys.com/research/Moodys-maintains-CN-Rails-ratings-under-review-for-downgrade-after--PR_447040; See S&P at https://disclosure.spglobal.com/ratings/en/regulatory/article/-/view/type/HTML/id/2648303.

most of the other Class I Railroads. I note that CP's current credit rating is one credit rating above CN's expected post-Merger BBB rating but, upon the announcement of the CP Transaction, Moody's downgraded CP from Baa1 to Baa2, which is the equivalent of S&P's BBB+/BBB rating.

19. A BBB credit rating is an investment grade credit rating and, as shown in Figure 1, 21% of the S&P500 companies with rated debt have a BBB credit rating. Moreover, more than 25% of the S&P500 companies with rated debt have a credit rating lower than BBB. Thus, the addition of $19.3 billion in debt used to finance the Merger creates no more risk for CN than the risk of 47% of the S&P500 companies with rated debt, and less risk than 26% of the S&P500 companies with rated debt.[28]

E. Conclusions

20. Prices and premiums offered by bidders competing to acquire the same target company can differ because of differences in the value of the expected synergies for each potential buyer and/or the allocation of the value of the synergies between the acquired (target) company and the buyer. Based on my review of the information available in the CN Fairness Opinions, financial analyst commentary, and CN's expected post-Merger debt rating, the proposed price (Merger consideration) and premium in the Merger are consistent with the synergies the Merger is expected to generate and consistent with the existing economic research showing that target companies often negotiate a price that reflects most of the value of the synergies, especially when the merger results from competitive bidding.[29] Competitive bidding is not evidence that

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[28] Even assuming all S&P500 companies that do not have a credit rating have an implicit credit rating higher than BBB, the addition of $19.3 billion in debt used to finance the Merger creates no more risk for CN than the risk of 40% of the S&P500 companies with rated debt, and less risk than 22% of the S&P500 companies.

[29] For an overview and review of this economic research, see Holthausen and Zmijewski, Chapter 1, Section 16.1. Regarding competition, see, for example, the early work by Bradley, Desai, and Kim (1988) provides economic

the price is unreasonable, but is evidence that the acquired company was able to capture much of the value that is expected to be created by the merger. In addition, even after considering the additional debt CN would issue to finance the Merger, the credit rating agencies expect CN to maintain an investment grade (low risk) credit rating, which implies the same or less risk than 47% of the S&P500 companies with rated debt. Based on the information I reviewed and analyses that I conducted I conclude the following:

a. **Opinion 1:** The financial aspects of the Merger have been reviewed by three financial advisors for CN (the CN Fairness Opinions), all of whom conclude that the proposed consideration offered, and thus the premium to KCS shareholders, is fair from a financial point of view.

b. **Opinion 2:** The Merger has been reviewed by multiple financial analysts who follow CN and who viewed the proposed consideration offered to KCS shareholders as reasonable.

c. **Opinion 3:** CN currently has a very high (A) investment grade credit rating, which is substantially higher than all of the other Class I railroads, except BNSF. With the proposed increase in CN's debt, the credit rating agencies have stated that CN will be downgraded but will continue to maintain an investment grade credit rating (BBB), and thus, CN will be well within the credit ratings of other S&P 500 companies and other Class I railroads.

d. **Opinion 4:** Based on the CN Fairness Opinions, financial analyst commentaries about the Merger, and CN's expected credit rating, the proposed merger consideration and premium are reasonable given the substantial synergies the Merger is expected to generate and the competitive bidding process in which CN participated.

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evidence that "competition among bidding firms increases the returns to targets and decreases the returns to acquirers." (Bradley, M., A. Desai and E.H. Kim, "Synergistic Gains from Corporate Acquisitions and their Division between the Stockholders of Target and Acquiring Firms," *Journal of Financial Economics*, 21 (1998), p. 31). See, also, Aktas, Nihat et al., "Negotiations Under the Threat of an Auction," *Journal of Financial Economics*, 98 (2010), p. 242 ("[o]ur empirical results confirm the existence of latent competition on acquirers' bidding in one-on-one negotiations: More potential competitors are associated with higher bids.").

V. EVEN USING PESSIMISTIC FORECASTS (STRESS TEST), CN WOULD BE FINANCIALLY SOUND WHILE KCS IS HELD IN THE VOTING TRUST AND AFTERWARDS, WHETHER OR NOT THE MERGER IS ULTIMATELY APPROVED

21. In this section, I analyze whether CN would be financially sound while KCS is held in the Voting Trust. I also analyze whether the merged CN/KCS company would be financially sound assuming the Merger is approved by STB. Lastly, I analyze whether CN would be financially sound assuming the Merger is not ultimately approved by the STB.

22. In my analyses I used pessimistic forecasts (stress test) for both CN and KCS ("Pessimistic Forecasts"). The Pessimistic Forecasts:

a. are based on the actual financial performance of CN and KCS in 2020, which, as is widely known, included the effects of a substantial downturn in the economy resulting from the COVID-19 pandemic;

b. are adjusted to include the change in operating working capital of $0 (instead of being positive and a source of cash)[30] and an increase in investment in capital expenditures at its pre-COVID-19 (pre-2020) levels;

c. do not include the cash flows generated by CN or KCS while KCS is held in the Voting Trust, which could be used by CN to repay its debt and which will increase KCS's value while it is held in the Voting Trust;[31] and

d. do not include the realization of any synergies expected to result from the Merger.

23. Thus, my analyses based on the Pessimistic Forecasts are conservative and provide a stress test of the Merger because they assume a continuation of the substantial economic downturn that occurred in 2020;[32] they ignore the consensus forecast that the economy is

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[30] The Pessimistic Forecasts assume no change in revenues or the financial performance of the companies' operations, therefore, I assume no change in operating working capital and other adjustments.

[31] Not including the cash flows generated by CN or KCS while KCS is held in the Voting Trust will result in both CN and KCS having substantial cash balances by the end of 2023, when I assume the STB will make its final decision about the Merger.

[32] See, for example, US gross domestic product statistics, available from the Federal Reserve Bank of St. Louis at https://fred.stlouisfed.org/series/GDP. See also https://www.reuters.com/article/us-usa-economy/covid-19-savages-u-s-economy-2020-performance-worst-in-74-years-idUSKBN29X0I8.

expected to grow substantially over the next few years;[33] they are adjusted for an increase in investments in capital expenditures; they do not include the cash flows generated by either company while KCS is held in the Voting Trust; and, if the Merger is ultimately approved by the STB, they ignore that CN and KCS, as well as financial analysts, expect the realization of substantial synergies to result from the Merger.[34]

A. Even Using Pessimistic Forecasts, CN Would Be Financially Sound While KCS Is Held in the Voting Trust

24. In this section, I analyze whether CN would be financially sound prior to the final decision by the STB to approve or not approve the Merger (while KCS is held in the Voting Trust). I assume that the STB's final decision to approve or not approve the Merger will occur at the end of 2023 and the Voting Trust is terminated at that time, and that CN will immediately divest KCS if the Merger is not approved. I understand that the length of the STB's review process (including the time required to prepare and submit an application) can vary and could take longer than the roughly two-year period I am assuming and that CN would have a longer period over which to divest KCS. Although I am assuming these shorter time periods, these

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[33] United States of America Nominal GDP Growth Forecasts:

Source	Estimate	As of date	Value
Congressional Budget Office	Average of 2021-2025	1/28/2019	3.80%
Economic Report of the President	Average of 2021-2025	3/1/2019	5.08%
Organisation for Economic Co-operation and Development	Average of 2021-2025	6/7/2018	3.71%
Annual Energy Outlook[1]	Average of 2021-2025	1/24/2019	4.13%
Median			**3.96%**
Mean			**4.18%**

Sources:
1. https://www.cbo.gov/data/budget-economic-data#4
2. https://www.govinfo.gov/content/pkg/ERP-2019/pdf/ERP-2019.pdf
3. https://www.oecd-ilibrary.org/economics/data/oecd-economic-outlook-statistics-and-projections/long-term-baseline-projections-no-103_68465614-en
4. https://www.eia.gov/outlooks/aeo/data/browser/#/?id=18-AEO2019&sourcekey=0

[34] See the previous two sections for the CN and KCS forecasts, CN Fairness Opinions, and financial analyst commentaries.

assumptions are conservative because I assume no growth or increase in profitability or increase in the cash flows of either company during the STB's review period, and I do not include the accumulation of cash from either the CN or KCS operations during this period in my calculations.

25. In Exhibit V-1, I present the calculation of CN's unlevered free cash flows ("FCF") and its cash flow available for financing activities (unlevered free cash flows minus after-tax interest and lease payments). At the bottom of the exhibit, I also present CN's debt balance and market capitalization as of the end of each year (2018 through 2020). I present CN's pro-forma financial performance in 2020 ("CN's Unconsolidated 2020 Pro-Forma"),[35] assuming the Merger occurred on January 1, 2020.[36] As is clear from this exhibit, CN generated substantial FCFs and cash flow available for financing activities in each year (2018 – 2020). CN's Unconsolidated 2020 Pro-Forma also shows that CN would have generated substantial FCFs and cash flow available for financing.

26. I analyze CN's financial leverage ratios in Exhibit V-2. In Panel A of the exhibit, I present CN's Adjusted EBITDA Interest Coverage Ratio, which measures the number of times that Adjusted EBITDA would be able to "pay" or "cover" pre-tax-affected interest. As shown in Panel A, CN's Adjusted EBITDA Interest Coverage Ratio is approximately 10.0x in each of 2018 through 2020 and is about 5.1x on an Unconsolidated 2020 Pro-Forma basis. In Panel B of the exhibit, I calculate CN's Adjusted Debt to Adjusted EBITDA leverage ratio, which measures the ability of a company's financial performance (earnings and cash flows) to repay its debt. As

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[35] Unconsolidated means CN and KCS operate independently and KCS pays a dividend to CN.

[36] As shown in this exhibit, I make changes to CN's 2020 financial performance: CN receives a dividend from KCS equal to the dividends KCS paid in 2020, CN has $19.3 billion of additional acquisition debt, CN has additional interest payments (and interest deductions for tax purposes) due to this additional debt, set CN's changes in operating working capital to equal $0, and increase CN's investments in capital expenditures (as a percentage of revenue).

shown in the exhibit, CN's Adjusted Debt to Adjusted EBITDA was between 1.9x and 2.0x in 2018 through 2020 and is about 5.3x based on CN's Unconsolidated 2020 Pro-Forma forecast.[37]

27. Thus, while CN's financial leverage would increase for a time after the Merger, CN would still be able to service its debt payments, which is consistent with the expectation of the credit ratings agencies that CN will maintain an investment grade credit rating after the Merger. In sum, even using the Pessimistic Forecasts, post-Merger CN would be financially sound while KCS is held in the Voting Trust.

B. Even Using Pessimistic Forecasts, the Combined CN/ KCS Company Would Be Financially Sound After the Merger Is Approved by the STB

28. In this section, I assume the Merger is ultimately approved by the STB at the end of 2023 and the Voting Trust is terminated. I analyze the merged CN/KCS company beginning in 2024 using the Pessimistic Forecasts for CN and KCS. In Exhibit V-3, I present the calculation of CN/KCS's unlevered free cash flows (FCF) and its cash flow available for financing activities for the combined company's pro-forma financial performance in 2020 ("CN/KCS's Consolidated 2020 Pro-Forma"), again assuming the Merger occurred on January 1, 2020.

29. I analyze CN/KCS's financial leverage ratios in Exhibit V-4. In Panel A of the exhibit, I present the Adjusted EBITDA Interest Coverage Ratio. As shown in Panel A, even assuming the Pessimistic Forecasts and not considering the cash flow CN and KCS will generate while KCS is held in the Voting Trust that can be used by CN/KCS to repay its debt, CN/KCS's Adjusted EBITDA Interest Coverage Ratio is roughly 5.4x in each year, and CN/KCS's Adjusted Debt to Adjusted EBITDA is 4.8x in each year.

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[37] I note that CN's Unconsolidated 2020 Pro-Forma forecast only includes 10% of KCS's Adjusted EBITDA (from KCS dividends. On a consolidated basis, all of KCS's 2020 Adjusted EBITDA would be included in the financial leverage ratio and CN's Adjusted Debt to Adjusted EBITDA would be 4.2x.

30. Thus, if the Merger is ultimately approved and the Voting Trust is terminated (*i.e.*, KCS is taken out of the Voting Trust), CN's Adjusted Debt to Adjusted EBITDA leverage ratio and its Adjusted EBITDA Interest Coverage Ratio would improve and continue to improve each year as CN/KCS uses its cash flow to repay its debt. This conclusion is consistent with the credit ratings agencies expecting CN to maintain an investment grade credit rating after the Merger and financial analyst commentary expecting CN to be able to repay its debt. In sum, even using the Pessimistic Forecasts, the post-Merger combined CN/KCS company would be financially sound after the Merger is approved.

C. Even Using Pessimistic Forecasts (Stress Test), CN Would Be Financially Sound Even If the Merger Is Not Approved and CN Is Required to Divest KCS

31. In the previous two sections, I show that CN would be financially sound while KCS is held in the Voting Trust and if the Merger is ultimately approved by the STB. In this section, I analyze the financial performance of CN assuming the Merger is not ultimately approved and CN is required to divest KCS. As I did in the previous section, I conservatively assume that KCS will remain in the Voting Trust through the end of 2023 but, at the end of 2023, the Merger is not ultimately approved and CN immediately divests KCS.

32. In my analysis, I conservatively assume that the price at which CN will divest KCS is substantially lower than the price at which KCS shares were trading before the first public announcement of KCS potentially being acquired by CP (KCS's "Unaffected Stock Price" and "Unaffected Stock Price Date"); in other words, I not only assume a price that does not include any premium relative to KCS's Unaffected Stock Price but I assume CN would divest KCS at a

discount relative to KCS's Unaffected Stock Price.[38] (Recall from Exhibit III-1, KCS's stock price was roughly $224 per share and its market capitalization was $20.4 billion on the Unaffected Stock Price Date.)

33. In Exhibits V-5A and V-5B, I present CN's FCF and its cash flow available for financing activities assuming that CN divests KCS based on two alternative discounts: (1) approximately a 5% discount from KCS's Unaffected Stock Price resulting in proceeds of $19.3 billion from the divestiture, the amount of additional debt used to finance the Merger (Exhibit V-5A); and (2) approximately a 30% discount from KCS's Unaffected Stock Price, resulting in proceeds of $13.6 billion from the divestiture (Exhibit V-5B).

34. As shown in Exhibit V-5A, if CN divests KCS at a 5% discount from KCS's Unaffected Stock Price, resulting in proceeds of $19.3 billion from the divestiture, it would be able to repay all of the debt issued to finance the Merger; and as shown in Exhibit V-5B, even if CN divests KCS at a discount as great as 30% from KCS's Unaffected Stock Price, resulting in proceeds of $13.6 billion from the divestiture, it would be able to repay more than two-thirds of the Merger debt from the proceeds of that divestiture sale. Recall that my Pessimistic Forecasts and analyses do not include the cash flows generated by CN or KCS while KCS is held in the Voting Trust, which could be used by CN to repay its debt. Based on CN's forecasts, CN could use its cash flows generated while KCS is held in the Voting Trust to repay most, if not all of the, remaining one-third of its debt issued to finance the Merger even if KCS were divested at a 30% discount.

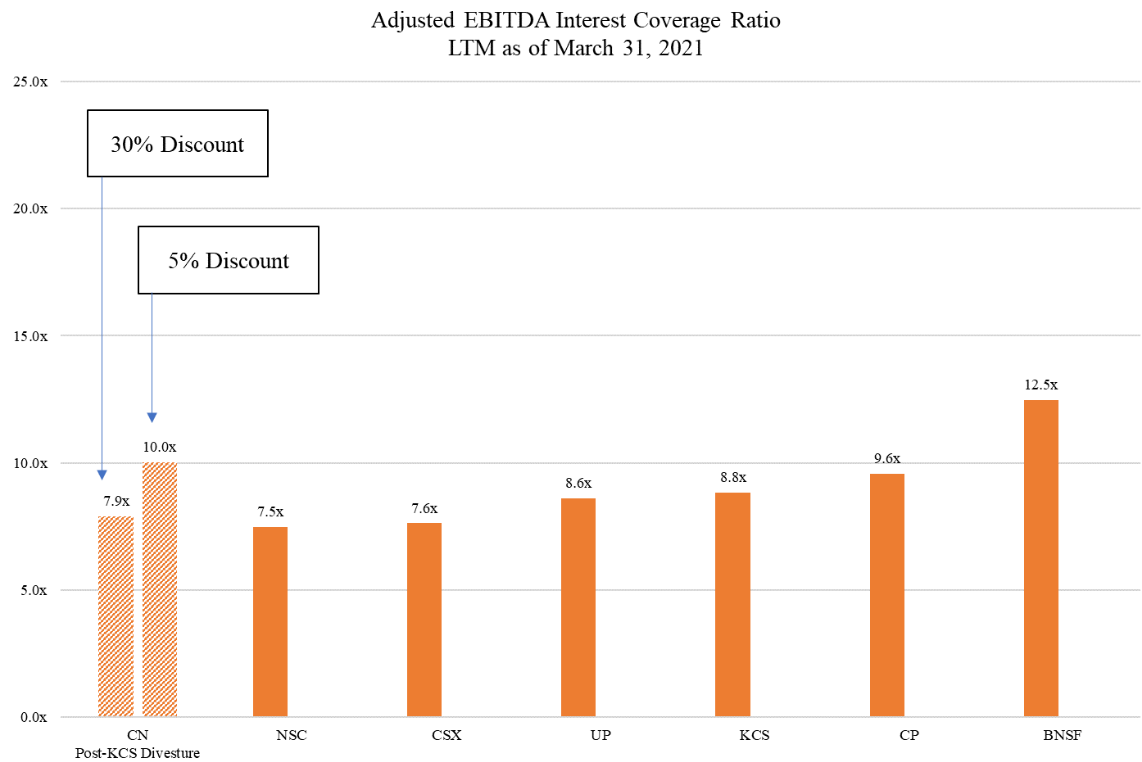
35. In Exhibits V-6A and V-6B, I analyze CN's financial leverage ratios after divesting KCS under the 5% and 30% discount alternatives. In Panel A of each of these exhibits, I present CN's

[38] It is widely known that KCS had multiple bidders, including a private equity bidder, all of which offered prices higher than KCS's Unaffected Stock Price. See, for example, CN F-4 Registration Statement (June 22, 2021), Exhibit 14 to CP's Reply, p. 47.

Adjusted EBITDA Interest Coverage Ratio. As shown in Panel A, the Adjusted EBITDA Interest Coverage Ratio is approximately 5.1x in each year and increases to 10.0x in 2024 assuming CN would divest KCS at a 5% discount relative to KCS's Unaffected Stock Price (Exhibit V-6A), and 7.9x assuming CN would divest KCS at a 30% discount relative to KCS's Unaffected Stock Price (Exhibit V-6B).

36. In Figure 2 below, I present the Adjusted EBITDA Interest Coverage ratio for each of the Class I Railroads as of March 31, 2021, including CN's Adjusted EBITDA Interest Coverage ratio after it divests KCS under both the 5% and the 30% discount alternatives. This figure shows that, even using the Pessimistic Forecasts and even assuming that CN would divest KCS at up to a 30% discount relative to KCS's Unaffected Stock Price, CN's Adjusted EBITDA Interest Coverage ratio would be in the same range as the other Class I railroads.

Figure 2



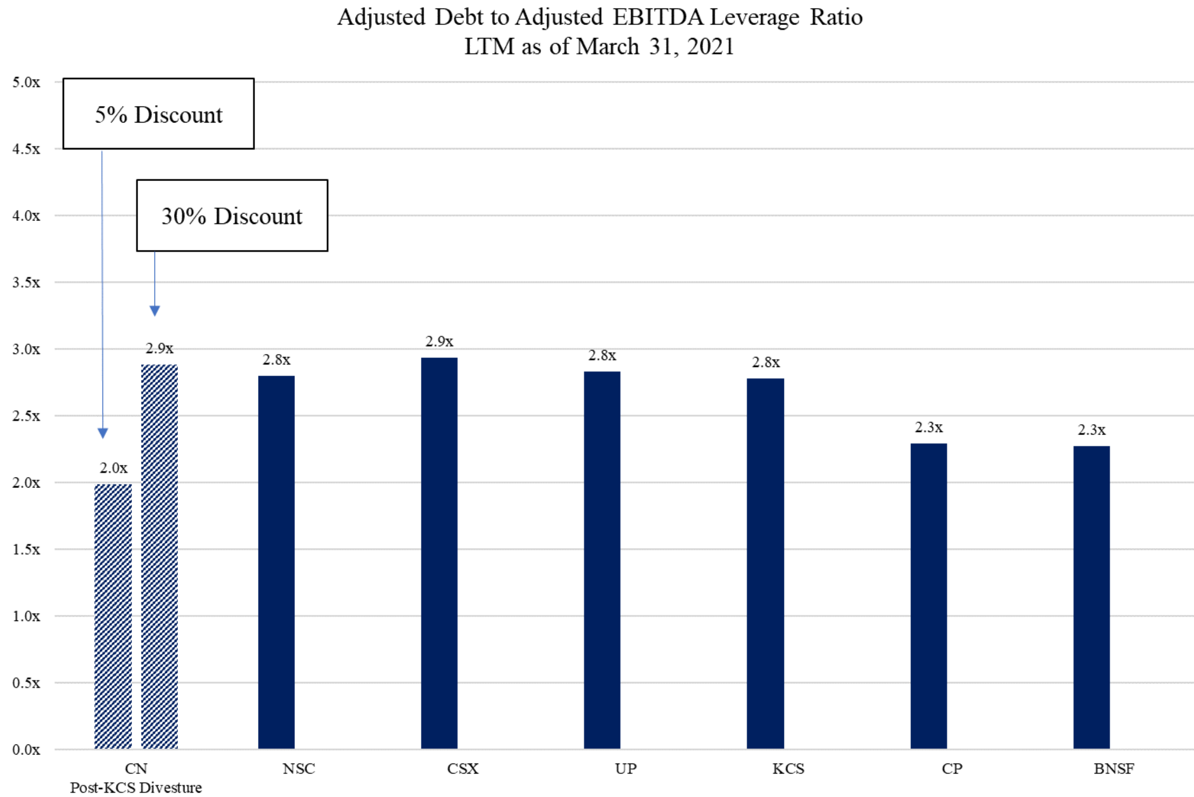
Note: BNSF data is as of December 31, 2020.
Sources: Exhibits V-6A and V-6B; 2020 BRK Annual Report; S&P Capital IQ.

37. In Panel B of Exhibits V-6A and V-6B, I present CN's Adjusted Debt to Adjusted EBITDA leverage ratio. As shown in Panel B, the Adjusted Debt to Adjusted EBITDA ratio is approximately 5.3x in each year and reduces to 2.0x in 2024 assuming CN would divest KCS at a 5% discount from KCS's Unaffected Stock Price (Exhibit V-6A), and decreases to 2.9x assuming CN would divest KCS at a 30% discount from KCS's Unaffected Stock Price (Exhibit V-6B).

38. In the Figure 3 below, I show the Adjusted Debt to Adjusted EBITDA leverage ratio for each of the Class I Railroads as of March 31, 2021 including CN's leverage ratio after it divests KCS. This figure shows that, even using the Pessimistic Forecasts and even assuming that CN

would divest KCS at up to a 30% discount from KCS's Unaffected Stock Price, CN's Adjusted Debt to Adjusted EBITDA leverage ratio would be within the same range as the other Class I railroads.

Figure 3



Note: BNSF data is as of December 31, 2020.
Sources: Exhibits V-6A and V-6B; 2020 BRK Annual Report; S&P Capital IQ.

39. Thus, even using the Pessimistic Forecasts and even assuming that CN would divest KCS at up to a 30% discount from KCS's Unaffected Stock Price, CN would be able to repay most of the debt from the Merger and have financial leverage ratios (Adjusted EBITDA Interest Coverage Ratio and Adjusted Debt to Adjusted EBITDA Leverage Ratio) in the same range as the other Class I railroads. In sum, even using the Pessimistic Forecasts and a heavily discounted

price at which CN would divest KCS, CN would be financially sound even if the Merger is not ultimately approved by the STB.[39]

D. Conclusions

40. The analyses I conducted in this section are based on Pessimistic Forecasts for CN and are conservative because they assume a continuation of the substantial economic downturn that occurred in 2020; they ignore the consensus forecast that the economy is expected to grow substantially over the next few years; they are adjusted for an increase in investments in capital expenditures; they do not include the cash flows generated by either company while KCS is held in the Voting Trust; and, if the Merger is ultimately approved by the STB, they ignore that CN and KCS, as well as financial analysts, expect the realization of substantial synergies to result from the Merger. Regardless, even using the Pessimistic Forecasts (stress test), CN would be financially sound while KCS is held in the Voting Trust and afterwards whether or not the Merger is approved. Based on the information I reviewed and the analyses I conducted, I have formed following opinions:

a. **Opinion 5:** Even applying pessimistic forecasts (stress test) based on economic conditions mirroring those that existed during the COVID-19 pandemic, CN would be financially sound while KCS is held in the Voting Trust.

b. **Opinion 6:** Even applying pessimistic forecasts (stress test) based on economic conditions mirroring those that existed during the COVID-19 pandemic, CN would be financially sound if the Merger is ultimately approved.

c. **Opinion 7:** Even applying pessimistic forecasts (stress test) based on a divestiture sale of KCS at a distressed price, CN would be financially sound if the Merger is ultimately not approved and CN has to divest KCS.

[39] I note that if the Merger were not approved, CN could choose to take KCS public again through an initial public offering ("IPO"). Based on its past historical performance, KCS would be a desirable IPO candidate.

VI. EVEN USING PESSIMISTIC FORECASTS (STRESS TEST), KCS WOULD BE FINANCIALLY SOUND WHILE KCS IS HELD IN THE VOTING TRUST AND AFTERWARDS, WHETHER OR NOT THE MERGER IS APPROVED

41. In this section, I analyze whether KCS would be financially sound while KCS is held in the Voting Trust and after the final decision by the STB to approve or not approve the Merger. First, it is important to note that, based on the Voting Trust Agreement, KCS will continue to operate independently while it is held in the Voting Trust, and therefore, KCS's financial performance during that period, and afterward if the Merger is not approved are essentially unaffected by the Merger.[40] Regardless, in this section I analyze KCS's financial performance in the same ways I analyzed CN's financial performance in the previous section.

42. In Exhibit VI-1, I present KCS's unlevered free cash flows (FCF) and its cash flow available for financing activities. At the bottom of the exhibit, I present KCS's debt balances. I also present KCS's pro-forma financial performance in 2020 ("KCS's Unconsolidated 2020 Pro-Forma"), assuming the Merger occurred on January 1, 2020, and adjust KCS's operating working capital and increase its investments in capital expenditures to create KCS's Pessimistic Forecast.

43. I analyze KCS's financial leverage ratios in Exhibit VI-2. In Panel A of the exhibit, I present the Adjusted EBITDA Interest Coverage Ratio. As shown in Panel A, the Adjusted EBITDA Interest Coverage Ratio is between 7.9x and 8.6x in each of 2018 through 2020, and 7.9x on an Unconsolidated 2020 Pro-Forma basis. In Panel B of the exhibit, I calculate KCS's

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[40] I understand that the Voting Trust is structured such that "all of the outstanding shares of capital stock of [KCS] will be deposited into the [STB Voting Trust] in accordance with the terms and conditions of the voting trust agreement. The trustee will agree to act as voting trustee in respect of the voting trust . . . and CN will be unable to exercise control over KCS while the trust stock is held by the trustee." This structure "will insulate the [KCS] from control by CN and . . . [t]he management and board of directors of KCS will continue to manage the surviving corporation while it is in trust, pursuing its independent business plan and growth strategies." Preliminary Proxy, pp. 4-5.

Adjusted Debt to Adjusted EBITDA leverage ratio. As shown in the exhibit, KCS's Adjusted Debt to Adjusted EBITDA was between 2.1x and 2.7x in 2018 through 2020 and is 2.7x based on KCS's Unconsolidated 2020 Pro-Forma forecast.

44. Thus, given that KCS continues to operate independently while it is held in the Voting Trust, KCS's financial performance while it is held in the Voting Trust is unchanged by the Merger. Based on the information I reviewed and the analyses I conducted, I have the following opinion:

a. **Opinion 8:** Even applying pessimistic forecasts (stress test) based on economic conditions mirroring those that existed during the COVID-19 pandemic, KCS would be financially sound while KCS is held in the Voting Trust and afterwards, if the Merger is approved or not approved.

VII. SUMMARY AND CONCLUSIONS

45. As I stated in the introduction, I understand that the STB has the discretion to grant or deny CN's Motion for Voting Trust. I further understand that the STB will carefully review whether CN and KCS would be financially sound while KCS is held in the Voting Trust and afterwards, regardless of whether or not the Merger is ultimately approved. My analyses in this Verified Statement demonstrate that CN and KCS would, in fact, be financially sound while KCS is held in the Voting Trust and afterwards, regardless of whether or not the Merger is approved.

46. The financial aspects of the Merger were reviewed by three separate financial advisors whose fairness opinions all concluded that the Merger consideration offered to KCS shareholders is reasonable. The Merger has also been reviewed by multiple financial analysts who follow CN and conclude that the proposed consideration (and premium) offered to KCS shareholders was viewed as reasonable. The price and premium offered by CN to acquire KCS are consistent with a Merger that is expected to create substantial synergies and a competitive bidding process in

which most of the value of the synergies is allocated to the target. Regarding the proposed increase in CN's debt, the credit rating agencies expect that CN will maintain an investment grade credit rating, which will be the same as or higher than 47% of the S&P500 companies with rated debt.

47. In addition, I conducted various analyses of the financial performance and financial leverage of CN and KCS based on the Pessimistic Forecasts. My analyses show that even using the Pessimistic Forecasts (stress test), CN and KCS would both be financially sound while KCS is held in the Voting Trust and afterwards, regardless of whether or not the Merger is ultimately approved.

VERIFICATION

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

Mark E. Zmijewski

Mark E Zmijewski

July 6, 2021

APPENDIX A – QUALIFICATIONS

1. I specialize in the areas of accounting, economics, and finance as they relate to valuation, financial analysis, and security analysis, or more generally, financial economics. I am Professor Emeritus at The University of Chicago Booth School of Business, and previously held the Charles T. Horngren Professorship and the Leon Carroll Marshall Professorship in my 30-year career at Chicago Booth. In addition to my faculty duties, I also held the positions of Deputy Dean and the PhD Program faculty director at Chicago Booth. I was also the faculty director of the University of Chicago's Center for Research in Security Prices, which is widely recognized for its expertise in building and maintaining historical, academic, research-quality stock market databases.

2. I earned my BS in 1976, MBA in 1981, and PhD (PhD with major in accounting and minors in economics and finance) in 1983, all from the State University of New York at Buffalo. In addition to The University of Chicago, I have taught at the State University of New York at Buffalo and at York University in Toronto, Canada. I have taught various courses in accounting (financial accounting, managerial accounting, and advanced accounting/mergers and acquisitions), finance (corporate finance, financial strategy and corporate transactions, financial analysis, and valuation of companies and corporate transactions), and entrepreneurship.

3. My research focuses on firm valuation, the pricing of securities, including publicly traded securities, and the ways in which various capital market participants use information to value securities. I have taught courses in financial and managerial accounting, mergers and acquisition accounting, financial analysis, corporate valuation, and financial strategy. I have published articles in academic journals in the areas of accounting and financial economics and also co-authored a textbook (with Professor Robert Holthausen of The Wharton School of the University of Pennsylvania) on how to value companies, parts of companies, and the securities issued by

companies, titled *Corporate Valuation: Theory, Evidence and Practice*. I have been an Associate Editor of *The Accounting Review* and have been on the Editorial Boards of both the *Journal of Accounting Research* and *The Accounting Review*.

4. I am a Senior Consultant to Charles River Associates, a consulting firm that provides economic, financial, and management consulting services. I am also a member of the Investment Committee at Patron Capital Partners (Funds IV and V), a private equity investment company with a focus on real estate related investments. I was a founding partner of Chicago Partners, LLC, which was acquired by Navigant Consulting. I am a former managing director of Navigant Economics (a subsidiary of Navigant Consulting) and a former member of the corporate executive committee of Navigant Consulting.

5. I have worked as a consultant or expert in litigation matters in U.S. state and federal courts, in the Supreme Court of Victoria in Australia, and in U.S. and international arbitrations. The issues on which I have worked include: business valuation and securities valuation (valuation of corporate transactions, companies, and parts of companies, intangible assets and intellectual property, and securities); securities litigation (Rule 10b-5, Section 11, Section 12, ERISA, Martin Act, effect of disclosures, analysis of how markets work, and insider trading); mergers and acquisitions (appraisals and price disputes, analyzing merger synergies, material adverse changes, corporate transactions, and the process of purchasing and selling companies); solvency and ability to pay (fraudulent conveyance, solvency assessment, and ability to pay government fines, analysis of debt covenants, renegotiation of terms of debt agreements, and debt refinancing); antitrust litigation (analysis of merger efficiencies, failing firm defense, and financial analyses of alleged anticompetitive behavior); commercial and stockholder disputes (damages, accounting analyses, and economic assessment of transactions); accounting issues

(measuring and analyzing revenue, cost structures, profitability, rates of return, interest rates, and other financial metrics and concepts); and creating and evaluating business plans. The frameworks and tools I use in my work are generally applicable to all industries, and I have applied my expertise in a broad range of sectors, including airline, auto, financial services, chemical, computer hardware and software, credit card and credit card security, energy, entertainment, for-profit education, health care, insurance, heavy and light manufacturing, pharmaceutical, retail, real estate investment funds, technology, telecommunications, transportation, investment companies/funds, investment advisory and brokerage companies, and others. My curriculum vitae, which begins on the following page, details my qualifications, including my publications and testimonial experience within the last five years.

Mark E. Zmijewski (Zme – yev' -ski) Bio

Professor Zmijewski specializes in the areas of accounting, economics, and finance as they relate to valuation, financial analysis, and security analysis, or more generally, financial economics. He is Professor Emeritus at The University of Chicago Booth School of Business, and previously held the Charles T. Horngren Professorship and the Leon Carroll Marshall Professorship in his 30-year career at the Booth. In addition to his research and teaching activities, Professor Zmijewski also held the positions of Deputy Dean, Associate Dean for PhD Studies, and the Faculty Director of the Center for Research in Security Prices (CRSP), all at the Booth School of Business. Professor Zmijewski is a Senior Consultant to Charles River Associates, a consulting firm that provides economic, financial, and management consulting services. He is also a Senior Advisor to, and a member of, the Investment Committee at Patron Capital Partners (Funds IV and V), a private equity investment company with a focus on real estate related investments. Professor Zmijewski was a Founding Partner of Chicago Partners, LLC, which was acquired by Navigant Consulting. He is the former Managing Director of Navigant Economics (a subsidiary of Navigant Consulting) and a former member of the Corporate Executive Committee of Navigant Consulting.

Professor Zmijewski earned his BS in 1976, MBA in 1981, and PhD with a major in accounting and minors in economics and finance in 1983, all from the State University of New York at Buffalo. In addition to The University of Chicago, he has taught at the State University of New York at Buffalo and at York University in Toronto, Canada. He has taught various courses in accounting (financial accounting, managerial accounting, and advanced accounting/mergers and acquisitions), finance (corporate finance, financial strategy and corporate transactions, financial analysis, and valuation of companies and corporate transactions), and entrepreneurship. Professor Zmijewski's research has focused on firm valuation and the ways in which various capital market participants use information to value securities. He has published articles in academic journals in the areas of accounting and financial economics and has co-authored a textbook (with Professor Robert Holthausen of The Wharton School of the University of Pennsylvania) on how to value companies, parts of companies, and the securities issued by companies, titled "Corporate Valuation: Theory, Evidence and Practice." He has been an Associate Editor of *The Accounting Review*, and has been on the Editorial Boards of both the *Journal of Accounting Research* and *The Accounting Review*.

Professor Zmijewski has worked as a consultant or expert in litigation matters in US state and federal courts, in the Supreme Court of Victoria in Australia, and in US and international arbitrations. The issues on which he has consulted include: business valuation and securities valuation (valuation of corporate transactions, companies, and parts of companies, intangible assets and intellectual property, and securities); securities litigation (10b-5, section 11, section 12, ERISA, Martin Act, and insider trading); mergers and acquisitions (appraisals and price disputes, analyzing merger synergies, material adverse changes, corporate transactions, and the process of purchasing and selling companies); solvency and ability to pay (fraudulent conveyance, solvency assessment, and ability to pay government fines); antitrust litigation (analysis of merger efficiencies, failing firm defense, and financial analyses of alleged anticompetitive behavior); commercial and stockholder disputes (measurement of damages, accounting analyses, and economic assessment of transactions); accounting issues (measuring and analyzing revenue, cost structures, profitability, rates of return, interest rates, and other financial metrics and concepts); and creating and evaluating business plans.

The frameworks and tools used in his work are generally applicable to all industries, and he has applied his expertise in a broad range of sectors, including the airline, auto, chemical, computer hardware and software, credit card, energy, entertainment, financial services, for-profit education, health care, insurance, heavy and light manufacturing, pharmaceutical, retail, real estate investment fund, technology, telecommunications, and transportation industries, among others.

Mark E. Zmijewski (Zme-yev’-ski)

Senior Consultant

PhD, Accounting
State University of New York
at Buffalo

MBA, Accounting
State University of New York
at Buffalo

BA, Accounting
State University of New York
at Buffalo

Academic employment

1984–Present	The University of Chicago Booth School of Business
	Professor Emeritus (2018–Present)
	Charles T. Horngren Professor of Accounting (2015–2018)
	Leon Carroll Marshall Professor of Accounting (1999–2015)
	Deputy Dean (1996–2011)
	Professor of Accounting (1992–1999)
	Associate Dean for PhD Studies (1995–1996)
	Executive Director, Center for Research in Securities Prices (CRSP) (1992–1998)
	Associate Professor of Accounting (1988–1992)
	Assistant Professor of Accounting (1984–1988)
1980–1984	*Assistant Professor of Accounting*, State University of New York at Buffalo
1979–1982	*Course Director*, York University, Toronto Canada
1977–1980	*Teaching Assistant*, State University of New York at Buffalo

Honors and awards

Business Information Professional of the Year—Education, Beta Alpha Psi, 2007.

Hillel J. Einhorn Excellence in Teaching Award, The Executive MBA Program, The University of Chicago Graduate School of Business, 1999.

Emory Williams Award for Excellence in Teaching, The University of Chicago, 1988

Competitive Manuscript Award, American Accounting Association, 1984.

Beta Alpha Psi, Honorary Accounting Society, 1981.

Beta Gamma Sigma, Honorary Business Society, 1980.

Grants

Research Grant, SEC and Financial Reporting Institute, 1985.

University Fellowship, State University of New York at Buffalo, 1979.

Graduate Fellowship, State University of New York at Buffalo, 1976–1978.

Publications

Corporate Valuation: Theory, Evidence and Practice (textbook). With Robert W. Holthausen, Cambridge Business Publishers, LLC, 1st Edition, 2014; 2nd edition, 2020.

“Valuation with Market Multiples: How to Avoid Pitfalls When Identifying and Using Comparable Companies.” With R. Holthausen. *Journal of Applied Corporate Finance*, Summer 2012.

“Pitfalls in Levering and Unlevering Beta and Cost of Capital Estimates in DCF Valuations.” With R. Holthausen. *Journal of Applied Corporate Finance*, Summer 2012.

“Accounting and Disclosure Issues in Structured Finance.” With Keith Bockus and W. Dana Northcut. In *Corporate Aftershock: The Public Policy Lessons from the Collapse of Enron and Other Major Corporations*, C.L. Culp and W.A. Niskanen, eds., Wiley, 2003.

“Discovery and the Financial Analyst.” With Roger Hickey. *Litigation Services Handbook*, January 1995.

“How Useful Are *Wall Street Week* Stock Recommendations?” With P. Griffin and J. Jones. *Journal of Financial Statement Analysis*, Fall 1995.

“Contemporaneous Announcements of Dividends and Earnings.” With R. Leftwich. *Journal of Accounting, Auditing, and Finance*, Autumn 1994.

“The Relative Informativeness of Accounting Disclosures in Different Countries.” With A. Alford, J. Jones, and R. Leftwich. *Journal of Accounting Research*, Supplement, 1993.

“Extensions and Violations of the Statutory SEC Form 10-K Filing Requirements.” With A. Alford and J. Jones. *Journal of Accounting and Economics*, 1993.

“SEC Form 10-K/10-Q Reports and Annual Reports to Shareholders: Reporting Lags and Squared Market Model Prediction Errors.” With P. Easton. *Journal of Accounting Research*, Winter 1993.

The Phish Corporation: A Practice Case in Managerial Accounting, With R. Derstine, R. Huefner, and S. Gunn. McGraw-Hill, 1991.

“Cross-Sectional Variation in the Stock Market Response to the Announcement of Accounting Earnings.” With P. Easton. *Journal of Accounting and Economics*, 1989.

“An Evaluation of Alternative Proxies for the Market's Expectation of Earnings.” With L. Brown, P. Griffin, and R.L. Hagerman. *Journal of Accounting and Economics*, 1987.

"Predictive Value of Accounting Information." With P. Griffin. In *Usefulness to Investors and Creditors of Information Provided by Financial Reporting*, 2nd Edition, P. Griffin, ed. Financial Accounting Standards Board, 1987.

"Security Analyst Superiority Relative to Univariate Time-Series Models in Forecasting Quarterly Earnings." With L. Brown, P. Griffin, and R. Hagerman. *Journal of Accounting and Economics*, 1987.

"The Effect of Labor Strikes on Security Analysts' Forecast Superiority and on the Association between Risk-Adjusted Stock Returns and Unexpected Earnings." With L. Brown. *Contemporary Accounting Research*, 1987.

"Estimating Models with Binary Dependent Variables: Some Theoretical and Empirical Observations." With G. Gessner, W. Kamakura, and N. Malhotra. *Journal of Business Research*, 1987.

"Methodological Issues Related to the Estimation of Financial Distress Prediction Models." *Journal of Accounting Research*, 1984.

"The Association Between the Magnitude of Quarterly Earnings Forecast Errors and Risk-Adjusted Stock Returns." With R.L. Hagerman and P. Shah. *Journal of Accounting Research*, 1984.

"An Income Strategy Approach to the Positive Theory of Accounting Policy Setting/Choice." With R.L. Hagerman. *Journal of Accounting and Economics*, 1981. Reprinted in *The Economics of Accounting Policy Choice*, Ray Ball and Clifford Smith, Jr., eds. McGraw-Hill, 1992.

"A Test of Accounting Bias and Market Structure: Some Additional Evidence." With R.L. Hagerman. *Review of Business and Economic Research*, 1981.

"Some Economic Determinants of Accounting Policy Choice." With R.L. Hagerman. *Journal of Accounting and Economics*, 1979.

Comments on "Earnings Forecasting Research: Its Implications for Capital Markets Research." *International Journal of Forecasting*.

Dissertation committees

Sandip Madan, The University of Chicago, 1999, Member

Keith Bockus, The University of Chicago, 1998, Co-Chairperson

Beverly Walther, The University of Chicago, 1995, Member

Howard Bunsis, The University of Chicago, 1993, Co-Chairperson

Phillip Berger, The University of Chicago, 1992, Member

Stuart Essig, The University of Chicago, 1991, Member

Sherri Jarrell, The University of Chicago, 1991, Member

Andrew Alford, The University of Chicago, 1990, Chairperson

Mark Lang, The University of Chicago, 1990, Member

Laureen Maines, The University of Chicago, 1990, Member

Walter Teets, The University of Chicago, 1988, Member

Siew Teoh, The University of Chicago, 1988, Member

Kirsten Ely, The University of Chicago, 1988, Member

M. Daniel Beneish, The University of Chicago, 1987, Member

Pat O'Brien, The University of Chicago, 1986, Member

W. Forbes Cavanagh, State University of New York at Buffalo, 1985, Member

University activities

Accounting Advisory Counsel, State University of New York at Buffalo, 1993–1995.

Faculty Facilitator, Leadership, Education, and Development (LEAD) Program, The University of Chicago, Graduate School of Business, 1989, 1991.

Dean's Advisory Committee on MBA Students and Curriculum, The University of Chicago, 1988.

Executive Director, Management Development Council, State University of New York at Buffalo, 1981–1984.

Advisor, Center for Management Development, State University of New York at Buffalo, 1979–1980.

Editorial service and boards

Associate Editor, *The Accounting Review*, 1993–1997.

Editorial Board, *Journal of Accounting Research*, 1988–1993.

Editorial Board, *The Accounting Review*, 1985–1987.

Ad hoc referee

Journal of Accounting, Auditing, and Finance

The Accounting Review

Contemporary Accounting Research

The Financial Review

Journal of Accounting and Economics

Journal of Accounting Research

Journal of Banking and Finance

Journal of Business

Journal of Forecasting

International Journal of Forecasting

Management Science

Professional organizations

American Accounting Association

The American Finance Association

Testimony, declarations, and other court filings and submissions in the past five years

Fairbank Reconstruction Corp. v. Greater Omaha Packing Co. Inc. In the United States District Court for the Western District of New York, Case No. 1:13-cv-00907. Deposition testimony December 3, 2020.

Norman Leslie Wills and Jane Anne Danaher (as Trustees for the Minty Tin Superannuation Fund), v. Woolworths Group Ltd (formerly Woolworths Ltd), Respondent. In the Federal Court of Australia Victoria Registry, Case No. VID 1131/2018. Expert Report February 17, 2020, Expert Rebuttal Report October 30, 2020.

Ahmed D. Hussein, Plaintiff, v. Sheldon Razin et al., Defendants. In the Superior Court of the State of California For the County of Orange, Case No. 30-2013-00679600-CU-NP-CJC. Deposition testimony June 10, 2015. Deposition testimony October 28, 2020.

Railroad Revenue Adequacy – 2019 Determination. Before the Surface Transportation Board. Verified Statement of Professor Kevin M. Murphy and Professor Mark E. Zmijewski, October 21, 2020.

Joint Petition For Rulemaking to Modernize Annual Revenue Adequacy Determinations on Behalf of Canadian National Railway, Norfolk Southern Railway and Union Pacific Railroad Company. Before the Surface Transportation Board. Verified Statement of Professor Kevin M. Murphy and Professor Mark E. Zmijewski, September 1, 2020. Supplemental Verified Statement of Professor Kevin M. Murphy and Professor Mark E. Zmijewski, October 13, 2020.

Federal Trade Commission v. Peabody Energy Corporation and Arch Coal, Inc. In the United States District Court for the Eastern District of Missouri, C.A. No 4:20-cv-00317-SEP. Deposition testimony June 26, 2020. Trial testimony July 24, 2020.

Zantran Pty Limited, Applicant vs. Crown Resorts Limited, Respondent. In the Federal Court of Australia Victoria Registry, Case No. VID 1317/2017. Expert Report April 18, 2019, Expert Rebuttal Report March 27, 2020, Joint Expert Report June 18, 2020.

Alison Court, et al., Applicants vs. Spotless Group Holdings Limited, Respondent. In the Federal Court of Australia Victoria Registry, Case No. VID 561/2017. Expert Report December 22, 2019, Expert Rebuttal Report March 25, 2020.

In Re *American Realty Capital Properties, Inc. Litigation*. In the United States District Court for the Southern District of New York, C.A. No. 1:15-mc-00040-AKH. Deposition testimony July 26, 2019.

In Re *Appraisal of Jarden Corporation*. In the Court of Chancery of the State of Delaware, Consol. C.A. No. 12456-VCS. Deposition testimony May 2, 2018. Trial testimony June 26, 2018 and June 28, 2018. Affidavit July 26, 2019.

In Re *Bracket Holding Corp. Litigation*. In the Superior Court of the State of Delaware, Consol. C.A. No. N15C-02-233 WCC CCLD. Deposition testimony September 20, 2018. Affidavit July 25, 2019.

Nathan F. Brand et al. v. William A. Linton and Promega Corporation. State of Wisconsin Dane County Circuit Court, Case No. 2016CV001978. Deposition testimony November 14, 2018. Trial testimony July 22, 2019.

Precision Castparts Corp. and PCC Germany Holdings GMBH v. Schulz Holding GMBH & Co. KG, et al. International Centre For Dispute Resolution, American Arbitration Association, Case No. 01-18-0001-0115. First witness statement November 16, 2018. Second witness statement May 17, 2019. Arbitration testimony July 1, 2019.

Reynolds American Inc. v. Third Motion Equities Master Fund Ltd, et al. State of North Carolina Forsythe County. In the General Court of Justice, Superior Court Division, Case No. 17 CVS 7086. Deposition testimony April 17, 2019. Trial testimony June 17, 2019.

In Re *Appraisal of Stillwater Mining Company*. In the Court of Chancery of the State of Delaware. Consol. C.A. No. 2017-0385-JTL. Deposition testimony November 27, 2018. Trial testimony December 13, 2018.

In Re *Appraisal of Columbia Pipeline Group, Inc.* In the Court of Chancery of the State of Delaware, Consol. C.A. No. 12736-VCL. Deposition testimony August 14, 2018. Trial testimony November 2, 2018.

Federal Trade Commission v. Tronox Limited, et al. In the United States District Court for the District of Columbia, Docket No. D09377. Deposition testimony May 15, 2018. Trial testimony May 31, 2018.

Brian Jones, Applicant vs. Treasury Wine Estates Limited, Respondent. In the Federal Court of Australia District of New South Wales, Case No. NSD 660 of 2014. Expert Report February 4, 2017, Expert Rebuttal Report July 10, 2017, Supplemental Expert Rebuttal Report August 17, 2017.

Money Max Int Pty Limited (ACN 152 073 580), as a trustee for the Goldie Superannuation Fund, Applicant vs. QBE Insurance Group Limited (ACN 008 485 014), Respondent. In the Federal Court of Australia, Case No. VID 513 of 2015. Expert Report August 10, 2017.

United States of America v. Bumble Bee Foods, LLC. In the United States District Court, Northern District of California, San Francisco Division, Case No. 17-CR-00249 CRB. Presentations before the U.S. Department of Justice, Antitrust Division September 20, 2016 and January 9, 2017. Declaration filed July 18, 2017.

Authenticom, Inc. v. CDK Global, LLC and The Reynolds and Reynolds Company. In the United States District Court for the Western District of Wisconsin, Case No. 17-CV-318. Declaration filed June 16, 2017. Trial testimony June 28, 2017.

United States Securities and Exchange Commission v. ITT Educational Services, Inc. et al. In the United States District Court, Southern District of Indiana, Indianapolis Division, Case No. 15-CV-00758. Deposition testimony May 10, 2017.

In the matter of Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords III). Before the Copyright Royalty Board Library of Congress, Washington, D.C., Docket No. 16-CRB-0003-PR (2018-2022). Trial testimony April 12, 2017.

PharMerica Corporation et al. v. AmerisourceBergen Drug Corporation v. BGS Pharmacy Holding Company et al. In the Jefferson Circuit Court Division Ten (10), Case No. 14-CI-004682. Deposition testimony April 4, 2017.

In Re *Caesars Entertainment Operating Company, Inc., et al. Chapter 11 Bankruptcy Case*. In the United States Bankruptcy Court for the Northern District of Illinois Eastern Division, Case No. 15-01145 (ABG). Declaration filed December 2, 2016.

Beef Products, Inc., BPI Technology, Inc. and Freezing Machines, Inc. v. American Broadcasting Companies, Inc., ABC News, Inc., Diane Sawyer, Jim Avila, David Kerley, Gerald Zirnstein, Carl Custer, and Kit Foshee. In the State of South Dakota in the County of Union First Judicial Circuit, Case No. 12-292. Deposition testimony August 25, 2016.

In Re *Harman International Industries, Inc. Securities Litigation*. In the United States District Court for the District of Columbia, Case No. 1:07-cv-01757-RC. Deposition testimony July 27, 2016.

Exhibit III-1

Kansas City Southern
Merger Consideration and Implied Premium

	Announcement Date May 21, 2021
Canadian National Share Price	$106.39
(×) Exchange Ratio	1.129
Stock Consideration	**$120.11**
(+) Cash Consideration	$200.00
Implied Merger Consideration	**$320.11**

March 19, 2021, One Day Before the Announcement of the Potential CP Transaction:	
KSC Share Price	$224.16
KSC Market Capitalization ($ million)	$20,364

Sources: Preliminary Proxy; S&P Capital IQ.

Exhibit III-2

Kansas City Southern
Implied Equity and Enterprise Value

all values in millions except per share values	Announcement Date May 21, 2021
Consideration per Share	**$320.11**
(×) Shares Outstanding	91.6
Equity Value	**$29,331**
(+) Net Debt	$3,514
(+) Value of Noncontrolling Interest	$327
Enterprise Value	**$33,172**

Sources: Preliminary Proxy; KCS 2021 10-Q.

Exhibit III-3

Canadian National
Standalone Forecasts

values in USD millions

	2021	2022	2023	2024	2025	2026	2027	2028	2029
Revenue	11,822	12,652	13,536	14,488	15,352	16,215	17,101	18,045	19,001
Adjusted EBITDA	5,949	6,384	6,952	7,564	8,161	8,746	9,348	9,992	10,650
Capital Expenditures	2,400	2,536	2,712	2,900	3,076	3,249	3,426	3,615	3,807
Unlevered Free Cash Flow	**2,253**	**3,041**	**3,184**	**3,496**	**3,700**	**3,664**	**3,960**	**4,275**	**4,600**

Note: 2021 forecast of unlevered free cash flows includes unlevered free cash flows for April through December only.

Sources: Preliminary Proxy.

Exhibit III-4

Kansas City Southern
Standalone Forecasts

values in USD millions

	2021	2022	2023	2024	2025	2026	2027	2028	2029
Revenue	3,055	3,352	3,554	3,748	3,946	4,143	4,344	4,556	4,770
Adjusted EBITDA	1,690	1,893	2,033	2,174	2,318	2,462	2,610	2,768	2,928
Capital Expenditures	500	550	586	618	651	684	717	752	787
Unlevered Free Cash Flow	**690**	**825**	**940**	**1,013**	**1,089**	**1,164**	**1,242**	**1,324**	**1,408**
Earnings per Share	**9.34**	**11.47**	**12.87**	**14.66**	**16.62**	**18.72**	**21.03**	**23.59**	**26.38**

Note: 2021 forecast of unlevered free cash flows includes unlevered free cash flows for April through December only.

Sources: Preliminary Proxy.

Exhibit III-5

Combined Company
Forecast of Synergies

values in USD millions

	Year				
Low	1	2	3	4	5
(+) Synergies	138	277	415	415	415
(-) Dissynergies	-33	-67	-100	-100	-100
(-) Cost of Synergies	-87	-87	0	0	0
EBITDA Synergies	**18**	**123**	**315**	**315**	**315**
(+) CapEx and D&A Synergies	9	19	28	28	28
Total Synergies	**27**	**142**	**343**	**343**	**343**

	Year				
High	1	2	3	4	5
(+) Synergies	333	667	1,000	1,000	1,000
(-) Dissynergies	-25	-50	-75	-75	-75
(-) Cost of Synergies	-120	-120	0	0	0
EBITDA Synergies	**188**	**497**	**925**	**925**	**925**
(+) CapEx and D&A Synergies	0	0	0	0	0
Total Synergies	**188**	**497**	**925**	**925**	**925**

Notes:
1. I assumed that synergies and dissynergies are linearly phased in over three years.
2. Year 1 is post final Merger approval by STB.

Sources: Preliminary Proxy.

Exhibit V-1

Canadian National Railway

Historical Cash Flows, Unconsolidated Pro-Forma 2020, and Select Market Data

2018 - 2020

all except per share values in MM USD

	2018	2019	2020	Unconsolidated 2020 Pro-Forma
Revenue	11,456.8	11,933.6	11,055.2	11,055.2
(+) Dividend from KCS				152.3
(-) Net Expenses	6,520.0	7,160.0	6,976.8	6,976.8
Earning Before Interest and Taxes (Operating Income or EBIT)	**4,936.8**	**4,773.6**	**4,078.4**	**4,230.7**
(-) Tax on EBIT	1,176.4	1,066.6	881.4	914.3
(+) Depreciation & Amortization	1,063.2	1,249.6	1,271.2	1,271.2
(+/-) Operating Working Capital and Other Adjustments	341.6	222.2	900.9	0.0
(-) Investment in Capital Expenditures	2,723.2	3,144.8	2,350.4	2,770.5
Unlevered Free Cash Flow	**2,442.0**	**2,034.1**	**3,018.7**	**1,817.1**
(-) Interest Expense and Other Fixed Charges	565.6	567.2	557.6	1,136.6
(+) Tax Deduction On Interest and Other Fixed Charges	134.8	126.7	120.5	245.6
Cash flow available for financing activities	**2,011.2**	**1,593.6**	**2,581.6**	**926.1**
Total Debt (Current + Long-Term)	10,055.2	11,036.8	10,324.8	10,324.8
(+) Operating Leases and Pension Liabilities	844.8	817.6	776.8	776.8
(+) Acquisition Debt				19,300.0
Adjusted Total Debt	**10,900.0**	**11,854.4**	**11,101.6**	**30,401.6**
Stock price (as of 12/31)	80.9	94.0	112.0	
(×) Shares outstanding (as of 12/31)	725.3	712.3	710.3	812.8
Market capitalization (12/31)	**58,668.1**	**66,939.1**	**79,519.5**	
Adjusted EBITDA	**5,632.0**	**5,860.8**	**5,596.0**	**5,748.3**

Notes:
1. CAD/USD calculated at a constant 0.8x rate.
2. EBITDA, Adjusted EBITDA, and Adjusted Debt are based on CN's non-GAAP definitions as disclosed in the company's financial statements.
3. EBIT is defined as EBITDA - Depreciation and Amortization.
4. The interest rate on Acquisition Debt is assumed at 3.0%.

Sources: 2020 CN Annual Report; Exhibit VI-1.

Exhibit V-2

Canadian National Railway

Debt Related Financial Ratios

2018 - 2020

all values in MM USD

	2018	2019	2020	Unconsolidated 2020 Pro-Forma
Panel A: Interest Coverage Ratios				
Adjusted EBITDA	5,632.0	5,860.8	5,596.0	5,748.3
(÷) Interest Expense	565.6	567.2	557.6	1,136.6
Adjusted EBITDA Interest Coverage Ratio	10.0x	10.3x	10.0x	5.1x
Panel B: Leverage Ratios				
Adjusted Debt	10,900.0	11,854.4	11,101.6	30,401.6
(÷) Adjusted EBITDA	5,632.0	5,860.8	5,596.0	5,748.3
Adjusted Debt to Adjusted EBITDA	1.9x	2.0x	2.0x	5.3x

Notes:

1. Adjusted Debt and Adjusted EBITDA are based on CN's non-GAAP definitions as disclosed in the company's financial statements.

Source: Exhibit V-1.

Exhibit V-3

Canadian National Railway
Cash Flows and Select Market Data on an Consolidated Basis
Assuming the Merger Occurred on Jan-1-2020 and Was Approved on Dec-31-2023

all values in MM USD

	Consolidated 2020 Pro-Forma	2021	2022	2023	2024
Revenue	13,687.8	13,687.8	13,687.8	13,687.8	13,687.8
(-) Net Expenses	8,635.3	8,635.3	8,635.3	8,635.3	8,635.3
Earning Before Interest and Taxes (Operating Income or EBIT)	**5,052.5**	**5,052.5**	**5,052.5**	**5,052.5**	**5,052.5**
(-) Tax on EBIT	1,155.8	1,155.8	1,155.8	1,155.8	1,155.8
(+) Depreciation & Amortization	1,629.1	1,629.1	1,629.1	1,629.1	1,629.1
(+/-) Operating Working Capital and Other Adjustments	0.0	0.0	0.0	0.0	0.0
(-) Investment in Capital Expenditures	3,397.3	3,397.3	3,397.3	3,397.3	3,397.3
Unlevered Free Cash Flow	**2,128.5**	**2,128.5**	**2,128.5**	**2,128.5**	**2,128.5**
(-) Interest Expense and Other Fixed Charges	1,315.8	1,315.8	1,315.8	1,315.8	1,315.8
(+) Tax Deduction On Interest and Other Fixed Charges	290.1	290.1	290.1	290.1	290.1
Cash flow available for financing activities	**1,102.7**	**1,102.7**	**1,102.7**	**1,102.7**	**1,102.7**
Total Debt (Current + Long-Term)	14,095.6	14,095.6	14,095.6	14,095.6	14,095.6
(+) Operating Leases and Pension Liabilities	982.1	982.1	982.1	982.1	982.1
(+) Acquisition Debt	19,300.0	19,300.0	19,300.0	19,300.0	19,300.0
Adjusted Total Debt	**34,377.7**	**34,377.7**	**34,377.7**	**34,377.7**	**34,377.7**
Adjusted EBITDA	**7,168.1**	**7,168.1**	**7,168.1**	**7,168.1**	**7,168.1**

Notes:
1. EBITDA, Adjusted EBITDA, and Adjusted Debt are based on CN's non-GAAP definitions as disclosed in the company's financial statements.
2. EBIT is defined as EBITDA - Depreciation and Amortization.

Sources: Exhibits V-1 and VI-1.

Exhibit V-4

Canadian National Railway
Debt Related Financial Ratios on an Consolidated Basis Assuming the Merger Occurred on Jan-1-2020 and Was Approved on Dec-31-2023
2020-2024

all values in MM USD

	Consolidated 2020 Pro-Forma	2021	2022	2023	2024
Panel A: Interest Coverage Ratios					
Adjusted EBITDA	7,168.1	7,168.1	7,168.1	7,168.1	7,168.1
(÷) Interest Expense	1,315.8	1,315.8	1,315.8	1,315.8	1,315.8
Adjusted EBITDA Interest Coverage Ratio	5.4x	5.4x	5.4x	5.4x	5.4x
Panel B: Leverage Ratios					
Adjusted Debt	34,377.7	34,377.7	34,377.7	34,377.7	34,377.7
(÷) Adjusted EBITDA	7,168.1	7,168.1	7,168.1	7,168.1	7,168.1
Adjusted Debt to Adjusted EBITDA	4.8x	4.8x	4.8x	4.8x	4.8x

Notes:
1. Adjusted Debt and Adjusted EBITDA are based on CN's non-GAAP definitions as disclosed in the company's financial statements.

Source: Exhibit V-3.

Exhibit V-5A

Canadian National Railway

Cash Flows and Select Market Data on an Unconsolidated Basis

Assuming the Merger Occurred on Jan-1-2020 and Was Not Approved on Dec-31-2023, High Divestiture Value

all values in MM USD

	Unconsolidated 2020 Pro-Forma	2021	2022	2023	KCS Divestiture	2024
Revenue	11,055.2	11,055.2	11,055.2	11,055.2		11,055.2
(+) Dividend from KCS	152.3	152.3	152.3	152.3		-
(-) Net Expenses	6,976.8	6,976.8	6,976.8	6,976.8		6,976.8
Earning Before Interest and Taxes (Operating Income or EBIT)	**4,230.7**	**4,230.7**	**4,230.7**	**4,230.7**		**4,078.4**
(-) Tax on EBIT	914.3	914.3	914.3	914.3		914.3
(+) Depreciation & Amortization	1,271.2	1,271.2	1,271.2	1,271.2		1,271.2
(+/-) Operating Working Capital and Other Adjustments	0.0	0.0	0.0	0.0		0.0
(-) Investment in Capital Expenditures	2,770.5	2,770.5	2,770.5	2,770.5		2,770.5
(+) Proceeds from Divestitures					19,300	
Unlevered Free Cash Flow	**1,817.1**	**1,817.1**	**1,817.1**	**1,817.1**		**1,664.8**
(-) Interest Expense and Other Fixed Charges	1,136.6	1,136.6	1,136.6	1,136.6		557.6
(+) Tax Deduction On Interest and Other Fixed Charges	245.6	245.6	245.6	245.6		120.5
Cash flow available for financing activities	**926.1**	**926.1**	**926.1**	**926.1**		**1,227.7**
Total Debt (Current + Long-Term)	10,324.8	10,324.8	10,324.8	10,324.8		10,324.8
(+) Operating Leases and Pension Liabilities	776.8	776.8	776.8	776.8		776.8
(+) Acquisition Debt	19,300.0	19,300.0	19,300.0	19,300.0		-
Adjusted Total Debt	**30,401.6**	**30,401.6**	**30,401.6**	**30,401.6**		**11,101.6**
Adjusted EBITDA	**5,748.3**	**5,748.3**	**5,748.3**	**5,748.3**		**5,596.0**

Notes:

1. EBITDA, Adjusted EBITDA, and Adjusted Debt are based on CN's non-GAAP definitions as disclosed in the company's financial statements.
2. EBIT is defined as EBITDA - Depreciation and Amortization.

Sources: Exhibit V-1.

Exhibit V-5B

Canadian National Railway

Cash Flows and Select Market Data on an Unconsolidated Basis

Assuming the Merger Occurred on Jan-1-2020 and Was Not Approved on Dec-31-2023, Low Divestiture Value

all values in MM USD

	Unconsolidated 2020 Pro-Forma	2021	2022	2023	KCS Divestiture	2024
Revenue	11,055.2	11,055.2	11,055.2	11,055.2		11,055.2
(+) Dividend from KCS	152.3	152.3	152.3	152.3		-
(-) Net Expenses	6,976.8	6,976.8	6,976.8	6,976.8		6,976.8
Earning Before Interest and Taxes (Operating Income or EBIT)	**4,230.7**	**4,230.7**	**4,230.7**	**4,230.7**		**4,078.4**
(-) Tax on EBIT	914.3	914.3	914.3	914.3		914.3
(+) Depreciation & Amortization	1,271.2	1,271.2	1,271.2	1,271.2		1,271.2
(+/-) Operating Working Capital and Other Adjustments	0.0	0.0	0.0	0.0		0.0
(-) Investment in Capital Expenditures	2,770.5	2,770.5	2,770.5	2,770.5		2,770.5
(+) Proceeds from Divestitures					14,255	
Unlevered Free Cash Flow	**1,817.1**	**1,817.1**	**1,817.1**	**1,817.1**		**1,664.8**
(-) Interest Expense and Other Fixed Charges	1,136.6	1,136.6	1,136.6	1,136.6		708.9
(+) Tax Deduction On Interest and Other Fixed Charges	245.6	245.6	245.6	245.6		153.2
Cash flow available for financing activities	**926.1**	**926.1**	**926.1**	**926.1**		**1,109.0**
Total Debt (Current + Long-Term)	10,324.8	10,324.8	10,324.8	10,324.8		10,324.8
(+) Operating Leases and Pension Liabilities	776.8	776.8	776.8	776.8		776.8
(+) Acquisition Debt	19,300.0	19,300.0	19,300.0	19,300.0		5,044.9
Adjusted Total Debt	**30,401.6**	**30,401.6**	**30,401.6**	**30,401.6**		**16,146.5**
Adjusted EBITDA	**5,748.3**	**5,748.3**	**5,748.3**	**5,748.3**		**5,596.0**

Notes:
1. EBITDA, Adjusted EBITDA, and Adjusted Debt are based on CN's non-GAAP definitions as disclosed in the company's financial statements.
2. EBIT is defined as EBITDA - Depreciation and Amortization.

Sources: Exhibit V-1.

Exhibit V-6A

Canadian National Railway

Debt Related Financial Ratios on an Unconsolidated Basis Assuming the Merger Occurred on Jan-1-2020 and Was Not Approved on Dec-31-2023, High Divestiture Value

2020-2024

all values in MM USD

	Unconsolidated 2020 Pro-Forma	**2021**	**2022**	**2023**	**2024**
Panel A: Interest Coverage Ratios					
Adjusted EBITDA	5,748.3	5,748.3	5,748.3	5,748.3	5,596.0
(÷) Interest Expense	1,136.6	1,136.6	1,136.6	1,136.6	557.6
Adjusted EBITDA Interest Coverage Ratio	5.1x	5.1x	5.1x	5.1x	10.0x
Panel B: Leverage Ratios					
Adjusted Debt	30,401.6	30,401.6	30,401.6	30,401.6	11,101.6
(÷) Adjusted EBITDA	5,748.3	5,748.3	5,748.3	5,748.3	5,596.0
Adjusted Debt to Adjusted EBITDA	5.3x	5.3x	5.3x	5.3x	2.0x

Notes:

1. Adjusted Debt and Adjusted EBITDA are based on CN's non-GAAP definitions as disclosed in the company's financial statements.

Source: Exhibit V-5A.

Exhibit V-6B

Canadian National Railway

Debt Related Financial Ratios on an Unconsolidated Basis Assuming the Merger Occurred on Jan-1-2020 and Was Not Approved on Dec-31-2023, Low Divestiture Value

2020-2024

all values in MM USD

	Unconsolidated 2020 Pro-Forma	2021	2022	2023	2024
Panel A: Interest Coverage Ratios					
Adjusted EBITDA	5,748.3	5,748.3	5,748.3	5,748.3	5,596.0
(÷) Interest Expense	1,136.6	1,136.6	1,136.6	1,136.6	708.9
Adjusted EBITDA Interest Coverage Ratio	5.1x	5.1x	5.1x	5.1x	7.9x
Panel B: Leverage Ratios					
Adjusted Debt	30,401.6	30,401.6	30,401.6	30,401.6	16,146.5
(÷) Adjusted EBITDA	5,748.3	5,748.3	5,748.3	5,748.3	5,596.0
Adjusted Debt to Adjusted EBITDA	5.3x	5.3x	5.3x	5.3x	2.9x

Notes:

1. Adjusted Debt and Adjusted EBITDA are based on CN's non-GAAP definitions as disclosed in the company's financial statements.

Source: Exhibit V-5B.

Exhibit VI-1

Kansas City Southern
Historical Cash Flows and Select Market Data
2018 - 2020

all except per share values in MM USD

KCS - Pre-Transaction Historical	**2018**	**2019**	**2020**	**Unconsolidated 2020 Pro-Forma**
Revenue	2,714.0	2,866.0	2,632.6	2,632.6
(-) Net Expenses	1,717.1	1,961.7	1,658.5	1,658.5
Earning Before Interest and Taxes (Operating Income or EBIT)	**996.9**	**904.3**	**974.1**	**974.1**
(-) Tax on EBIT	289.4	284.0	241.5	241.5
(+) Depreciation & Amortization	346.7	350.7	357.9	357.9
(+/-) Operating Working Capital and Other Adjustments	8.8	249.3	124.3	0.0
(-) Investment in Capital Expenditures	651.9	676.3	526.0	626.8
Unlevered Free Cash Flow	**411.0**	**544.0**	**688.8**	**463.7**
(-) Interest Expense and Other Fixed Charges	159.3	169.6	179.2	179.2
(+) Tax Deduction On Interest and Other Fixed Charges	46.3	53.3	44.4	44.4
Cash flow available for financing activities	**298.0**	**427.7**	**554.0**	**328.9**
Total Debt (Current + Long-Term)	2,689.4	3,246.0	3,770.8	3,770.8
(+) Operating Leases	205.3	131.1	70.0	70.0
Adjusted Total Debt	**2,894.7**	**3,377.1**	**3,840.8**	**3,840.8**
Stock price (as of 12/31)	95.5	153.2	204.1	
(×)Shares outstanding (as of 12/31)	101.7	99.1	93.6	93.6
Market capitalization (12/31)	**9,707.0**	**15,181.2**	**19,106.9**	
Dividends	147.5	144.3	152.3	152.3
Adjusted EBITDA	**1,364.4**	**1,459.5**	**1,419.8**	**1,419.8**

Notes:
1. EBITDA, Adjusted EBITDA, and Adjusted Debt are based on CN's non-GAAP definitions as disclosed in the company's financial statements.
2. EBIT is defined as EBITDA - Depreciation and Amortization.

Sources: 2020 KCS Annual Report; S&P Capital IQ.

Exhibit VI-2

Kansas City Southern
Debt Related Financial Ratios
2018 - 2020

all values in MM USD

	2018	2019	2020	Unconsolidated 2020 Pro-Forma
Panel A: Interest Coverage Ratios				
Adjusted EBITDA	1,364.4	1,459.5	1,419.8	1,419.8
(÷) Interest Expense	159.3	169.6	179.2	179.2
Adjusted EBITDA Interest Coverage Ratio	8.6x	8.6x	7.9x	7.9x
Panel B: Leverage Ratios				
Adjusted Debt	2,894.7	3,377.1	3,840.8	3,840.8
(÷) Adjusted EBITDA	1,364.4	1,459.5	1,419.8	1,419.8
Adjusted Debt to Adjusted EBITDA	2.1x	2.3x	2.7x	2.7x

Notes:
1. Adjusted Debt and Adjusted EBITDA are based on CN's non-GAAP definitions as disclosed in the company's financial statements.

Source: Exhibit VI-1.

Exhibit 5

Reply Verified Statement of James Cairns

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36514

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND CN'S RAIL OPERATING SUBSIDIARIES
—CONTROL—
KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

VERIFIED STATEMENT OF JAMES CAIRNS

My name is James Cairns. I am the Senior Vice-President, Rail-Centric Supply Chain of Canadian National Railway Company ("CN"). In my current role, I oversee the execution and expansion of CN's bulk and merchandise carload businesses, lead the commercial teams and non-rail operations in my supply chains, and look after all last-mile services for customers. I am responsible for CN's grain, fertilizers, sulphur, and coal businesses as well as for petroleum and chemicals, forest products, and metals and minerals. I have had a 33-year career at CN spanning widespread responsibilities, including Vice-President, Petroleum and Chemicals, Assistant Vice-President of CN domestic intermodal, and senior positions in Intermodal Wholesale, Petroleum & Plastics Marketing, and IMX operations.

This is an exciting moment in the history of this industry. The transportation markets are transforming to meet the modern-day demands of our customers, our environment, and our communities. More than ever, customers want resilient logistics partners. They want choices. They want premium service at reasonable costs. They want new direct market access and a diverse commodity portfolio to react to changing market conditions. They want to grow through business cycles. They want logistics partners who will invest with their customers to create capacity for growth. And they want partners who will work collaboratively to create a service product that supports their business, rather than imposing what works for us on them. In my long career in the rail industry, it is abundantly clear that **CN wins when its customers win.**

The combination of CN and Kansas City Southern ("KCS") would be in the position to match the exciting potential of this moment. The merger will create a connected continent by directly linking the Midwestern United States to markets in Mexico and Canada, and to dozens of ports throughout North America. It would connect markets in Mid America, including those across the Mississippi River and route traffic around Chicago to Detroit and Eastern Canada. It will take trucks off congested highways and promote a global push towards corporate environmental responsibility and reducing emissions from supply chains. It will reduce shipping costs between key United States-Mexico-Canada Agreement ("USMCA") markets to make our customers more competitive—ultimately creating more jobs and economic growth. In the end, a safer, faster, cheaper, and more resilient integrated North American railroad will meet the service demands of our customers and build the freight railroad of tomorrow.

The overall feedback we have received from our customers, our employees, and the communities through which we operate has been encouraging. I have been speaking with customers and trade associations every day about the potential opportunities presented by a CN-KCS combination. The over 1700 letters of support filed with the Surface Transportation Board ("STB") reflect a shared anticipation of the genuine benefits from an integrated North American railroad. But some naturally have a healthy skepticism over whether this merger would increase competition for them or their members. And still others have expressed outright hostility towards this merger, particularly Canadian Pacific ("CP") whose bid was terminated by KCS. With different levels of urgency, these parties urge the STB to deny CN and KCS the use of a voting trust and thereby tilt the transaction balance in favor of another buyer whose offer provided less value and has been rejected by KCS.

The purpose of this Verified Statement is to respond to those skeptical stakeholders. I will explain the competitive benefits of this CN-KCS merger to our rail customers, port operators, employees, stakeholders, and the communities along our rail lines. My key observations are as follows:

1. **We have committed to "enhancing competition" under the current merger rules.** CN reiterated this commitment to the current rules even after the STB waived these rules for CP-KCS because the merger will enhance competition in so many different ways. This is not an afterthought. It is the right thing to do because our customers expect it, and it is a central feature of this CN-KCS deal.
2. **We will deliver more choices to our rail customers**. The combination will enhance our ability to connect with other Class I carriers up and down our connected network using the most efficient and lowest cost gateway available for a particular move. Our combined network will connect with partner Class Is at numerous major gateways, providing unprecedented choice, resiliency, and flexibility. More choice tilts negotiations in the customer's favor.
3. **We will compete more vigorously with Union Pacific ("UP") and BNSF.** At the moment, UP and BNSF are the two major rail carriers for north-south movements to and from Mexico. With the ability to offer new, single-line, single-operator service from Mexico to the key industrial centers in the American heartland, CN and KCS together will offer a new service and more vigorous competition.
4. **We will unlock the full potential of the USMCA by becoming a vibrant competitor to the trucking industry and enabling re-shoring**. In the wake of COVID-19, growing geopolitical tensions, and high tariffs, numerous manufacturers with operations overseas are planning to or have already begun to re-shore at least some part of their supply chain.[1] In the 2021 State of North American Manufacturing Annual Report published by Thomas, 83 percent of North American manufacturers surveyed responded that they were "likely or extremely likely to re-shore," which is a

[1] Prince Ghosh, *The Exodus of Chinese Manufacturing: Shutting Down 'The World's Factory'*, Forbes (Sept. 18, 2020, 4:34 p.m.), https://www.forbes.com/sites/princeghosh/2020/09/18/the-exodus-of-chinese-manufacturing-shutting-down-the-worlds-factory/?sh=551645cfc2f2.

nearly 30 percent increase from March 2020.[2] These developments present exciting opportunities for a premier North American railroad, which will be all the more amplified by the USMCA's modernized customs procedures and reduced discriminatory technical barriers to trade. And to fully capitalize on the USMCA's benefits, we will invest in our short and medium haul markets to provide customers with better access to the barge network and dislodge trucks as the primary mode for this traffic.

5. **We will enhance competition further by keeping gateways open on commercially reasonable terms**. This means, for example, that agricultural customers—including farmer-owned co-operatives enjoying competitive joint line routings through gateways with CN or KCS and another carrier—will continue to have those routings available upon completion of the merger. Everyone benefits from this commitment. Customers continue to enjoy the interline service they have today, along with new, enhanced rail-to-rail competition. And by creating more optionality through major gateways, we offer customers a new ability to shop for the best price and service combination.
6. **We will use confidential, voluntary, binding arbitration to enforce the gateway commitment.** A gateway commitment fosters more options, enhanced competition, and greater customer choices only if it is real. We will work hard to resolve any disputes privately and on fair terms. CN will also offer voluntary, confidential, binding arbitration to permit quick resolution of any commercial dispute over the gateway commitment with our customers.
7. **We will further enhance competition through greater price transparency.** Since 1980, customers have urged the railroads (and the STB) to create more rail-to-rail competition through segment rates (which could include "Rule 11 rates" or "bottleneck rates"). CN currently uses Rule 11 rates extensively in its U.S. properties to foster greater pricing transparency with our customers. But we recognize that even more is possible. We are talking with our customers about how to expand our commitment to greater pricing transparency. With more transparency, each carrier in a move needs to justify its price, escalation, and service, which will foster greater rail-to-rail competition. That is why many of our customers have advocated it for decades.

[2] NEW REPORT: Reshoring Could Drive $443 Billion in U.S. Economic Value Over Next 12 Months, Business Wire (June 2, 2021, 9:27 a.m.), https://www.businesswire.com/news/home/20210602005529/en/NEW-REPORT-Reshoring-Could-Drive-443-Billion-in-U.S.-Economic-Value-Over-Next-12-Months.

In the end, CN is not afraid to compete, and the company firmly believes that a more competitive marketplace will attract more freight to rail. That is beneficial for all involved. Our goal is to grow the size of rail's market share with a premier integrated railroad that can change with a changing logistics marketplace. This transaction is not about the past and preserving antiquated marketing strategies. It is about creating a new rail product and refined market philosophy for the future. New direct rail service, preserving interline routing options with the gateway commitment, and offering pricing transparency through separately challengeable segment rates (often known as a "bottleneck rate") will deliver on our commitment to enhance competition.

Below is a closer look at some of the arguments made against our proposed transaction, and where they fall short or fail to appreciate the commitments CN has already made to address competition concerns.

I. <u>CN has committed to demonstrating how the merger will enhance competition by committing to the current merger rules.</u>

When CN announced its offer to acquire KCS, it immediately committed to the STB and customers that we would proceed under the current STB merger rules. Once the offer was public, we engaged with our customers, employees, and communities, and many supported our commitment to the current rules because like CN, our customers want a merger that does more than just maintain the status quo or provide simple fixes to small areas of competitive overlap. We all want a premium, integrated North American railroad that brings with it the promise of better service, expanded markets, and enhanced competition.

Even after the STB chose to release CP from a similar standard, CN stood by its commitment to the STB and its customers because that was the right thing to do, and because we are convinced that a combined CN-KCS will enhance competition in so many different ways.

Some commenters have attempted to prejudge the Board's merits review by expressing skepticism about CN's ability to deliver on its commitment to enhance competition as required under the current rules. *See*, *e.g.*, CP VT Reply at 58-59; CP-7. The STB should not be asked to prejudge the result of its merger review process—indeed, I do not see how the STB could do so without the full application and an exhaustive review of the benefits from a CN-KCS merger. It will take time to iron out the many complex details necessary to bring this commitment to life, but the framework for how a premier North American railroad will enhance competition is clear:

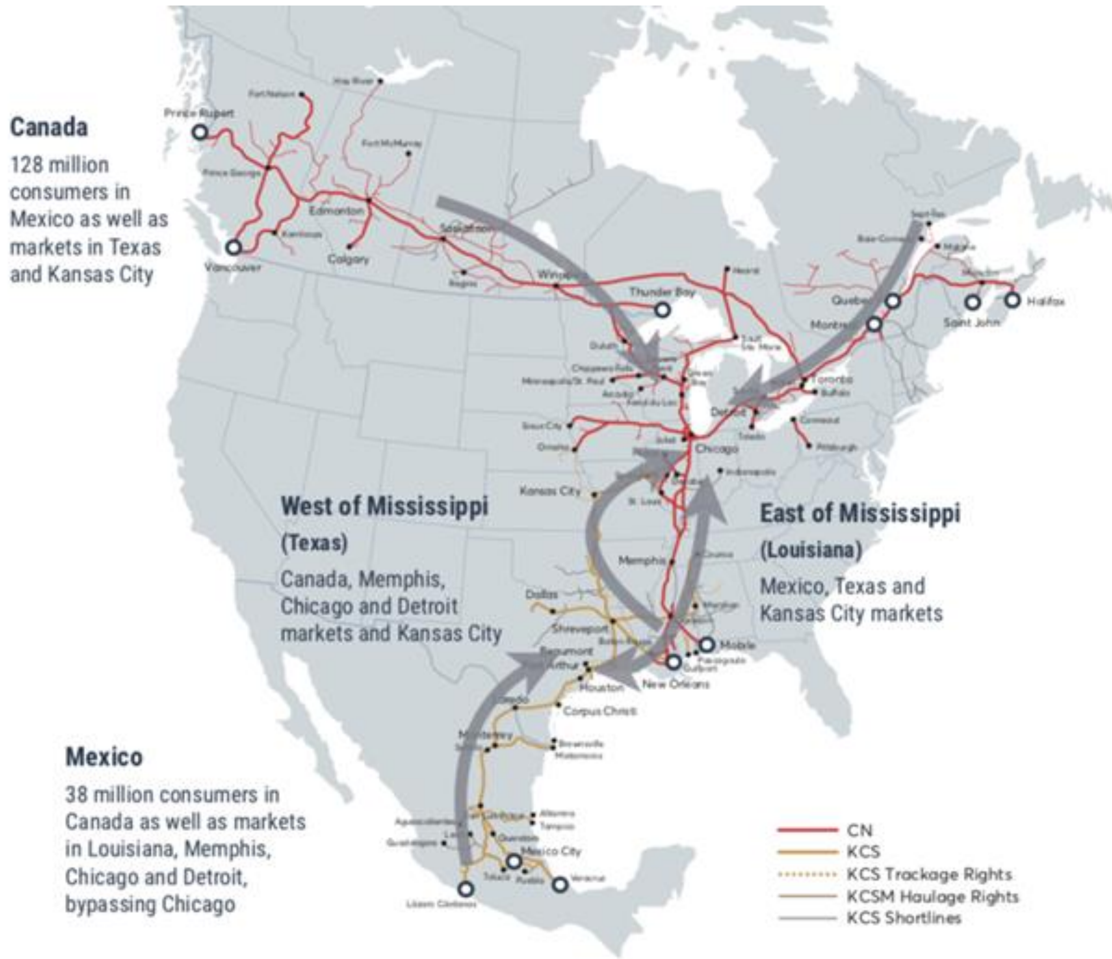
- We will deliver more choices to our customers, and more choices mean greater negotiating power.
- The commitment to divest a KCS rail line in the only area of competitive overlap means this deal is a true end-to-end merger.
- New single-line service will create enhanced competition with our rail competitors, our trucking competitors, and other modes of transportation.
- Our meaningful commitment to keep major gateways open on commercially reasonable terms will offer customers routing resiliency and choices, both to connect north-to-south and to enhance competitive options for east-west movement.
- CN is actively exploring with its customers a proposal to offer greater pricing transparency for interline movements, which will provide customers the visibility needed to better negotiate rates and service.

These are commitments on a scope and scale that have never been made in any prior merger.

II. <u>CN will deliver more choices and options *because* it connects with KCS and the other Class I carriers at more gateways.</u>

As shown below, the CN and KCS networks are highly complementary. The proposed combination would create new direct connections that would give companies in America's heartland faster, more reliable, and less expensive reach into both Canada and Mexico.

Figure 1: The Combined CN-KCS Network



Faster, more choice, increased reach, and more resiliency

Moreover, KCS and CN customers between Baton Rouge and New Orleans will have routing options via five Class I carriers post-merger, creating more routing choice and enhancing competition. Customers on the KCS line will have new direct access to CN-served locations and gateways with a choice of serving carrier between CN-KCS and the buyer of the KCS line between New Orleans and Baton Rouge. Customers on the CN line will gain new direct access to KCS destinations and gateways. And CN customers with current access to KCS via haulage will also maintain the benefits of that haulage, which will be passed to the new owner of the KCS line between New Orleans and Baton Rouge.

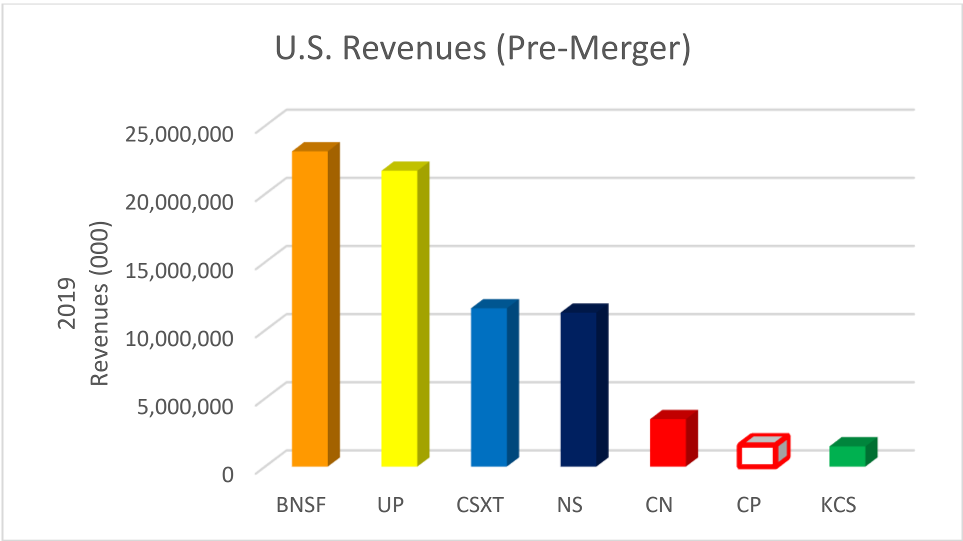
Our opponents cast the number of gateways where KCS and CN connect as a negative. From a marketing perspective, this is simply untrue. Customers love choices. And this transaction will, just to take one illustrative example, create superior connections for KCS-served customers to CSX Transportation ("CSX") at gateways such as Memphis. This will offer KCS-served customers more competitive options for shipments bound for destinations east of the Mississippi and in turn offer CSX the ability to compete more aggressively for that business. More choice creates more negotiation power for customers to bid out their freight. Direct service creates the opportunity to consolidate shipments into high demand markets and gives customers the opportunity to take advantage of scale-price discounts. And improved gateway connections to both the eastern and western railroads will offer new routing options. This in turn will create resiliency and market liquidity and allows customers to pivot supply chains to service emerging and short-term, high-demand markets that result from supply chain disruptions (*e.g.*, floods, winter weather, hurricanes, pipeline or barge outages, port congestion, truck shortages). Optionality allows the market to clear and keeps prices in check through increased competition, both railway and multimodal.

Simpler, more resilient supply chains are vital—a hard lesson learned from the coronavirus pandemic. A combined CN-KCS merger can meet these modern day demands of our customers in ways that would be impossible for any other combination. It is possible **precisely because we have multiple end-to-end connection points with the KCS** and, as discussed below, we have committed to keeping existing major gateways open.

A. New single-line service will compete more vigorously with other railroads.

In the United States, CN is a relatively small player when compared with other Class I railroads. It moves only a small share of long-haul freight transportation, which is still predominantly moved by trucks.

Figure 2: 2019 U.S. Freight Rail Revenues[3]



This merger may change that. CN and KCS will inject a larger, more efficient fifth competitor to BNSF, UP, CSXT, and NS. As the map below illustrates, the central part of the United States enjoys an unparalleled degree of competition for north-south movements. Unlike large swaths of Canada, Mexico, the U.S. west coast, and the U.S. east coast, where two Class I carriers operate, the region surrounding the Mississippi River is served by seven Class I carriers and barge competitors, plus pervasive trucking options.

[3] Source: STB R1, Schedule 210, Line 13.

Figure 3: Rail Corridors Mexico, US, Canada

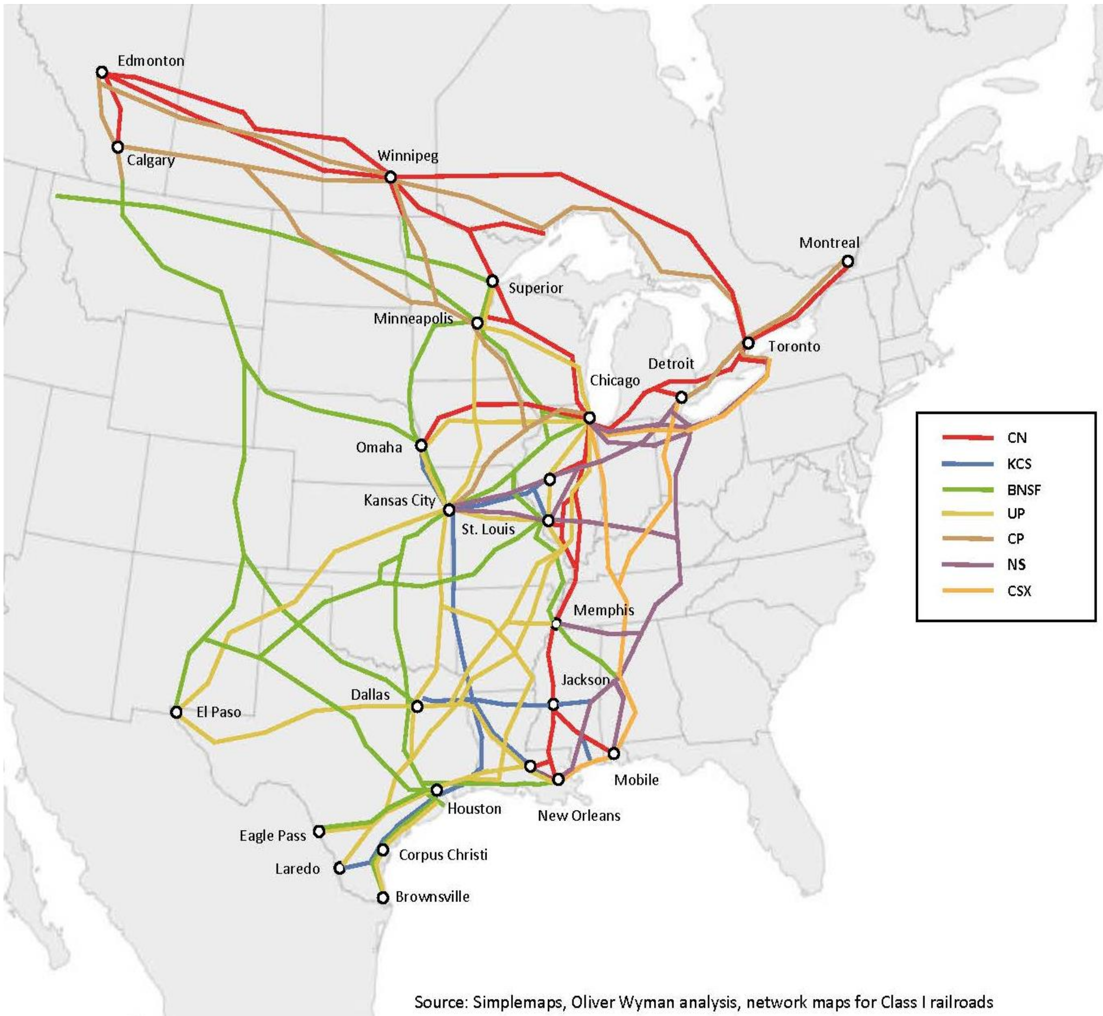
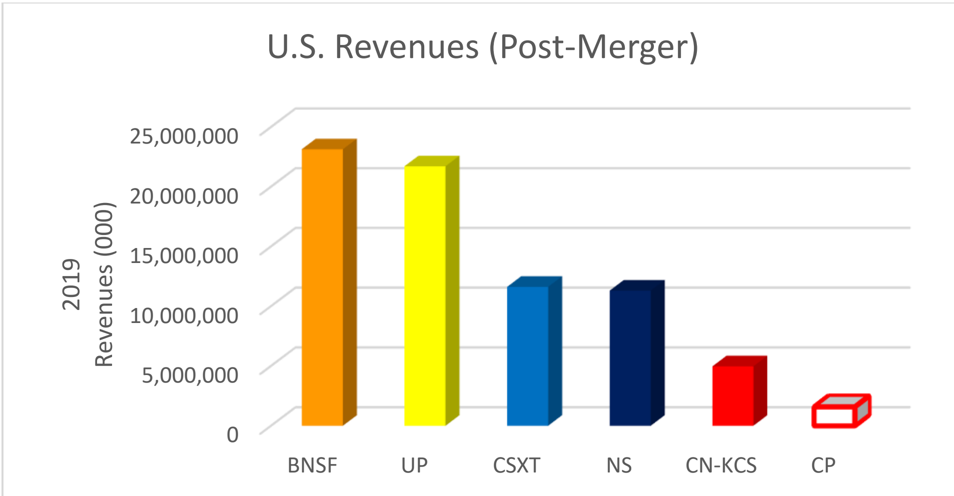


Figure 4: Post-Merger U.S. Freight Rail Revenues[4]



But our excitement around the merger is driven by far more than our ability to compete for a greater share of business against our larger Class I railroad brethren. This merger is premised on growth and not on cost cutting. It is about tapping into potential from the USMCA to facilitate trade, to open the American heartland to new and growing markets, and ultimately, to help our customers grow their own businesses. A rising tide lifts all boats. As the merger delivers superior service and greater shipping flexibilities, we all will win when our customers win.

B. CN will enhance competition further by keeping major gateways open on commercially reasonable terms.

CN is committed to keeping CN and KCS major gateways open both physically and commercially. Indeed, the foundation of this combination is about growth, and that includes wanting to grow interline carload traffic over gateways with other Class Is. Many parties are either ignoring this commitment or downplaying its importance.

What does this gateway commitment mean? It means that customers enjoying competitive joint line routings with CN or KCS to gateways will continue to have those

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[4] Source: STB R1, Schedule 210, Line 13. This chart does not capture how a combined CN-KCS will result in rail-to-rail diversion, truck-to-rail diversions, or how the total market will expand over time.

routings available upon completion of the merger. They keep the interline service options they have today and add to those choices new, enhanced single-line service. The gateway commitment is about providing greater choices to customers. And it will extend to all major U.S. gateways served by CN and KCS today.

The question I hear from customers is, “How can they be sure that a gateway will remain open on commercially reasonable terms?” This is understandable. What constitutes “commercially reasonable terms” is not, in my view, subject to a simple formulaic solution. I have been told that from 1950 to 1980, federal regulators used to impose rigid rates or divisions to keep gateways open, a policy that history showed was completely counterproductive and anticompetitive because it destroyed a railroad’s ability to respond to changing market conditions. We need to be careful not to repeat the mistakes of the past. In my experience, there is no one-size-fits-all definition of commercially reasonable rates. It is intensively fact-specific and should be resolved through commercial discussions and negotiations, tailored to the circumstance of the specific customer and movement.

However, all commercial commitments must have a dispute-resolution forum to resolve any intractable disagreement, even if few ever ultimately arise. It should be flexible and quick, to permit us to move past a dispute over what is “commercially reasonable” and back to the more important task of growing the business with new opportunities and markets. In my experience, the best solution to these commercial disputes is confidential, voluntary arbitration. The goal is to work quickly with our customers to resolve disagreements before a neutral forum, so that we can get back to work on the more important goal of expanding our partnership and relationship. It works in virtually every commercial setting and should work well here.

It’s still a work in progress, as we discuss these concepts with our customer stakeholders. But the combination of keeping gateways open on commercially reasonable terms, with an offer to quickly arbitrate any disputes with our customers, in my view will enhance the competitive landscape for the entire railroad industry.

C. CN will enhance competition even further through greater price transparency.

This merger will result in a tremendous amount of organic enhanced competition. The principal benefit from this merger—indeed from any end-to-end rail merger—is the ability to offer customers more efficient, single-line service. The benefits of single-line service are well established. That efficient service will enhance competition with other railroads and with other modes of transportation. This will in turn permit our customers to be more competitive with their own products, to expand their market reach, to hire more employees, and to invest more in their companies. Creating a faster, cleaner, and more reliable logistics partner will have a ripple effect on competition everywhere.

CN is also committed to enhancing competition through a robust gateway commitment, described above, backed by voluntary arbitration of any disputes. This will preserve routing options through major gateways, either for those customers who will not enjoy new, single-line service, or as an additional benefit for those who will. This too will enhance competition.

But CN is also exploring how to use increased pricing transparency to enhance rail-to-rail competition in the United States. Since the Staggers Rail Act, rail customers have urged the Class I railroads and federal regulators to create more rail-to-rail competition by quoting rates for segments of a joint movement, instead of bundling the divisions into a single through rate. The railroad industry resisted, based on longstanding industry custom and legal precedent that rail carriers in an interline movement need only offer through rates and are not generally required to quote segment rates.

CN has practiced a different approach. CN began offering more so-called Rule 11 rates in the U.S. instead of through rates. It began about 20 years ago with a large chemical customer that was distressed over the total through rate charged for a joint movement. The customer believed that the rate was not reasonable. CN knew that any concern by the customer did not relate to CN's division but conveying that reality to our customer proved challenging with a through rate. CN offered a Rule 11 rate for that joint movement, and the customer was thrilled. The increased transparency put competitive pressure on our railroad partners to offer a more competitive rate on its division of the joint movement and permitted the customer to bring to bear more negotiation leverage on that segment rate. The end result was a more competitive total rate, a more satisfied customer, and more joint-line business.

Over time, CN has expanded this practice. It now routinely unbundles a through rate for joint movements and offers customers Rule 11 segment rates instead.

This increased pricing transparency is welcomed by our customers. It fosters greater competition by denying an interline railroad the ability to hide its division behind a through rate and forcing each railroad to instead defend and explain the rate on their portion of the movement—or risk losing the business to other railroads, geographic sources, or transportation modes. In my experience, this increased pricing transparency offers negotiating leverage to our customers and results in more satisfactory rates. While pricing transparency will not resolve all customer concerns, it goes a long way. For CN, the end result is a more satisfied customer with greater visibility into its logistics costs—one which will send more business to CN.

CN is exploring a binding merger commitment to bring this pricing transparency mindset to the combined CN-KCS network. We have not yet worked out all of the final details, but we are working in earnest to do so quickly. We have reached out to trade associations and individual customers to gauge how to craft a commitment that will work. This is no easy task. The basic framework is to offer, upon request from a rail customer, a separately challengeable segment rate to replace a current through rate. In the STB's nomenclature, this would mean offering bottleneck rates even where a shipper would not be entitled to one under the agency's narrow contract exception or under the narrow "bottleneck commitments" offered in prior mergers. We will provide more detail in our merger application. Yet this concept offers a unique chance to enhance competition not only on the CN-KCS network, but beyond, without the burden of any potential service disruptions. This is a commitment the shipper community has been clamoring for since 1980.

III. Conclusion: All rail customers will benefit from the enhanced competition.

Our customers, our employees, and the communities we serve have shared their strong support for a combined CN-KCS. Their enthusiasm is contagious. But the STB has also heard from others who are either skeptical or downright hostile to a combined CN-KCS.

Where others voice concerns, I see opportunities. At the moment, CP is understandably disappointed over not being selected as the preferred partner by KCS. And I also understand the desire by customers in the Dakotas, who might have limited export options for their businesses, to share the benefits that will flow to other customers and other regions of the country. And employees who operate over those regions served by CP but not CN, and the communities that want more jobs and resilient logistics chains, similarly and understandably, may feel left out.

Once the dust settles and the emotions subside, what will remain is commercial opportunity. When I read about grain customers who are frustrated with being forced to export goods through the western ports**, I see an opportunity to grow our business in partnership with CP.** This is not an act of charity but sound business. It will clearly be in CN's best interest to work with CP to connect CP-served points in the Dakotas, as well as elsewhere in the upper Midwest and Canada, with Gulf and Mexico destinations routing over Kansas City, the longest haul gateway on the CP network.

When I read about labor unions representing CP employees who are concerned about the impact on their railroad, **I see an opportunity to create jobs for our interline partners** with a gateway commitment that will enable new business, more choices, enhanced competition, and ultimately more interline business.

When I read of local communities worried they will be cut off from growing economic opportunities, **I see an opportunity to work as partners, not competitors, to share in the opportunities created by the USCMA, and to expand the global reach of every community.**

Ultimately, CN wants everyone's business, whether it's new, single-line service, or reinvigorated interline traffic with our railroad partners.

VERIFICATION

I, James Cairns, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 6th day of July, 2021.

James Cairns
Senior Vice-President, Rail Centric Supply Chain of
Canadian National Railway Company

Exhibit 6

Reply Verified Statement of William Rennicke

(Public Redacted Version)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36514

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND CN'S RAIL OPERATING SUBSIDIARIES – CONTROL – KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

RENEWED MOTION FOR APPROVAL OF VOTING TRUST AGREEMENT

Second Verified Statement of William J. Rennicke

July 6, 2021

CONTENTS

1. Qualifications

My name is William J. Rennicke. I am a Partner with Oliver Wyman, a global general management consulting firm with more than 60 offices in 31 countries. My office address is 99 High Street, 32nd Floor, Boston, MA. I provided my qualifications and resume in my Verified Statement dated May 21, 2021.

2. Assignment and Summary of Findings

I have been asked to respond to the opposition of the Canadian Pacific Railway (CP) to the proposed merger of the Canadian National Railway (CN) and the Kansas City Southern (KCS) and to the establishment of a Voting Trust by CN and KCS. In particular, I have been asked to evaluate and comment on the joint Verified Statement of Adolph Gameiro and Jon Harman, the Verified Statement of Keith Creel, and the Expert Statement of Dr. W. Robert Majure.[1] In undertaking this assignment, I have employed the methodologies accepted by the Surface Transportation Board (the Board)[2] and its predecessors in past mergers. In conducting my evaluation, I specifically account for CN's commitments that 1) all gateways that are currently open will remain open after the proposed merger on commercially reasonable terms; 2) that as part of the merger application, CN will divest the KCS line between Baton Rouge and New Orleans,[3] which makes the transaction completely end-to-end; 3) that CN will retain and utilize the KCS line between Kansas City and Shreveport, LA; {{

[1] Surface Transportation Board Finance Docket 36514, Canadian National Railway Company, et al. – Control – Kansas City Southern et al., Canadian Pacific's Reply to CN and KCS Joint Motion for Approval of Voting Trust, June 28, 2021, Exhibits 1, 3, and 4.

[2] In this Verified Statement, I use the term "Board" to refer to decisions and actions taken by the Surface Transportation Board and its predecessor, the Interstate Commerce Commission.

[3] Verified Statement of Jean-Jacques Ruest, May 26, 2021, pp. 2 and 5.

}}[4]

2.1. Competition

The central thesis presented by CP in this proceeding is that the proposed merger of CN and KCS is a horizontal, side-by-side merger that will reduce competition.[5] I have carefully evaluated the arguments presented by Mr. Creel, Messrs. Gameiro and Harmon, and Dr. Majure in support of this thesis, and I find their arguments unconvincing. I have been a railroad executive or a consultant to the railroad industry for more than four decades. During that period, the railroad industry has consolidated through a series of mergers. I have been deeply involved in evaluating most of these mergers. I have never seen a merger of Class I railroads result in so few horizontal competitive issues. It is remarkable that out of a customer base of approximately 5,000 shippers, the merger would result in so-called “2-to-1” situations affecting only 14 of these shippers (less than three-tenths of one percent), all located in one narrow geographic location – and that all these situations would be resolved through the divestiture of a single line.

[4] Verified Statement of Jean-Jacques Ruest, op. cit., p. 5.

[5] These allegations of reduced competition are not only incorrect, but also generally irrelevant to the voting trust application currently before the Board. With the exception of one argument by Dr. Majure, which I rebut in Section [4.1] below, the Board can defer any consideration of CP’s competition arguments until review of the merger application itself. This Second Verified Statement nonetheless addresses CP’s competition arguments on the merits and explains why they would fail even if they were relevant to the Board’s voting trust decision.

I have evaluated the analyses conducted by Dr. Majure and Messrs. Gameiro and Harman and find that they do not follow methodologies accepted by the Board; rather, these methodologies seem designed to manufacture supposed competitive issues where none exist. Specifically, I find that:

- None of the selected shippers analyzed by Messrs. Gameiro and Harman will experience a reduction leading to service by fewer than three competitive railroad options as a result of the proposed merger of CN and KCS, and none of the shortline railroads they analyzed will be adversely affected. After the divestiture and gateway commitments, there will be no harmful loss of competitive rail options for shippers as a result of this transaction. Further, CN and KCS will remain subject to intense intermodal and geographic competition.
- The allegations made by Dr. Majure concerning the lack of effectiveness of CN's proposed divestiture of the KCS line between Baton Rouge and New Orleans are unfounded and speculative. The solution proposed by CN will effectively resolve any competitive issues that could have existed in the region and will enhance the competitive options available to shippers. In particular, Dr. Majure's claim that shippers will be harmed during the voting trust period is speculative: not only is there no factual basis for his assertion, but he also fails to recognize the highly competitive environment in which railroads operate and to consider the long-term interests of a merged CN-KCS.
- The conclusion by Dr. Majure that the proposed merger is horizontal is incorrect. The configuration of the CN and KCS networks is end-to-end, except for minimal overlap between Baton Rouge and New Orleans, which will be addressed by the divestiture of the KCS line in that area.
- Dr. Majure's analysis of competitive issues elsewhere on the CN and KCS networks is based on a methodology that has been explicitly rejected by the Board and is deeply flawed. His use of arguments based on broad geographic areas such as Bureau of Economic Analysis (BEA) Economic Areas and Standard Point Location Codes (SPLCs) is incorrect and misleading. His analysis reveals a lack of even a basic understanding of the structure and operation of the railroad industry, in particular in relation to the access of individual customers to rail service. His generalizations based solely on geographic location lead him to make erroneous claims about the effect of the proposed merger on market shares, geographic competition, and commodity-specific competition.

CP and others opposed to the merger of CN and KCS wrongly argue that the Board should deny shippers the superior benefits of the proposed CN-KCS merger based on the vague notion that CN and KCS operate north-south networks and that this will remove "subtle" benefits created by the "geographic proximity" of the railroads. For CP's argument to have merit, CN and KCS would have to be not only current competitors, but also the *only* transport competitors in that region. But CN and KCS operate in Mid-America, which is one of the most competitive transportation regions in North America, and so face intense competition from other railroads, trucking companies, and barge operators. Moreover, I have analyzed the traffic moving over CN and KCS and have found that there is very little actual competitive overlap, including in Mississippi, despite Dr. Majure's claim to the contrary. I also have found that, contrary to claims made by CP and others, there will be no competitive harm to either individual shippers or shortline railroads that connect with both CN and KCS. CP's argument is apparently based on the proposition that the loss of a single competitive option is a problem, no matter how many competitive options remain, a proposition that is inconsistent both with well-established Board precedents and common sense.

I conclude that the competitive issues CP asserts will result from the proposed merger are unfounded. CN and KCS have recognized the very limited areas in which competitive issues could arise and have addressed them through their commitments to divest the KCS line between Baton Rouge and New Orleans, keep gateways open on reasonable commercial terms, and {{

}} Based on my evaluation of CP's arguments, I do not believe that CP has demonstrated that the proposed CN-KCS merger or the voting trust will result in any competitive issues.

2.2. Merger Benefits

I have reviewed the public benefits that CN and CP state would be created through their respective proposed mergers with KCS. I conclude that the merger of CN with KCS would create public benefits superior to those that would be created by a merger of CP with KCS.

My review of the evidence confirms that the CN-KCS combination will benefit shippers by creating more efficient gateways and single-line services, which will enhance competition between railroads as well as between railroads and their primary competitors in the trucking industry. The merger will create single-line service linking Mexico and Texas with Michigan and eastern Canada, benefitting producers and consumers in the United States, Mexico, and Canada. This single-line service also will enhance rail competition between Detroit, Chicago, Kansas City, and locations to the west and south. In addition to single-line services, the merger will create more efficient connections between KCS and the eastern railroads, which will benefit producers and consumers in the Great Lakes states and the Ohio Valley. Both CN and KCS have significant rail networks in Mid-America, and the merger will create new opportunities for shippers in the combined network to reach new customers in more efficient and direct ways, enhancing competition to the benefit of all involved parties. Finally, the merger will enhance competition in the rail corridor between New Orleans and Baton Rouge, by preserving all existing competitive options for shippers in that corridor and adding new options offered by the railroad that acquires the KCS line.

Based on my analysis, I do not believe that these benefits would be realized in a CP-KCS transaction, for the reasons discussed below in Exhibit 1.

Exhibit 1: Benefits Offered by CN Compared to CP in a KCS Merger Transaction

Rationale	Canadian Pacific	Canadian National
Network Availability East of Chicago	• CP's US network east of Chicago consists entirely of trackage rights over NS that grant CP the option to run only a limited number of trains and haulage rights over CSX • CP does not control the movement of these trains while they are operating via trackage or haulage rights on other railroads	• CN owns its own US network east of Chicago and can directly control the movement of its trains
Ability to Serve Shippers in Michigan	• CP's carload trackage rights through Michigan do not include the ability to serve any customers in the state, including shippers in Detroit, so CP cannot offer shippers single-line services to and from Michigan	• CN serves shippers on its own Michigan lines, including Detroit shippers, and so can offer new single-line routes, including new competitive options for shippers now using CSX and NS in Detroit
Access to Eastern Canada	• CP's access to Eastern Canada via the Detroit Tunnel cannot accommodate, and cannot be easily modified to accommodate, double-stack intermodal trains and large capacity automobile-carrying railcars, both of which are essential to growing trade between Mexico and Texas and eastern Canada • As a result, CP must route its westbound traffic southeast to Buffalo and hence via haulage rights over CSX to Chicago, a route that is 23 percent longer than the CN route[6]	• CN's border crossing at Port Huron, MI can accommodate double-stack intermodal trains and large capacity automobile-carrying railcars and provides a direct, efficient, and shorter route between the Chicago gateway and Eastern Canada
Routing Around Chicago Congestion	• To remain on its own lines, CP would have to route traffic from KCS lines moving to the eastern railroads through the congested Chicago terminal, using some of the most congested portions of Chicago rail infrastructure and track owned by Metra, to reach its Bensenville yard	• CN can route traffic to eastern carriers around Chicago using a less congested outer belt line (coming north to Matteson, IL and proceeding east on the former Elgin, Joliet & Eastern Railroad), via the Meridian Speedway at Meridian, MS, and via the Kansas City Speedway, thus bypassing Chicago
Network South of Chicago	• CP's only line south of Chicago is a secondary mainline to Kansas City, which will give shippers on the KCS network few additional single-line service options in the US	• CN operates an extensive network of lines in the Midwest and Gulf Coast states that will provide numerous new single-line service options to customers on KCS

[6] Calculated using PC*Miler | Rail.

Rationale	Canadian Pacific	Canadian National
New Single-Line Services for Baton Rouge-New Orleans	• A CP-KCS merger would create very few new single-line service options for shippers between Baton Rouge and New Orleans, due to the very limited US network that CP operates and the fact that most Canadian locations served by CP also are served by CN	• CN's commitment to divest the KCS line between Baton Rouge and New Orleans will create new competitive options for shippers in that corridor as well as many new single-line services to points on the CN network in that corridor including new single-line services to points on the acquiring carrier's network, in addition to maintaining single line service to all locations on the CN and KCS networks

Many locations will gain new single-line haul options as a result of the CN-KCS transaction, creating, in some cases, the first single-line service between two locations. This is true for corridors connecting Texas (including Dallas and Beaumont/Port Arthur, TX) to Michigan, Ohio, and Eastern Canada, but also to the upper Midwest and Western Canada. It is also true for corridors connecting Mexico to points served by CN such as Memphis, Detroit, Chicago, and CN's entire network in Canada. These new single-line hauls will provide efficient and competitive alternatives for shippers in these areas. For example:

- Terminals receiving petroleum products in locations such as Beaumont/Port Arthur, TX will be able to source oil from new origins by rail, competing with oil traveling by rail and other modes from other regions.
- Grain producers served by CN in Canada will have new single-line grain routes to Mexico via KCS, and grain producers on KCS will have access to new barge loading facilities served by CN.
- Lumber and forestry products and aluminum originating on CN will have improved access to large markets in Texas.

In addition to single-line hauls, the CN-KCS merger will create new competitive routes linking destinations in the eastern US (primarily on CSX, but also on NS) with locations served by KCS, by offering substantially better interchange options than those that are currently available. Current KCS-CSX interchanges, in particular, are circuitous, leading to low volumes of traffic interchanging primarily in New Orleans (which is less convenient for southbound traffic to Mexico) and East St. Louis. Following the transaction, there will be new interchange locations for the combined railroad, including Chicago, Effingham, IL, and Memphis. Having more options will allow more efficient routings to the appropriate interchange, that will greatly facilitate the flow between locations served by CSX and the entire KCS network.

At present, to reach these interchange locations, KCS traffic must interchange first with CN or with another carrier, and then interchange again with CSX. These additional handlings can lead to delays and the incremental costs that result from the addition of interchanges. Alternatively, KCS could interchange with CSX at existing interchanges, but these are more circuitous and less efficient than the locations that CN can offer. Finally, although it is theoretically possible to facilitate these interchanges through a solution other than a CN-KCS combination (*e.g.*, trackage or haulage rights), this is operationally complex and disadvantageous, due to the challenges of aligning the priorities and needs of both railroads, of coordinating the different aspects of operations (including schedules, yard operations, the use of labor for required work, car supply, locomotive utilization, and any unplanned maintenance activities), and of duplicating administrative processes. As a result of the merger, more convenient interchanges will be simpler to execute and more efficient. This implies that sources and destinations on CSX will become more competitive for customers on the KCS network, and vice-versa, enhancing geographic competition.

The same will occur to some extent with NS: In addition to the current interchange in Meridian, MS, the merged CN-KCS will be able to offer improved interchanges in locations such as Chicago, Memphis, and Decatur, IL. It should be noted that these positive impacts are unique to a CN-KCS transaction and would not be of comparable magnitude in a CP-KCS transaction, due to the limited number of interchange options that CP could offer.

Finally, the divestiture of the KCS line between Baton Rouge and New Orleans will enhance geographic competition at a regional level, since customers on the KCS line will have access both to the merged CN-KCS network (including all KCS origins and destinations to which they had access before the transaction, plus all origins and destinations on CN) and a new set of origins and destinations offered by the acquiring railroad or its partners. If the acquirer is another Class I railroad, this will more than double the number of destinations accessible via single-line haul from the region (given that all other Class I railroads operating nearby are larger than a combined CN-KCS). If the acquirer is a shortline, there will be connections with all Class I railroads except for CP in New Orleans and UP in Baton Rouge.

For all the reasons above, I conclude that the CN-KCS transaction would produce substantial public benefits for rail customers. The remainder of my statement is organized as follows: In Section 3, I examine the Verified Statement by Messrs. Gameiro and Harman and their assertions about the loss of rail options for individual customers and for shortline railroads. In Section 4, I evaluate the Expert Statement by W. Robert Majure, Ph.D., including his claims about the divestiture of the line between Baton Rouge and New Orleans, and his assertions regarding corridor level, geographic, and commodity-specific competition. Finally, in Section 5, I examine the benefits of a CN-KCS combination and compare them to the benefits that CP claims for a hypothetical CP-KCS merger.

3. Verified Statement of Messrs. Gameiro and Harman

Messrs. Gameiro and Harman claim that the CN-KCS merger transaction will lead to a reduction in point source competition and options available to shortlines. As explained below, both assertions are false.

3.1. Competitive Rail Options for Shippers

KCS Baton Rouge to New Orleans Line: In my initial statement, I rigorously analyzed the impact of the CN-KCS merger on the rail options available to shippers. I found that the only instances in which a shipper currently served by two railroads would after the merger be served by one railroad (2-to-1 situations) were all in the Baton Rouge-New Orleans corridor. Thus, given CN's commitment to divest the KCS line between Baton Rouge and New Orleans, no 2-to-1 situations will occur after the merger. The line divestiture will, at a minimum, maintain pre-merger competitive conditions by preserving service from the merged CN-KCS system and introducing a new competitive railroad on the divested KCS line. Overall, I identify 14 instances in which the divestiture itself prevents 2-to-1 situations from occurring and will instead enhance competition, since shippers on the divested line will enjoy single-line service to and from additional rail stations on the CN-KCS network and with the new buyer.[7]

Messrs. Gameiro and Harman agree with my analysis. All the 2-to-1 (and 3-to-2) situations identified in their work papers occur on the KCS Baton Rouge to New Orleans line. However, for reasons they do not state or defend, they disregard the pro-competitive effects of CN's divestiture of the KCS line and continue to claim that shippers on this line will "suffer reductions" in service, when those customers will have service from the same number of railroads and service to more destinations since they will have access to all stations served by the railroad that acquires the KCS line and all stations on the combined CN-KCS system..

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[7] In my previous Verified Statement, I shared an initial count of nine shippers identified by preliminary analysis of Railinc's Serving Carrier/Reciprocal Switching (SCRS) file. *See* Verified Statement of William J. Rennicke, May 26, 2021. I subsequently worked with CN teams to identify a further four shippers between Baton Rouge and New Orleans covered by haulage agreements that provided them with access to both CN and KCS, as well as one shipper in Baton Rouge that also is accessed by both railroads. Therefore, the divestiture of the KCS line will prevent potential 2-to-1 situations for 14 shippers.

Terminal areas: Outside of the Baton Rouge to New Orleans line, Messrs. Gameiro and Harman identify an additional 34 shippers that they say will have reduced competitive options due to the CN-KCS merger. All these shippers are located in terminal areas that provide shippers with access to multiple Class I railroads. Messrs. Gameiro and Harman concede that each of the 34 shippers will have either three or four competitive railroad options after the merger. Yet, they contend that these shippers present a competitive issue in the proposed merger. The Board has made clear that it does not consider such situations as impediments to a merger. As the Board stated in 1996 in the case of the Union Pacific/Southern Pacific (UP/SP) merger:

> "As we have previously explained, numerous mergers since 1980 have sharply reduced the number of major railroads. During that time, the ICC's policy focused usually on preserving two-railroad competition, not on preserving three-railroad competition."[8]

It is reasonable to assume, given the Board's explanation that it is not focused on preserving three-railroad competition, that the Board also is not focused on preserving four-railroad and five-railroad competition, as Messrs. Gameiro and Harman appear to be.

In the same decision, the Board cited the position of the US Department of Transportation concerning 3-to-2 situations:

> "DOT's concern, however, is not with competitive harm of the 3-to-2 variety; two independent railroads, DOT believes, are usually sufficient to maintain vigorous competition."[9]

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[8] Surface Transportation Board Finance Docket 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, Spcsl Corp., and the Denver and Rio Grande Western Railroad Company, Decision No. 44, August 6, 1996, p. 119.

[9] Finance Docket 32760, Decision No. 44, op. cit., p. 90.

The Board's position on this issue is clear and is based on its study of previous instances of consolidation in the industry, which demonstrated that robust competitive conditions remain in place as long as at least two railroads serve a location.[10] This is also consistent with my experience and understanding of the competition faced by railroads, which comes not only from other railroads serving the same customers, but also from trucking and water transport (intermodal competition)[11], geographic competition[12], and in some cases, product competition[13]. Based on the above, I conclude that the merger does not result in a harmful loss of competitive options to any shipper, and note that the analysis provided by Messrs. Gameiro and Harman supports the exact same conclusion, since all their alleged issues are either situated between Baton Rouge and New Orleans, or involve the preservation of more-than-three-railroad competition, a condition which is not consistent with the Board's previous findings and practice.

3.2. Shortline Options

Messrs. Gameiro and Harman allege that shippers served by the 12 shortline railroads that connect with both CN and KCS will experience competitive harm from a loss of competitive options brought about by the merger. This is incorrect. As summarized in Exhibit 2 and described below, shippers on these railroads will not be adversely affected by the proposed merger.

[10] The Board has concluded that despite consistently imposing merger conditions to preserve two-railroad competition where it existed, railroads have continued to face effective competition, either from other railroads or other modes, that has forced them to pass on the preponderance of the significant efficiency gains that they have achieved (through mergers and other means) to the shippers that they serve. *See* STB Ex Parte No. 582 (Sub-No. 1), Major Rail Consolidation Procedures, July 11, 2001.

[11] *See* Verified Statement of William J. Rennicke, May 26, 2021, Section 3.2.

[12] *See* Section 4.3, below.

[13] Product competition occurs when a customer receiving a product can readily substitute another product, for example substituting vegetable oil for waste oil in the manufacture of synthetic diesel.

Exhibit 2: Shortline Railroads Served by CN and KCS[14]

Reporting Mark	Railroad Identified by CP	Comments
AGR	Alabama & Gulf Coast Railway	• O-D pairs served by AGR are end-to-end. Traffic from the CN interchange goes to CN-served stations and traffic from the KCS interchange goes to KCS-served stations. Thus, CN and KCS do not compete for traffic on AGR • AGR shippers also have connections to BNSF, CSX, and NS
ALS	Alton & Southern	• Terminal railroad owned by UP with connections to six Class I railroads. The merger of CN and KCS will leave five competitive options, and shippers will not be materially affected
CMR	Central Midland Railway	• Connects with TRRA, which after the merger will provide connections to five Class I railroads, giving CMR shippers ample competitive options
IMRR	Illinois Midland Railroad	• Traffic from the CN interchange goes to CN-served stations and traffic from the KCS interchange goes to KCS-served stations. CN and KCS do not compete for traffic on IMRR and shippers will not be adversely affected • Shippers on IMRR also have connections to BNSF, NS, and UP
MSE	Mississippi Export Railroad	• Has no physical connection to KCS; connects via haulage rights at Jackson • {{ }}[15] • MSE shippers also have access to interchanges with CSX and NS
NOPB	New Orleans Public Belt	• Terminal railroad with connections to six Class I railroads. The merger of CN and KCS will leave five competitive options, and shippers will not be materially affected
PHRR	Port Harbor Railroad	• Connects with the TRRA, which after the merger will provide connections to five Class I railroads. PHRR shippers will not be materially affected by the merger
TZPR	Tazewell & Peoria	• Terminal railroad located at Peoria, IL • Does not connect with KCS and does not list KCS as an interchange partner on its website
TRRA	Terminal Railroad Association of St. Louis	• Terminal railroad with connections to six Class I railroads and owned by BNSF, CN, CSX, NS, and UP. The merger of CN and KCS will leave five competitive options, and shippers will not be materially affected
TASD	Terminal Railway Alabama State Docks	• Port terminal railroad serving the Port of Mobile, AL with connections to five Class I railroads. The merger of CN and KCS will leave four competitive options, and shippers will not be materially affected
TPW	Toledo, Peoria & Western Railway	• TPW does not connect with KCS and does not show KCS as an interchange partner on its website

[14] Oliver Wyman review of public sources.

[15] 2019 CN Revenue Waybill Data.

Reporting Mark	Railroad Identified by CP	Comments
WTNN	West Tennessee Railroad	• Traffic from the CN interchange goes to CN-served stations and traffic from the KCS interchange goes to KCS-served stations. CN and KCS do not compete for traffic on the WTNN and shippers will not be adversely affected

- Two of the 12 railroads identified by Messrs. Gameiro and Harman (TZPR and TPW) do not connect with KCS and do not list KCS as an interchange partner, and thus the merger will have no competitive effect on the shippers they serve.
- Four of the 12 railroads are large neutral terminal companies that provide their shippers with connections to multiple Class I railroads. Shippers on all these railroads will have service from at least three Class I railroads after the merger.
- Four of the 12 railroads listed interchange little or no traffic with CN, KCS, or both:[16]
  - {

    }}
  - {

    } CN and KCS run in opposite directions from Springfield, making any competitive routings circuitous.
  - CMR and the PHRR connect to CN and KCS via TRRA in St. Louis, which offers multiple Class I connections. {{

    }}
- AGR connects with CN at Mobile, AL and KCS at Columbus, MS. All the traffic interchanged with CN at Mobile, AL goes to or from CN-served stations, while all the traffic interchanged with KCS at Columbus goes to or from KCS-destinations.[17] As with the CN and KCS systems overall, the O-D pairs served by AGR are not on the same route and AGR shippers will not lose competitive options due to the merger.
- WTNN connects with CN at Fulton, KY and KCS at Corinth, MS. As with AGR, traffic from the CN interchange at Fulton goes in different directions to and from CN-served stations, and traffic from the KCS interchange at Corinth goes to and from KCS-served stations.[18] Thus, WTNN shippers moving traffic on CN and KCS on the same routes/end points will not lose competitive options due to the merger.

[16] 2019 CN and KCS Revenue Waybill Data.

[17] Alabama & Gulf Coast Railway (AGR) website.

[18] West Tennessee Railroad (WTNN) website.

In sum, careful analysis shows that the assertion by Messrs. Gameiro and Harman that the proposed merger will harm shortlines that connect with both CN and KCS is incorrect. Shippers on these railroads will continue to have access to ample competitive railroad connections.

4. Expert Statement of Dr. Majure

In his Expert Statement, Dr. Majure makes several assertions that I discuss in the sections below. These include questioning the effectiveness of CN's divestiture in Louisiana; other instances of what he considers to be horizontal competition issues outside of this region; an analysis of "geographic" competition (*i.e.*, competition between shippers within a geographic area); and an analysis of several specific commodities that he claims illustrate competitive harm.

4.1. Baton Rouge to New Orleans Corridor Competition

Dr. Majure acknowledges that the divestiture of the Baton Rouge-New Orleans KCS line could potentially address his horizontal concerns about the CN-KCS merger. But he still tries to argue, entirely without merit, that prior to the divestiture there could be harm, as well as that the divestiture itself may be flawed.

Competitive Conditions During the Voting Trust

Dr. Majure contends that shippers between Baton Rouge and New Orleans will be negatively affected by approval of the Voting Trust before the divestiture of the KCS line occurs.[19] This argument, for which Dr. Majure provides no evidence based on prior railroad Voting Trusts, is that shippers will be disadvantaged during the period the Voting Trust remains in place. He speculates that CN's logical next step following the Voting Trust approval would be to raise rates on its shippers to encourage them to switch their traffic to KCS, apparently based

[19] Expert Statement of W. Robert Majure, PhD, June 28, 2021, ¶¶6-26.

on his belief that CN would therefore be able to increase the sale value of the KCS line. This makes no sense in the real world. As with many of his arguments, Dr. Majure fails to consider the fact that CN and KCS do not operate in a vacuum.

Even in the rare circumstance in which CN and KCS are the only rail competitors for a customer, they face intermodal competition from trucks and barges, allowing shippers to discipline rate setting and service by threatening to switch to other modes of transport. I described this competition extensively in my first Verified Statement, which Dr. Majure apparently ignored.[20] A prime example of this occurs {{ }} in the Baton Rouge to New Orleans corridor. {{ }} This will allow the plant to source the commodities required for its production not only by rail, but also by barge.[21] Additionally, geographic competition contributes to disciplining rates and service.[22] A deliberate hypothetical price increase by CN for customers on its line would make shipments from facilities located on the CN line less competitive, thereby encouraging customers to source commodities from alternative shippers located elsewhere. In other words, the market for the commodities which CN and KCS transport in the Baton Rouge to New Orleans area is not restricted to Baton Rouge-New Orleans or to shippers located on CN and KCS lines.

In addition, the rate increases that Dr. Majure speculates CN would apply to customers on its line would damage the long-term prospects of CN-KCS, as the merged railroad would risk

[20] Verified Statement of William J. Rennicke, op. cit.

[21] {{ }}

[22] An extensive discussion of geographic competition is provided in Section 4.3 of this Verified Statement.

losing these customers to the railroad that would acquire the KCS line when it is divested.[23] CN-KCS would then be left with a diminished traffic base in this corridor. Customers served by CN-KCS at other locations on their system could also potentially switch traffic to other providers.

The above notwithstanding, and out of an abundance of caution, {{

}} It provides a complete answer to Dr. Majure's conjecture that CN would have incentive to raise rates during the voting trust period.

Intramodal Competition Through Divestiture

Dr. Majure also strains to explain why the divestiture of the KCS line between Baton Rouge and New Orleans will not eliminate the concerns that he has raised about horizontal effects. As noted, this is not relevant to the voting trust, but it also underscores how unfamiliar he is with the structure and operation of the railroad industry.

His first assertion is that "Some shippers in these areas are unlikely to see their competitive options restored at all."[24] Dr. Majure does not provide any rationale or logic to support this claim, but as I have previously explained, a simple analysis of the effects of the divestiture shows that it will not only preserve competitive options but enhance competition compared to a no-merger situation. The group of shippers located on the divested line that, absent the divestiture, could have been adversely affected by the proposed merger are those

[23] Dr. Majure's comment that this would be reflected in a higher acquisition price for the KCS line is speculative, and he has not provided any evidence that this is likely to occur.

[24] Expert Statement of W. Robert Majure, op. cit., ¶50.

shippers currently served by both CN and KCS, which operate parallel lines between Baton Rouge and New Orleans. That group of shippers currently have two competitive rail options: to ship via CN or via KCS. Dr. Majure states that shippers currently shipping via KCS will lose that option. But he ignores the fact that, after the divestiture, the affected shippers will continue to have access to both CN and KCS. CN has stated that the merged railroad will maintain local trackage rights so that it can continue to serve customers on the divested line that wish to ship to KCS destinations.

Dr. Majure also claims that such shippers will lose a competitive option.[25] This is incorrect. The affected shippers will be served both by CN-KCS *and* by the railroad that acquires the divested KCS line between Baton Rouge and New Orleans; thus, these shippers will have competitive service over an additional railroad's network. Therefore, after the divestiture, shippers on the line will continue to have two competitive options: one that covers all the origins and destinations of the combined CN-KCS (including origins and destinations via gateways, which will be available given CN's existing gateway commitments); and the other by the railroad that acquires the divested line. Shippers that had been served by CN and KCS will gain access to CN's network through the combination plus a competitive option. No shipper on the KCS line between Baton Rouge and New Orleans will lose competitive service.

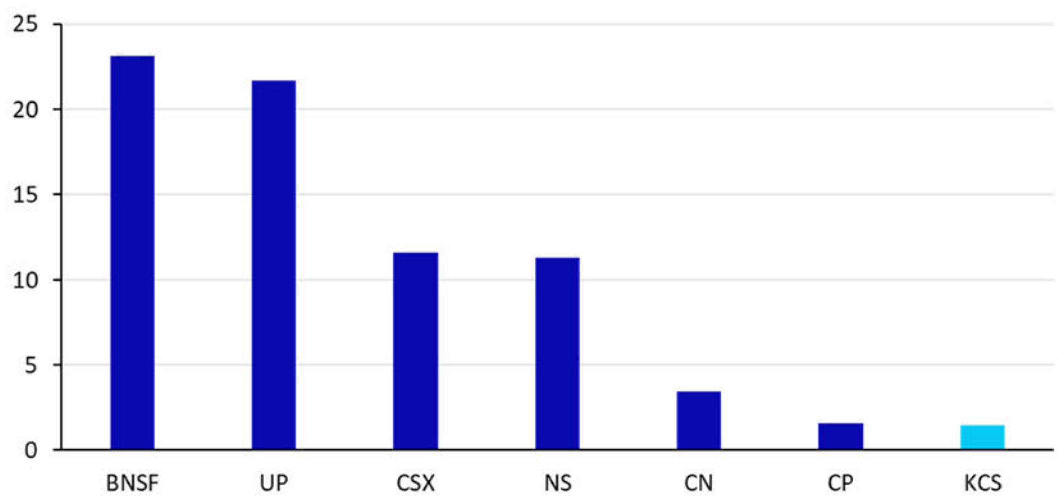
Dr. Majure reveals his lack of understanding of the basic structure and operation of the railroad industry beginning at Paragraph 62 of his statement. He first states that divestitures are difficult. Yet, as the Board is fully aware, a sale of the KCS track between Baton Route and New Orleans would be a straightforward line divestiture, similar to literally hundreds of other line transfers from Class I railroads to other Class I, regional, and shortline railroads that have been

[25] Expert Statement of W. Robert Majure, op. cit., ¶50 and ¶54.

carried out successfully under the Board's jurisdiction since 1980. Dr. Majure, in contrast, is apparently unaware of this history and thus greatly overestimates the difficulty of the divestiture.

Next, Dr. Majure opines that a line sale to a Class I railroad would not benefit shippers. Every Class I railroad in North America, except CP, serves New Orleans and could acquire and efficiently operate the divested line. Any of these railroads are of a size to give shippers on the divested line access to single-line service over a much larger network than KCS currently provides, as evidenced by the difference in revenue between potential acquirers and KCS (Exhibit 3) – again enhancing the competitive options available to those shippers.

Exhibit 3: 2019 US Revenue for Class I Railroads[26]
$ billions



Next, Dr. Majure expresses what he considers to be serious concerns regarding the potential sale of the KCS line to a shortline operator, which is another option available to CN and the Board in crafting a pro-competitive solution.

[26] Surface Transportation Board R1, Schedule 210, Line 13; Oliver Wyman analysis. Only US portion of revenue is included. The conclusion still applies if Mexican revenue is included in the calculation: KCS reports total revenues of $2.86 billion in its 2019 form 10-K, compared to $23.5 billion for BNSF, $21.6 billion for UP, $11.9 billion for CSX, and $11.3 billion for NS, reported in their respective 2019 SEC form 10-K filings.

As the Board is aware, several holding companies specialize in operating shortline and terminal railroads (*e.g.*, Genesee & Wyoming, Watco, Anacostia Rail Holdings, the Washington Rail Group) and provide high levels of service to hundreds of existing shippers. Dr. Majure apparently seems to be unsure whether a shortline operator could connect to Class I railroads in New Orleans and of the effect that introducing a shortline operator would have on single-line service. I have conducted due diligence reviews in dozens of Class I line divestitures to shortline companies, and based on that deep experience, I am confident that no matter whether a Class I or a shortline acquires the KCS line, shippers on the line will gain access to all the railroads serving New Orleans, further enhancing shippers' competitive options.

Additionally, should a shortline operator be selected to operate the line, it is common to structure the commercial relationship of the shortline with the Class I's as a switching relationship, in which the shortline delivers cars to and from shippers according to a fee schedule and does not appear in the waybill or participate in rate negotiations with shippers. Shippers welcome the additional competitive options such an arrangement can provide.

Dr. Majure then expresses unsubstantiated and purely speculative concerns regarding whether a buyer could be found and, if so, whether it would be "burdened with debt or with poor logistics or with an inability to obtain scale."[27] Again, Dr. Majure's lack of experience with rail divestitures and transfers is manifest.

First, based on my experience both with Class I's and shortline holding companies and with dozens of line divestitures, I am certain that CN will have no shortage of qualified buyers for the KCS line. The line would be an uncommonly attractive acquisition for a Class I railroad or any of the shortline operators.

[27] Expert Statement of W. Robert Majure, op. cit., ¶66.

Second, as the Board is aware but Dr. Majure apparently is not, the shortline holding companies are large and experienced enough to operate the KCS line. For example:

- Genesee & Wyoming operates approximately 15,000 miles of track – more than CP and nearly five times the mileage operated by KCS in the United States.
- Anacostia Rail Group operates in environments as complex as the KCS line, including the Chicago, South Shore & South Bend Railroad, where it operates both commuter and freight service in the dense industrial corridor at the south end of Lake Michigan; the Port Harbor Line, where it provides rail operations, maintenance, and dispatching for the Ports of Los Angeles and Long Beach and handles more than 40,000 carloads a year that are interchanged to Class I railroads; and the New York and Atlantic Railway, where it operates freight service over the Long Island Rail Road, one of the densest rail corridors in the world.
- The Washington Rail Group owns the Montana Rail Link, which operates a portion of one of BNSF's transcontinental lines between Chicago and the West Coast.

Finally, whichever option is chosen, the Board will have jurisdiction over the divestiture transaction.[28] As the Board stated in FD 36500 regarding the CP-KCS voting trust, "In the event divestiture were required, the agency would have the authority to approve both a plan of divestiture and the sale (or other disposition) of the trust stock, whenever such divestiture and disposition take place, and whether or not the person acquiring the trust stock requires §11323 authority to consummate that acquisition."[29] As discussed above, there are many pro-competitive alternatives – all of which would preserve or enhance competition.

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[28] 49 CFR 1180.3.

[29] *See* May 6 Decision at p. 9 (citing CN/IC Op. Letter, FD 33556, slip op. at 4 (citing Union Pac. Corp.—Request for Informal Op.—Voting Trust Agreement, FD 32619, slip op. at 5 and Santa Fe S. Pac. Corp.—Control—S. Pac. Transp. Co., 2 I.C.C.2d 709, 834 (1986) (noting that the jurisdiction of the agency "to oversee the orderly divestiture" of the trust stock is "inherently within [its] authority to approve consolidations and acquisitions of control.")).

4.2. Competition at Other Locations

Dr. Majure also presents in his statement what he considers to be other instances of horizontal competitive issues outside of the Baton Rouge-New Orleans corridor that could arise as a result of the CN-KCS merger. His statement at this point is a succession of attempts to manufacture competitive overlap using a variety of irrelevant metrics and flawed techniques. As he has done in previous work, he relies on approaches that the Board has specifically rejected in the past, such as fabricating imaginary 2-to-1 situations solely on the basis that the merging railroads both have a presence in the same broad geographic area, such as a BEA Economic Area, regardless of the railroads' actual ability to serve the same customers in a broad area.[30]

Additionally, in his analysis, Dr. Majure represents imaginary 3-to-2 situations as being problematic, despite the Board's precedent of only seeking to preserve two-railroad competition.[31] In the following paragraphs, I examine Dr. Majure's conjectures one by one and show that his claims about these horizontal competition situations are baseless.

"Parallel and overlapping" networks: Dr. Majure provides a map showing the CN and KCS networks, which he claims are "parallel and overlapping."[32] Like most oversimplified arguments, this one is superficially appealing. Upon closer examination, however, the map provided in Dr. Majure's statement clearly shows that CN and KCS lines do not overlap in any way, other than the short corridor between Baton Rouge and New Orleans discussed previously.

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[30] *See* Finance Docket No. 32760, Decision No. 44, op. cit., pp. 269-270, where Dr. Majure's approaches are thoroughly criticized and dismissed by the Board. Additionally, the Board has since upheld its definition of 2-to-1 locations in a way that clearly contradicts Dr. Majure's manufactured 2-to-1 situations, *see* Finance Docket No. 32760, General Oversight, Decision No. 19, December 19, 2001, pp. 3-5.

[31] Finance Docket 32760, Decision No. 44, op. cit., p. 119.

[32] Expert Statement by W. Robert Majure, op. cit., p. 14.

On balance, the lines of the two networks that Dr. Majure claims are parallel are located more than two hundred miles, and even in some cases more than three hundred miles, apart from each other. They also are separated by the Mississippi River. CN's main line (the former Illinois Central line) serves a north-south corridor running from New Orleans to Jackson, MS, Memphis, and Chicago; whereas KCS's line serves markets such as Kansas City (including traffic moving through Kansas City via interchanges and through haulage rights from Omaha, NE-Council Bluffs, IA) to Shreveport, LA, Dallas, and on to the border with Mexico.

Even Mr. Creel's Verified Statement does not support, and plainly contradicts, Dr. Majure's claim. Table 1 of Mr. Creel's statement clearly shows that the CN and KCS north-south routes that Dr. Majure claims are competing are not competitive, because the distance and transit times on the CN routes are far better than those on the KCS routes.[33] At the same time, Table 1 of Mr. Creel's statement shows that CN's routes are not competitive with the KCS line for traffic moving between Kansas City and New Orleans, and Kansas City to Shreveport, LA, Port Arthur, TX, and Mexico.[34] The clear hypothesis one would draw from Mr. Creel's analysis is that, contrary to the claims made by Dr. Majure on the basis of lines on maps, CN serves one set of markets, namely from Canada, the Upper Midwest, and Chicago to New Orleans and other Louisiana ports; and KCS serves a different set of markets, from Kansas City to Mexico, Shreveport, LA, Port Arthur, TX, and New Orleans.

To test this hypothesis, I conducted an in-depth examination of origin and destination ("O-D") pairs served by CN and by KCS. The objective of my examination was to gather more

[33] Mr. Creel's observations are made in the context of his assertion that CN-KCS would have incentives to downgrade the line between Kansas City and Shreveport. I prove that his assertion is incorrect elsewhere in my Verified Statement, but his observation that the KCS lines are not competitive in the markets served by the CN line is correct.

[34] Verified Statement of Keith Creel, op. cit., p. 9, Table 1 – CN/KCS Comparisons.

detailed information concerning the extent to which the CN and KCS networks are parallel and their traffic flows side-by-side, as opposed to end-to-end and complementary. My analysis does not merely depend on a map to make assumptions; instead, I analyzed specific traffic flows on the CN and KCS networks. To ensure maximum coverage of routes serving various O-D pairs, I aggregated data from the STB Carload Waybill Sample 2015-2019 and examined all O-D pairs over which both CN and KCS operate all or part of any routes.[35] I used 6-digit SPLC locations as the smallest geographic unit available that is consistent across railroads in the STB Carload Waybill Sample.[36]

I identified 1,185 O-D pairs in which CN and KCS both participated that carried any traffic recorded in the Carload Waybill Sample 2015-2019. I eliminated 44 O-D pairs where the traffic between 2015 and 2019 was exclusively intermodal in my analysis.[37] I then reviewed whether CN and KCS served the remaining 1,141 O-D pairs primarily through *side-by-side*

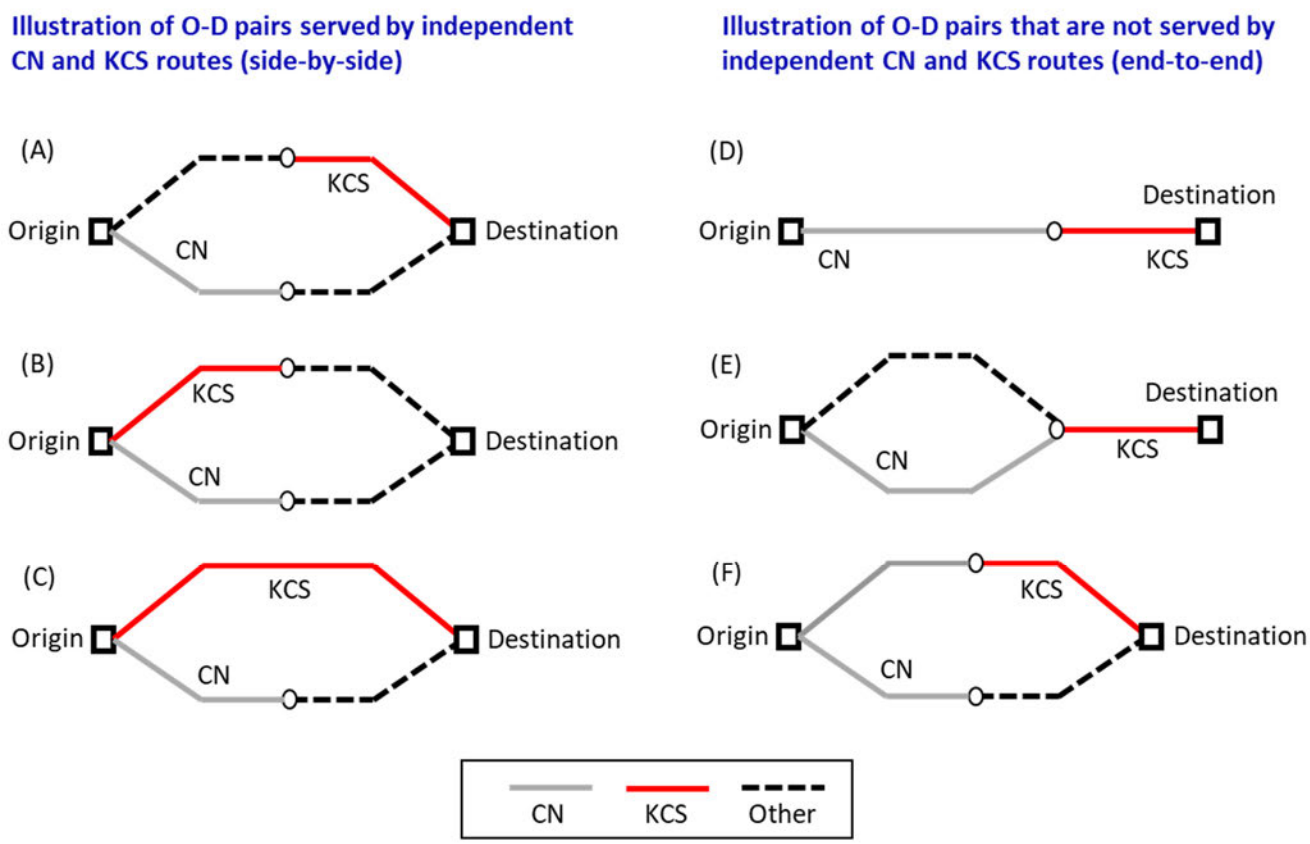
[35] I included any O-D pair where both CN and KCS were involved in any part of a route. CN's and KCS's involvement could include all or portions of competing routes, as well as portions of the same route (*e.g.*, CN-KCS interchange routes). O-D pairs where only CN and other railroads but not KCS are involved were excluded. Similarly, O-D pairs where only KCS and other railroads but not CN are involved were excluded.

[36] This analysis does not establish the existence of horizontal competitive effects (loss of options for customers) because such impacts are dependent on the effective access of customers located in each geography to each rail option in that geography – as I show in my discussion of Dr. Majure's flawed application of BEA-level analysis for that purpose later in this statement. Likewise, as noted, an analysis of competitive effects requires accounting for intermodal and geographic competition. However, this analysis can function as an initial screen to begin identifying situations where such circumstances could arise. The extremely low number of 6-digit SPLC O-Ds where CN and KCS have independent routes is an initial indication of the low potential for competitive harm in the CN-KCS merger.

[37] I limited my analysis to carload traffic, because the Board has indicated that it views intermodal traffic as inherently competitive. This includes trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) shipments. Because the cargo for these movements is loaded into a truck or container and drayed to and from railroad ramps, this traffic is directly competitive with truck and can be easily diverted to motor carriers. Other types of intermodal traffic that are trucked from the point at which they are produced to a railroad for loading (such as grain or pulpwood) also are competitive but are not included here. Similarly, commodities such as livestock and chicken feed that are often trucked from the railroad to the point at which they are consumed are competitive but are not included here.

routes (*i.e.*, O-Ds where CN and KCS each can operate from origin to destination, either directly or via interchange with other carriers, without involving the other railroad, and therefore using independent routes) or primarily through *end-to-end* routes (*i.e.*, O-Ds where CN and KCS operate different segments of common routes from origin to destination, as opposed to operating parallel segments of competing independent routes). Exhibit 4 illustrates some of the many permutations of side-by-side and end-to-end routes.

Exhibit 4: Illustrative Route Configurations: Side-By-Side CN and KCS Routes and End-To-End Routes Which Include Both CN and KCS[38]



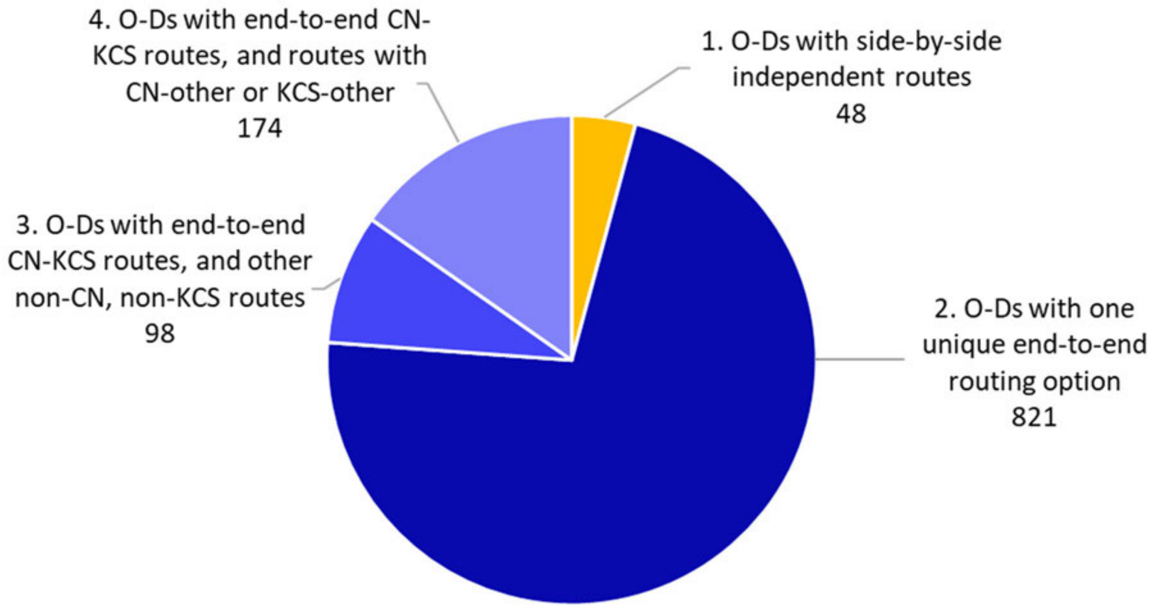
[38] Case (A) illustrates independent routes where CN and KCS do not serve a common location, whereas (B) and (C) illustrate independent routes where CN and KCS serve a common origin. Case (D) illustrates a single route with CN and KCS portions. Case (E) illustrates an O-D pair with a CN-KCS route and an Other-KCS route. Case (F) illustrates a CN-KCS route and a CN-Other route. Additional configurations are possible. The vast majority of CN and KCS-served O-D pairs correspond to cases on the right, while nearly every case on the left include Baton Rouge and New Orleans as an origin or destination.

If Dr. Majure's hypothesis is correct, most (or at least many) O-D pairs will be served by side-by-side routes where CN and KCS operate parallel, competing segments of different routes. End-to-end routes where CN and KCS each operate different segments of the same routes will be rare. My analysis, however, found that between 2015 and 2019, 96 percent of O-D pairs involving both CN and KCS were end-to-end routes. Moreover, virtually all of the four percent of O-D pairs that were side-by-side (a total of just 48 O-D pairs) involved stations between Baton Rouge and New Orleans, where CN and KCS operate parallel lines and serve some common customers (Exhibit 5). Thus, my analysis is a clear indication that Dr. Majure's hypothesis is not supported by data, that CN and KCS do not operate parallel networks of any kind outside the Baton Rouge to New Orleans corridor, and that the proposed merger of CN and KCS is clearly end-to-end, given the divestiture commitment. Based on all of this, Dr. Majure's repeated claims that the CN-KCS merger is horizontal is flawed.

At this point, it is important to note that my analysis of SPLC-level O-D pairs does not imply in any way that the customers served by CN and KCS in any given SPLC are the same customers. I do not use this analysis to test whether any customers will lose competitive options, because that would be entirely dependent on each customer's situation with respect to the railroads present in each geographic area.[39] Instead, I only use this approach to test the extent to which the network configuration is end-to-end as opposed to side-by-side. I contrast this with Dr. Majure's geography-based methodology that he used to attempt to identify potential losses of competitive options, which is deeply flawed and which I assess in detail in the next section of this document.

[39] *See supra* note 36.

Exhibit 5: Analyzed CN and KCS Served O-D Pairs[40]
See footnote for additional detail



Corridor-level competition: Dr. Majure's so-called corridor-level analysis is particularly misleading and shows a basic lack of understanding of how railroads operate and compete with each other and with other modes of transport. In his attempt to create theoretical competitive issues, Dr. Majure appears to have repeated a basic methodological error that he made in a prior merger proceeding and that the Board itself identified as such and rejected: namely, the assumption that the relevant geographic market for railroad competition is a BEA Economic Area. The BEA divides the entire United States into just 179 Economic Areas, many of which

[40] Surface Transportation Board Carload Waybill Sample 2015-2019; Oliver Wyman analysis. Notes for numbered pie slices: 1. O-D pairs are considered to have side-by-side independent routes if there is at least one route using CN in any portion of the route but not KCS, and simultaneously at least another route using KCS in any portion of the route and not CN. 2. O-D pairs are said to have one unique end-to-end routing option if there is only one route in the Waybill Sample, which includes both CN and KCS on the same route. 3. O-D pairs have at least one route which includes CN and KCS on the same route, but may additionally have routes that involve neither CN nor KCS. 4. There is at least one route involving CN and KCS on the same route, and at least another route involving either CN or KCS, connecting with another railroad – for example, an O-D pair could have a KCS-CN option and a competing KCS-UP option.

are hundreds of miles across and encompass dozens of counties. Canadian Economic Areas are at a province level and Mexico is represented by a single Economic Area. Dr. Majure appears to assume that if CN and KCS both operate on parts of a movement between BEA Economic Areas, then a merger would lead to a loss of routing options. This theoretical construct is clearly not consistent with the competitive and operational realities faced by railroads. For Dr. Majure's approach to be correct, individual shippers would need to be served by both railroads or be located close enough to permit a shipper to build out to a competing line. In practice, given the size of BEA Economic Areas, this is most often not the case.

Again, this is not the first time that Dr. Majure has improperly relied on BEA Economic Area data to analyze the competitive impact of a merger. He did so in connection with the 1996 UP/SP merger, and the Board expressly found that this was inappropriate and erroneous:

> "Majure's use of BEAs and SPLCs…leads to an overestimate of the amount of traffic that would face the loss of one of three direct rail competitors….His data limitations and measurement errors significantly increase the upward bias in his estimates of merger-related competitive harm."[41]

In addition to criticizing Dr. Majure's decision to use BEA and SPLC data in such as way as to inflate his own findings to argue a loss of competition, the Board concluded that geographic location-based analyses such as the analysis performed by Dr. Majure are not broadly applicable or relevant, since many commodities cannot be "transloaded" to a distant railroad (or if they could, they could also be shipped entirely via truck).[42] The Board has subsequently reiterated its definition of 2-to-1 points as locations where at least one shipper/receiver has available to it service from the two railroads proposing to merge but no other railroad. The railroads' access to

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[41] Finance Docket No. 32760, Decision No. 44, op. cit., pp. 120-121.

[42] *See* Finance Docket No. 32760, Decision No. 44, op. cit., pp. 269-270.

the shipper/receiver could either be direct service or commercial access through reciprocal switching or haulage.

The Board's definition is quite inconsistent with the expansive approach employed by Dr. Majure, which categorize points served by either merging railroad located in broad geographic units (specifically, BEAs or 4-digit SPLCs) as potential losses in rail options.[43] As I have stated before in my analysis, using STB Carload Waybill Sample data, I find that such 2-to-1 and analogous 3-to-2 locations are exclusively located in the corridor which will be divested by CN, between New Orleans and Baton Rouge, and that all these situations will be addressed by the divestiture of the KCS line.

Revenue from "overlap areas": Dr. Majure's lack of understanding of how customers access rail service likewise permeates into his argument concerning what he calls "overlap areas," or areas that are served both by CN and by KCS. His hypothesis, apparently, is that the merger of CN and KCS will reduce competition in "overlap" areas because CN and KCS are both present in these areas. Dr. Majure has calculated that CN and KCS earn 21 percent of their revenue from shipments in BEA areas that are served both by CN and by KCS.[44] He further estimates that more than ten percent of revenues are earned in his so-called "overlap" areas at a 6-digit SPLC (or city) level.

Again, Dr. Majure has employed a flawed and biased analysis. As with his "corridor" analysis, he again improperly assumes any railroad in the same BEA Economic Area competes with all other railroads in the BEA Economic Area. Even that flaw is not sufficient to get to his

[43] *See* Finance Docket No. 32760, General Oversight, Decision No. 19, op. cit., pp. 3-5.

[44] Expert Statement by W. Robert Majure, op. cit., p. 17.

preferred conclusion, and he makes additional, demonstrably false assumptions that serve further to manufacturer nonexistent harm.

- First, Dr. Majure continues to include the KCS Baton Rouge to New Orleans line in his calculation as an "overlap" area, although due to CN's commitment to divest the line, CN and KCS would compete with another railroad in the area.
- Second, Dr. Majure fails to acknowledge that all other "overlap" areas are in terminals such as St. Louis or Mobile, where CN and KCS compete with multiple Class I railroads. As I have explained previously, shippers in such terminal areas have access to between four and six Class I carriers and the merger of CN and KCS will not have a material effect on rail competition.
- Third, Dr. Majure's analysis fails to acknowledge that, in most cases, customers are not located on the same railroad and are not open to reciprocal switching. In these speculations, Dr. Majure's lack of understanding of how customers use railroads to ship their products is most evident, and he repeats the same flawed logic that he used in his BEA-level corridor analysis. The case of Jackson, MS (and all the rest of the state of Mississippi) serves as an illustration of Dr. Majure's incorrect assumptions, since no customers are served by or open to both CN and KCS – a fact that is confirmed by the statement of Messrs. Gameiro and Harman.[45] Dr. Majure's calculation characterizes revenue earned in Mississippi as coming from an "overlap area," where in reality CN and KCS have no common or "overlap" in customers in the state, as I clearly pointed out in my previous Verified Statement.[46]
- Finally, Dr. Majure does not consider, for locations that are served by CN and by KCS, whether the two railroads predominantly serve different corridors, given that the networks are end-to-end and not side-by-side. For example, CN may generate revenue in the St. Louis area through traffic to or from Memphis, Chicago, Detroit, or Canada; whereas KCS may generate revenue in the same St. Louis area through traffic going in the opposite direction to Kansas City, Texas, or Mexico. My analysis of O-D pairs served by CN and KCS clearly indicates that even where the two railroads serve a common geographic area, they do so in an end-to-end configuration and not through competing side-by-side routes.

[45] Verified Statement by Adolph Gameiro and John Harman, June 28, 2021, p. 3.

[46] Note that in Sections 4.3 and 4.4. below, I review in more detail the conclusions from my examination of the situation in Mississippi. Also *see* Verified Statement by William J. Rennicke, op. cit., pp. 12-14.

Unfortunately, the work papers which were provided by Dr. Majure after a considerable delay do not include any meaningful explanation of where his "overlap areas" are situated. I nevertheless replicated the analysis using CN and KCS 2019 Revenue Waybill Data. The results are once again an indication of the extent to which Dr. Majure is willing to generate unsupported arguments:

- My analysis found that the "overlap area" with the highest revenue is the Baton Rouge BEA Economic Area. This location accounts for over 30 percent of the revenue in the "overlap areas," with a total revenue that is more than 50 percent higher than the second location, which is New Orleans. Dr. Majure cannot have ignored CN's commitment to divest the KCS line in the area, but he nevertheless decided to include it in his calculation – even though any potential loss of competition there will clearly be resolved by the sale of the KCS line.
  - {{ }}[47] His analysis appears to consider that any location where the two railroads originate any revenue is an "overlapping area," even if one of the railroads has a minimal presence.
- The second "overlapping area" by volume is New Orleans. This location is a major rail market and port area served by UP, BNSF, NS, CSX, KCS, and CN. The fact that CN and KCS both generate revenue in New Orleans does not provide any indication of competitive issues or harm.
- The third "overlap location" is Jackson, MS. Dr. Majure once again ignores that there is no overlap in customers in Mississippi, even though Messrs. Gameiro and Harman failed to identify a single common customer in the state. The "overlap" that Dr. Majure sees may only seem to exist when the network of CN and KCS are combined on a high-level map of Mississippi, and not in understanding the actual competitive options available to shippers in the area.
- The fourth "overlap location" is St. Louis, MO/IL, which is again served by nearly every Class I railroad. This is also the case for the other locations in the list, which are served by multiple railroads and which I had previously identified in my first Verified Statement (Omaha, NE/Council Bluffs, IA, Mobile, AL, Springfield, IL, St. Louis, and New Orleans).[48]

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[47] Carload Waybill Sample, op. cit.

[48] *See* Verified Statement by William J. Rennicke, op. cit.

I once again conclude that Dr. Majure's analysis is flawed and designed specifically to demonstrate competitive issues that will not exist after the combination of CN and KCS. It is clear that merely calculating the percentages of originations and terminations in commonly served locations has very limited analytical value and does not indicate that competitive harm would result from this merger.

4.3. Geographic (Source and Destination) Competition

In past merger proceedings, the Board has recognized that geographic competition must be considered in assessing the competitive effects of a merger.[49] The Board defines geographic competition as "whether the complaining shipper can avoid using the defendant railroad by obtaining the same product from a different source, or by shipping the same product to a different destination."[50] The Board has found that geographic competition can be an effective competitive restraint on rail rates when:

- Sources of supply are numerous;
- Cost conditions for alternative sources of supply are homogeneous;
- Transport costs from alternative sources are similar;
- Delivered products are close substitutes; and
- The share of transport cost for the delivered product is high.[51]

For example, for commodities such as grain, customers can access homogeneous products sourced from a variety of locations both in North America's production areas as well as from international markets. Additionally, since grain is generally trucked to grain elevators, producers

[49] Finance Docket No. 32760, Decision No. 44, op. cit., pp. 124-125.

[50] *See* Ex Parte 627, Market Dominance Determinations--Product And Geographic Competition, December 10, 1998, p. 1.

[51] Finance Docket No. 32760, Decision No. 44, op. cit., p. 125.

can easily shift their shipments to alternative elevators serving different railroads, both to reach the same customer or to reach alternative customers consuming the same commodity. Finally, competition from barges in the transport of grain also increases the number of sources that are available to customers, as well as the number of customers that an individual shipper can access through a variety of modal combinations.

Similar situations occur with other commodities such as petroleum oil, which can be sourced by oil terminals from various production areas in the US, Canada, and elsewhere by pipeline, rail, or barge. For example, a petroleum oil terminal served by KCS in {{ }} faces competition from other oil terminals in the Gulf Coast area, which can be served by other railroads, as well by as pipeline and barge. In this case, KCS must set its prices so that the delivered price of the oil to the terminal on its railroad is competitive with the price of the oil to other terminals, delivered by rail or by other means of transport. The Board has in the past considered both the geographic dispersion of sources, the markets served by each railroad, and whether truck and barge also could be used to transport products. In the 1996 UP/SP merger, for example, the Board studied commodities such as plastics and other chemicals, coal, grain, and lumber, finding robust instances of geographic competition in each market.[52]

Geographic competition has a major impact on rail competition in markets where the conditions described by the Board apply. For example, I used Transearch[53] and CN and KCS 2019 Revenue Waybill Data to test the extent of source competition for five of the largest representative rail commodity flows – {{

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[52] *See* Finance Docket No. 32760, Decision No. 44, op. cit., pp. 124-132.

[53] IHS Transearch is a database that provides detailed transportation data by geography for truck, rail, waterborne, and air shipments for more than 340 commodities.

}} – moving in two key Louisiana BEA Economic Areas – New Orleans and Baton Rouge (Exhibit 6).

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Exhibit 6 shows that these commodities are currently sourced from a wide variety of geographies in the United States and Canada. Commodities such as grain and lumber shipped to Louisiana originate in more than 100 BEA Economic Areas. All these commodities are shipped to Louisiana from no less than 60 BEA Economic Areas each. The dispersion of origins is striking; in markets such as primary iron and steel shipments to New Orleans, the top origin Economic Area accounts for less than 15 percent of shipments.

Dr. Majure claims that the merger of CN and KCS will result in a loss of geographic competition, affecting in particular customers in Louisiana and Mississippi.[55] To support his claim, he states that the share of rail revenue of a combined CN-KCS in each state or BEA

[54] Bureau of Economic Analysis, 2019 CN and KCS Revenue Waybill Data, IHS Transearch, Oliver Wyman analysis.

[55] Expert Statement by W. Robert Majure, op. cit., p. 19.

within a state indicates the extent to which customers in these states or BEA's will lose competitive options in a geographic area. My analysis shows that Dr. Majure's unconventional characterization of geographic competition is simplistic and erroneous for several reasons.

First, notwithstanding the label he uses, the analysis offered by Dr. Majure is not based on the widely accepted understanding and use of the concept of "geographic competition" as defined by the STB, but instead is largely a way of repackaging his baseline assumption that railroads within a BEA necessarily compete with each other. Again, Dr. Majure fails to consider even whether each customer in a state or BEA has access to other railroads serving the area.

To be sure, if customers in a geographic area effectively have access to more than one railroad, there could be a plausible scenario where a customer could source a commodity from either railroad, each originating in a different location, and where following the merger the railroad could in theory favor one origin over another, reducing geographic competition. Of course, the scenario described above is a 2-to-1 situation and the primary challenge would be the loss of rail options and not the loss of "geographic competition."

However, as I have demonstrated in my analysis, customers in the areas that Dr. Majure targets are not accessible to both railroads. In the case of Jackson, MS, for example, no customers served by CN have access to KCS, and no customers served by KCS have access to CN. Under these circumstances, there is geographic competition for the business of a rail customer in Mississippi served by CN, but it is limited to sources and destinations located on or efficiently assessible through CN. The same is true for customers in Mississippi served by KCS. The merger in this case would create an increase, not a decrease, in competition, as customers now served only by either CN or KCS would gain single-line access to all the sources and destinations across a combined CN-KCS. For example, a customer located on the KCS line would be able post-merger to source commodities via single-line service not only from KCS-served shippers but also from CN-served shippers and select its suppliers from an expanded set of competitors based on price and quality.

Second, Dr. Majure's analysis fails to recognize that in the few locations where customers do have access to both CN and to KCS (for example, New Orleans), they also have access to multiple other Class I railroads whose networks are orders of magnitude greater than a combined CN-KCS. The two merging railroads account for a small percentage of originations and terminations, and therefore any negative impact on geographic competition would be minimal to nonexistent: While CN and KCS respectively originate fewer than seven percent and two percent of tons originated by Class I railroads in the United States, BNSF, UP, CSX, and NS respectively originate over 33 percent, over 24 percent, over 16 percent, and nearly 15 percent of tons originated by Class I railroads in the US. Even accounting for Canadian originations on CN and Mexican originations on KCS, market shares and coverage of potential origins and destinations for CN and KCS amount to only a fraction of the shares and coverage provided by the other Class I railroads.[56]

Third, Dr. Majure's analysis does not consider the commodities that either railroad originates or terminates in each location. Even if the two carriers were to serve the same customers in one area, if they transport different commodities which are not perfect or nearly perfect substitutes for each other, there will be no impact on geographic competition. A careful

[56] AAR Analysis of Class I Railroads, 2019. CN's total originations of US-bound commodities from Canada were 49 million tons in 2019; conversely, nearly 13 million tons originated in the US by CN had Canada as their destination. Even if these inbound and outbound flows to and from the US are considered, CN remains substantially smaller than BNSF, UP, NS, and CSX. KCSM's revenue mix is 52 percent US, 48 percent in Mexico; its shipments from Mexico to the US represent a small portion of Class I market shares in the US. Additional sources: 2019 CN and KCS Revenue Waybill Data, KCS Form 10-K, Oliver Wyman analysis.

evaluation of originations and terminations in Mississippi is revealing: {{

}} KCS does not originate either commodity in Mississippi. {{

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Fourth, Dr. Majure's analysis fails to account for modal competition from trucks and barges. The market shares presented by Dr. Majure are only shares of rail transport revenue, but rail customers also have non-rail options to source products. Therefore, his proclaimed market shares are a gross exaggeration of the railroads' market share for the overall markets they serve.

To demonstrate this, I combined Transearch data with CN and KCS 2019 Revenue Waybill Data to determine the geographic sources and modal shares for all shipments terminating in the 28 BEA Economic Areas served by KCS. {{

}} Notably, over 65 percent of total tons terminated in the 28 BEA Economic Areas terminate by truck, while another 12 percent are transported by barge.[58]

[57] 2019 CN and KCS Revenue Waybill Data.

[58] IHS Transearch; 2019 CN and KCS Revenue Waybill Data; Wyman analysis.

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I also examined terminations in the New Orleans BEA Economic Area and the Baton Rouge BEA Economic Area in Louisiana, which are the two most significant areas which Dr. Majure considers to be "overlap areas" for CN and KCS. I used Transearch data to analyze the modal share for five of the largest key commodities terminating in these Economic Areas: grain, soybean oil and byproducts, lumber, primary iron and steel products, and miscellaneous inorganic chemicals. Exhibits 8 and 9 below show the modal share of terminations for each commodity.

[59] Note: Rail Other excludes tons on all routes involving KCS and/or CN. Other is all other modes, including pipeline, air freight, and mail. KCS excludes routes where CN also participates. CN excludes routes where KCS also participates. CN & KCS is tons on routes where both CN and KCS participate. The 28 BEA regions are: 75, 77, 78, 80, 82, 83, 84, 86, 87, 88, 89, 90, 91, 92, 93, 96, 97, 98, 99, 118, 123, 124, 127, 129, 131, 132, 134, and 135. Sources: IHS Transearch 2019; 2019 CN and KCS Revenue Waybill Data; Oliver Wyman analysis.

Exhibit 8: Share of Terminations of Key Commodities in the New Orleans BEA Economic Area by Mode of Transport, 2019[60]

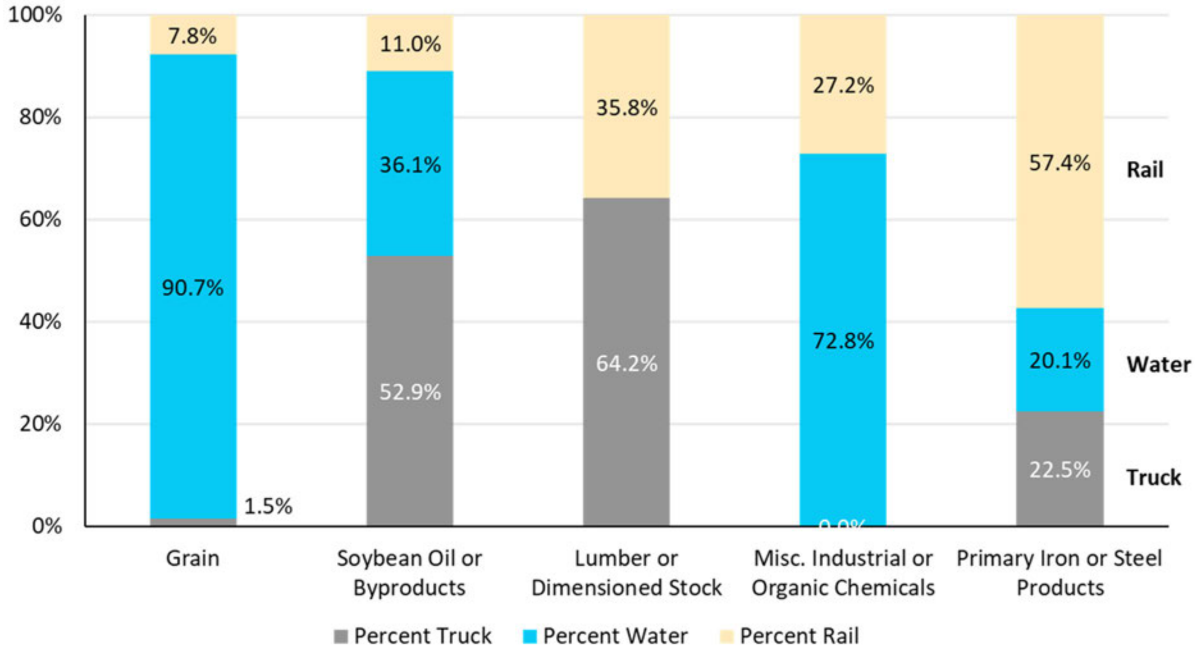
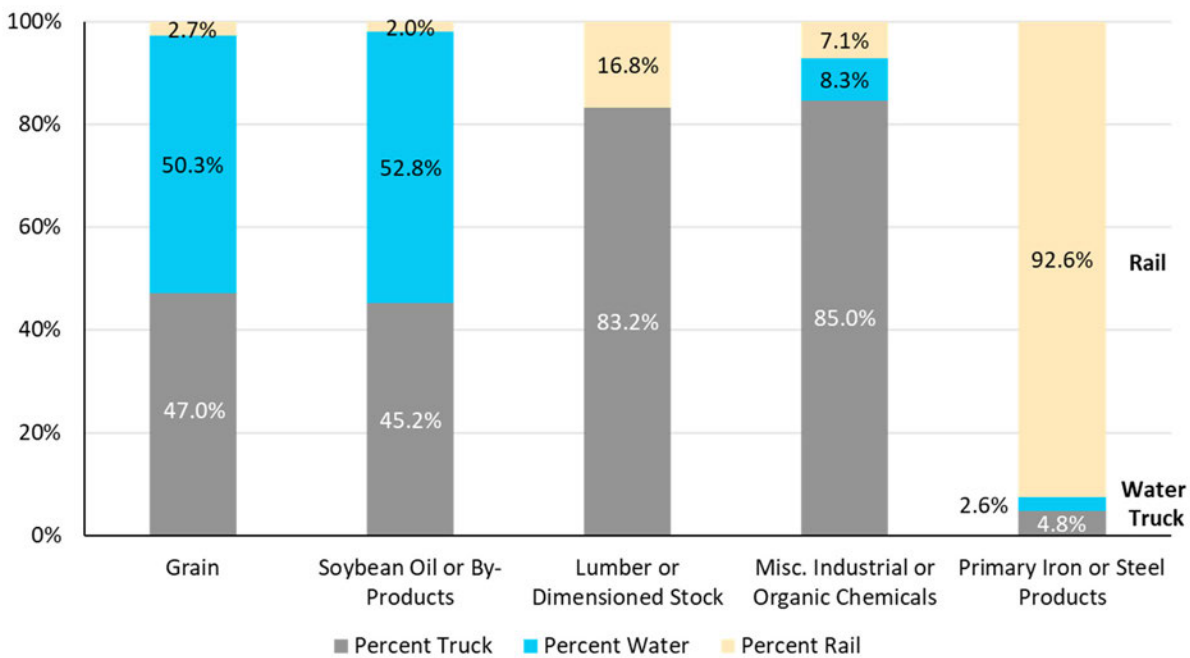


Exhibit 9: Share of Terminations of Key Commodities in the Baton Rouge BEA Economic Area by Mode of Transport, 2019[61]



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[60] IHS Transearch, 2019, Oliver Wyman analysis.

[61] IHS Transearch, 2019, Oliver Wyman analysis.

Exhibits 8 and 9 show the extent of modal competition in the New Orleans and Baton Rouge BEA Economic Areas where Dr. Majure used his estimated CN and KCS market shares to claim that a loss of geographic competition would occur. Not only are these commodities sourced from hundreds of competing locations in dozens of different BEAs, but they also are transported to New Orleans and Baton Rouge using alternative modes and rail carriers. Customers in New Orleans and Baton Rouge have ample choice to obtain products that they require, and the CN-KCS merger will not have any detrimental impact on them.[62]

In an attempt to broaden the estimate of impacts for competition in a geographic area, Dr. Majure also raises concerns about competitive issues in Mississippi. His Exhibit 5, on page 26 of his statement, is particularly telling: Virtually all the overlaps which he identifies that do not involve Baton Rouge or New Orleans are anchored in Mississippi. I conducted an in-depth review of competition in Mississippi and conclude the following:

- First and foremost, CN and KCS serve different customers in Mississippi. I do not find a single customer served by, or open to, both CN and KCS in the state.[63] This is in line with the findings of Messrs. Gameiro and Harman.[64]
- In most cases, CN and KCS originate and terminate commodities in different locations in Mississippi.
  - {

[62] Below, I have included a detailed examination of the situation in Mississippi, where CN and KCS do not serve any common customers.

[63] Railinc Serving Carrier/Reciprocal Switching file (SCRS).

[64] Verified Statement of Messrs. Adolph Gameiro and John Harman, op. cit., p. 3.

}}[65]

- CN and KCS originate different commodities in Mississippi; where the commodities are the same, the customers are different and are competitors in their own industries. {{

}} A similar situation occurs with terminations. In cases where both railroads originate or terminate the same commodity, they almost exclusively do so in different counties.
- CN and KCS serve the state in different directions: CN serves primarily north-south, connecting it to Memphis, St. Louis, and Chicago; and KCS primarily east-west, from Dallas and Shreveport, LA to Meridian, MS.
- There is no realistic potential for buildouts in Mississippi. Although the CN routes through Mississippi run north-south while the KCS routes run east-west, one secondary KCS line between Meridian and Corinth runs north-south. However, the CN and KCS lines are about 100 miles apart, making buildouts impractical. Additionally, the Grenada Railroad runs between the two tracks and connects to every Class I railroad in Memphis (except CP), providing more plausible opportunities, if such a buildout were ever to occur. The only point at which CN and KCS lines cross is at Jackson, where the lines intersect in the middle of downtown.[66]
- Finally, CN and KCS face substantial competition from other modes of transport in Mississippi, not only trucking along interstates 55 (north-south, parallel to CN's line), 59 (from New Orleans to Meridian), 10 (east-west along the Gulf Coast), 20 (east-west through Jackson and parallel to the Meridian Speedway), and 22 in the northeast, but also from water transport on the Mississippi river (running the entire length of the state to the west, parallel to CN's line) and the Tennessee-Tombigbee waterway in the northeast.
- Geographic competition in Mississippi is extensive. Key commodities shipped to Mississippi originate in dozens of different BEA Economic Areas, and are transported by truck, rail and water barges. {{

} New, single line rail

[65] 2019 CN and KCS Revenue Waybill Data.

[66] *See* Verified Statement by William J. Rennicke, op. cit., p. 15.

> service from additional destinations on CN-KCS will offer Mississippi businesses a wider range of source options for these and other commodities, enhancing this geographic competition.[67]

My analysis of the situation in Mississippi shows that the potential for competitive harm due to a reduction in options in the state as a result of a CN-KCS merger is nonexistent. Given that all CN or KCS customers in the state today are either exclusively served by CN but not KCS, or exclusively served by KCS but not CN, the combination of the two railroads will not reduce competition in the artificial geography created by Dr. Majure. Instead, it will expand the set of single-line origins and destinations that customers now on either CN or KCS lines will have access to on a merged CN-KCS system.

4.4. Competition for Specific Commodities

Dr. Majure dedicates a section of his statement to presenting an analysis of three hand-picked commodity examples, as a final attempt to illustrate competitive harm in this transaction. Dr. Majure contends that the screening analysis the Board has relied upon in past proceedings combines an analysis of geographic areas with the analysis of specific commodities.[68] While I agree that commodity-specific analyses are valuable and necessary to evaluate the extent of potential competitive harm from a transaction, I also must point out that for such analyses to provide any value, they need to consider the idiosyncratic characteristics of transportation for each shipper, affiliates of the shipper, each commodity, and the competitive conditions in the markets for each commodity. This requires a deep understanding of the implications and feasibility of transloading each commodity, the competitiveness of other modes of transport for

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[67] IHS Transearch, 2019, Oliver Wyman analysis.

[68] Expert Statement by W. Robert Majure, op. cit., p. 31.

each commodity, the extent of geographic competition in each case, and the nature of the operations of customers for each commodity type. Dr. Majure displays no such understanding.

Dr. Majure's analysis was prepared using STB Carload Waybill Sample data to identify commodities originated or terminated by CN and KCS; he then used a map to indicate whether or not the sources or destinations are geographically proximate. As noted above, Dr. Majure departs from the common definition of geographic competition to address what might better be characterized as competition in a geographic area. Based on this methodology, he concludes that "In each of the examples described below, CN and KCS compete to originate or terminate commodity shipments in a particular BEA area, handling the commodities at the same or geographically proximate SPLCs."[69] This not only once again ignores the Board's clear rejection of arguments based on a broad definition of geographic proximity,[70] but also fails to provide any substantive insights based on the nature of each commodity's markets and supply chain characteristics.

{{ }} Jackson, MS: Dr. Majure's first example involves shipments of {{ }} from the Jackson, MS BEA Economic Area. He identifies four locations in the BEA that ship this product. He fails to acknowledge (or does not know) that two of the locations are served *only* by CN and are not open to service by KCS, and that the remaining two stations are served only by KCS and are not open to service by CN. Nonetheless, he proclaims that a merger of CN and KCS will lead to a reduction in rail choice.[71] This of course is incorrect,

[69] Expert Statement by W. Robert Majure, op. cit., p. 31.

[70] *See* previously referenced documents, which included specifically a critique of Dr. Majure's past methodologies for establishing competitive harm, and which remain unchanged in his present statement: Finance Docket No. 32760, Decision No. 44, op. cit., pp. 120-121, 269-270, and Finance Docket No. 32760, General Oversight, Decision No. 19, op. cit., pp. 3-5.

[71] Expert Statement by W. Robert Majure, op. cit., p. 32.

in that no choice exists between rail providers at any of these locations, with or without the merger. Dr. Majure also omits to mention that in addition to the locations on CN and KCS that originate {{ }} originations by rail {{ }} in the Jackson, MS Economic Area.

I examined shipments of {{ }} originating in Mississippi using CN and KCS 2019 Revenue Waybill Data. My first observation is that most of the shipments Dr. Majure cites are from production facilities to distribution or downstream facilities belonging to the same corporate family. In these cases, the railroad is part of the company's internal supply chain and it is extremely unlikely that the company would change railroads even if it was physically or commercially possible to ship the product from an alternative location – which would most likely be owned by a competing producer. {{ }} Dr. Majure does not consider that the plants served by CN and KCS are operated by competitors, and it is implausible to assume that the operator of a facility on CN, for example, would ship to the downstream distribution centers of its competitor located on KCS. Moreover, {{ }} shipments on each carrier have widely different destinations. Shipments on KCS travel primarily west and southwest, {{ }}; whereas shipments on CN travel east and north, {{ }} Clearly, Dr. Majure's arguments concerning the four {{ }} shippers are erroneous and based on simplistic geographic considerations rather than detailed analysis and understanding of the supply chains for the involved commodity.

{{ }} Baton Rouge, LA. Dr. Majure next turns to shipments of {{ }} originating in {{ }} and terminating in {{ }}[72] He apparently does not know, or chose to ignore, the fact that {{ }} that is supplied by the terminal served by CN and KCS, and could compete for the traffic.

More fundamentally, Dr. Majure's argument ignores basic facts about {{ }} and misses the entire point of why the analysis of commodities is oftentimes necessary. {{ }} is a prime example of a commodity that is subject to geographic competition. It is fungible, can be sourced from a variety of locations in the US, Canada, or internationally and can be redirected at will to {{ }} and export terminals if the delivered price at a given {{ }} or terminal becomes uncompetitive. Producers can take their {{ }} to rail terminals at the origin by truck {{ }}, and they can use these facilities to ship their {{ }} to a number of terminals to reach both customers and international export markets. {{ }} can and do ship their {{ }} to a number of locations both in Louisiana and outside Louisiana (including other locations along the Gulf Coast, in Houston, Port Arthur, TX, Mobile, AL, and New Orleans, as well as elsewhere), utilizing various rail and non-rail options to do so. Exhibit 10 below shows numerous examples of {{ }} located between Houston, TX and Mobile, AL.

Dr. Majure also overlooks the extensive and pervasive modal competition into the {{ }} and its proximity to the Mississippi River. {{

[72] Carload Waybill Sample, op. cit.; interviews with CN operational personnel.

}} Rail pricing is strongly restrained by international commodity pricing and modal competition.

Exhibit 10: {{

}}

{{ }} terminations, New Orleans, LA: In his final example, Dr. Majure claims that the merger will reduce the options for customers receiving {{ }} in New Orleans from three to two. While captioned as {{ }} the inbound products to which Dr. Majure refers also include vegetable oil, waste oil, cooking oil, and a variety of products that go into the blending of synthetic diesel. Like Canadian crude oil, inbound waste oil is a commodity where prices are set in a broad national, if not an international, commodity market and, thus, is subject

[73] Oliver Wyman analysis, company websites, {{ }}. The map is not comprehensive; additional terminals may be under construction or have started operations recently.

to geographic competition. Indeed, these commodities are nearly perfect substitutes for one another, and are therefore interchangeably used for the production of synthetic diesel in the same facilities. They can be sourced from a variety of locations, spread over many US states. Producers generally use trucks to transport their oil to rail loading facilities and can competitively choose between multiple loading facilities on multiple rail lines at the origin. In addition to domestic product, imports have recently entered the US market. This product is not only transported by rail but also by barge. {{

}}[74]

Dr. Majure once more uses only a partial presentation of the true competitive situation in New Orleans and between Baton Rouge and New Orleans to create an issue where commercially none exists. As in the {{ }} examples, he again ignores pervasive and growing modal competition and the characteristics of shipper supply chains and intercorporate relationships. {{

}}

My conclusion in evaluating Dr. Majure's analysis of the commodities which he selected to demonstrate "competition that is not addressed by CN's divestiture proposal" is that his claims are unfounded, and that his analysis is not only superficial, but also plagued by methodological and conceptual errors.

[74] {{ }}

5. Substantial Benefits of a CN-KCS Combination

In this section, I first examine the public benefits that a CN-KCS merger would provide to shippers located on both railroads, including new single-line services, improved interchanges, and corridor benefits. I then examine CP's claimed benefits from a CP-KCS merger and note that they are considerably more modest than the benefits from a CN-KCS merger. Finally, I evaluate CP's claimed benefits between the Midwest and the Gulf Coast ports in Louisiana and Alabama.

5.1. Benefits of a CN-KCS Merger

As discussed below, key benefits of a CN-KCS merger would include single-line service linking Texas and Mexico with Michigan and Ontario, more competitive interchanges with eastern railroads (particularly CSX), and an improved "Kansas City Speedway."

Single-line service linking Texas and Mexico with Michigan and Ontario: One of the primary benefits of a KCS merger with a Canadian carrier would be to provide single-line service from Texas and the industrial north of Mexico to the industrial corridor in Michigan and Ontario. CN-KCS will have a direct route that bypasses Chicago and serves shippers in Michigan and Ontario. The merged carrier will have terminal facilities in Detroit and Ontario. The CN tunnel at Port Huron has the dimensions to accommodate double-stack intermodal trains and state-of-the-art Automax automobile-carrying railcars, both of which will be important to trade between the industrial area in northern Mexico and the industrial areas in Michigan and Ontario. This single-line service created by the CN-KCS merger will benefit:

- The automotive industry, by providing a single-line, end-to-end service between Michigan/Ontario and Mexican auto complexes, with flows of both finished vehicles and production parts.
- Importers of home appliances and electronics made in Mexico, due to improved access to consumer markets such as Chicago, Toronto, Detroit, and Montreal.

- Customers in Kansas, Texas, and Mexico, who will have improved access to products from Eastern Canada, such as aluminum and lumber.

More competitive interchange with eastern railroads: The primary competitors for railroads are trucks. The CN-KCS merger will enhance competition, both between railroads but more importantly between railroads and trucks, by creating more efficient routes and interchanges for east-west traffic between KCS and eastern railroads that are better able to compete with trucks.

- The current KCS-CSX interchanges are inefficient. A merger of CN and KCS will create new, more competitive interchanges at Chicago, Effingham, IL, and Memphis, greatly facilitating the flow between locations served by CSX and the entire KCS network. Shipments to destinations on CSX will become more competitive for customers on the KCS network and vice-versa, enhancing geographic competition and providing new, improved options for customers.
- The new connections will improve connections between locations on the KCS line and locations to the Great Lakes states and Ohio Valley such as Cincinnati, Columbus, and Cleveland; and Pittsburgh. It will improve options for traffic such as intermodal traffic originating in Marion, OH, which now interchanges in St. Louis and continues southward to Mexico.

An improved "Kansas City Speedway": The Meridian Speedway operated by KCS and NS provides an efficient route for traffic moving between points in Mexico and Texas served by KCS and points in the Southeast served by NS via a connection at Meridian, MS. CN and KCS have committed, as part of the proposed merger, to creating a similar "Kansas City Speedway" linking points in Kansas, Missouri, and Illinois served by KCS with points in Indiana, Ohio, and Pennsylvania served by NS and CSX. This new, more efficient route will enhance competition in this corridor and provide better options for shippers.

5.2. Limitations of Claimed Benefits of a CP-KCS Merger

While CN operates a large network in the central and southern United States, providing numerous opportunities to create more competitive services, CP's network in the United States south and east of Chicago offers few such opportunities and a CP-KCS merger would provide fewer public benefits than a CN-KCS merger.

CP's sole owned line south of Chicago is a secondary mainline that carries six to eight trains per day. Aside from a connection from Kansas City to Chicago, it offers KCS shippers very few opportunities for enhanced competition through the creation of new, more efficient single-line services. By contrast, CN offers KCS shippers opportunities for new, competitive single-line services over its extensive route structure between Chicago and the Gulf Coast.

CP's sole connection with the eastern US railroads is via the most congested rail links at the congested Chicago terminal. To get through Chicago to connect with eastern railroads, CP uses a complex train path that includes a gauntlet of trackage rights and access windows. As CP trains enter the Chicago area at Rondout, they leave CP tracks to operate over Metra on trackage rights to Techny. Between Techny and Bryn Mawr, trains are on a UP line, exercising trackage rights. At Bryn Mawr, trains go back onto CP tracks briefly until they reach Tower B17, where they once again move under trackage rights on Metra. Trains continue east to Bensenville Yard, CP's primary rail terminal and sorting facility in Chicago. After Bensenville Yard, trains are still on Metra trackage rights to either Franklin Park or Cragin. These many required changes between different railroad lines reduce the speed of travel and magnify complexity – including waiting for commuter trains on Metra lines and other freight on the UP line.

At Franklin Park, CP trains change over to the Indiana Harbor Belt (IHB) railroad. At Cragin, trains change over to the Belt Railway of Chicago (BRC). Both IHB and BRC are "terminal switching carriers," which means they host the freight trains of almost all carriers operating in the Chicago area, as well as their own switchers and local jobs. Train speeds are generally slow. Thus, CP trains must negotiate the heart of the Chicago switching district to reach the mainlines of the eastern carriers, CSX and NS. In total, trains on CP bound for connections with eastern railroads change back and forth between trackage rights owners a minimum of four times in Chicago.

By contrast, CN's routes from the north and south use the lines of the former Elgin, Joliet & Eastern Railroad (EJ&E), which CN acquired in 2009, to bypass Chicago to the west (Exhibit 11).

Exhibit 11:EJ&E and CN Lines in the Chicago Area[75]

As shown in Exhibit 11, the EJ&E was designed as an outer belt railroad to avoid the congestion of the Chicago terminal. Trains from Mexico and Texas that travel over the Meridian

[75] "CN Proposed Acquisition of the EJ&E," Canadian National, November 2007.

Speedway or the Kansas City Speedway move directly from the CN mainline, to the EJ&E line at Matteson, to CN's mainline to Detroit and Eastern Canada. Moreover, traffic to be interchanged between CN and eastern railroads will be able to use efficient interchanges with the eastern railroads via the Kansas City Speedway and the Meridian Speedway that do not involve transit through Chicago.

Single-line service to Michigan and eastern Canada: One of the primary benefits of a merger with KCS, identified by both CN and CP, is to create new, more competitive single-line rail service linking points in Mexico and Texas with points in Michigan and Ontario. Yet:

- CP's route structure east of Chicago consists almost entirely of trackage rights over NS to Detroit and haulage rights over CSX to Buffalo. Not only are the NS trackage rights restricted with respect to the number of trains CP can operate, but the NS trackage rights are overhead only, meaning that CP cannot offer KCS shippers new single-line connections to shippers anywhere in Michigan, or Detroit shippers a new competitive option to NS. The CP intermodal yard in Detroit is physically located on CSX and is restricted to handling traffic to and from Canada. By contrast, CN owns all its infrastructure serving Michigan and Canada and can offer enhanced competitive options to shippers on KCS and shippers on its lines in Michigan, including shippers in Detroit.
- CP's tunnel at Detroit does not have, and cannot be easily modified to have, the dimensions to accommodate double-stack intermodal trains or state-of-the-art Automax cars. Thus, much of CP's intermodal traffic to and from Ontario must be routed by way of Buffalo over CSX haulage rights, which adds 118 miles to the route between Chicago and Toronto. Clearly, CP could not deliver on one of the central promises of the merger, which is to efficiently link Mexico with Eastern Canada. By contrast, CN's border crossing at Port Huron can accommodate all traffic.
- CP maintains a smaller route structure in Eastern Canada than CN, and it does not serve aluminum and forest products producers north of Montreal. By contrast, CN will be able to offer KCS customers direct access to more shippers than CP in Eastern Canada and single-line service to forest products and aluminum producers.

Routing between Chicago and the Midwest, and Gulf Coast ports in Louisiana and Alabama: In his Verified Statement, Mr. Creel asserts that a hypothetical merger of CP with KCS would deliver greater public benefits than the proposed CN-KCS merger. Mr. Creel is mistaken. The CN-KCS merger would provide far greater public benefits than a hypothetical CP-KCS merger. Nowhere is this more evident than in Table 1 of Mr. Creel's Verified Statement, which Mr. Creel intends to demonstrate that a merged CN-KCS would "inevitably" downgrade its Kansas City to Shreveport, LA mainline. However, what the table demonstrates is that a hypothetical CP-KCS would offer shippers inferior service compared to the service provided by a merged CN-KCS. The distance and transit time from Chicago to Kansas City via CP is roughly equivalent to the distance and transit time via CN-KCS, so the times a CP-KCS routing would achieve are similar to those shown in column 2 of the table for CN-KCS via Kansas City.[76] In each case presented by Mr. Creel in Table 1, except Kansas City to Mexico via Shreveport, Mr. Creel admits that CN offers shippers faster and shorter routes, and thus greater public benefits.

For example, Mr. Creel states that service from Canada, the Upper Midwest, and Chicago to New Orleans is an astonishing 35 hours faster via CN-KCS than via CP-KCS. And Table 1 supports my analysis elsewhere in this Verified Statement that a merged CN-KCS system will not downgrade its Kansas City to Shreveport, LA line, because the line will continue to carry all the traffic it carries today, which KCS originates and terminates on the line and that it interchanges with CP, UP, BNSF, and NS at Kansas City. Table 1 shows only that the line will receive limited incremental traffic from CN stations on the routes shown, but that it remains the fastest route for KCS shippers and connecting carriers between Kansas City and Mexico.

6. Conclusions

In this statement, I have analyzed and refuted the arguments presented by Messrs. Gameiro and Harman and determined that this merger will result in very few reductions in rail

[76] The CN route from Chicago to Kansas City via Springfield, IL is 499.4 miles, whereas the CP route is 505.3 miles. (Calculated using PC*Miler | Rail).

options for any customer and that any reductions that do occur will have little or no competitive significance, because third-party railroads and intermodal competitors will continue competing with the merged entity. I also have established that no shortline partner will experience any harmful reductions in competing connecting options.

I have then examined the claims made by Dr. Majure and concluded that the divestiture of the line between Baton Rouge and New Orleans will address any competitive issues in that region. I conclude that CN and KCS generally operate noncompeting end-to-end networks, not "parallel and overlapping" networks. I have demonstrated that Dr. Majure's allegations with respect to a loss of horizontal competition in corridors and in corridor areas, and of a loss of geographic competition, are baseless and reflect a fundamental misunderstanding of the inner workings of the rail industry and of what it means for a customer to have access to rail options. Finally, I have shown that Dr. Majure's hand-picked examples of commodities are treated superficially and in a misleading way.

Finally, the public benefits of a CN-KCS merger would be substantial. These include, among others, creating the first single-line service linking Texas and Mexico with Michigan and Ontario, improved interchanges for traffic moving between the KCS network and eastern carriers, and the benefits that the transaction would produce in the corridor between Kansas City, Chicago, Michigan, and Ontario over the "Kansas City Speedway."

By comparison to CN-KCS, a hypothetical CP-KCS merger would not deliver any benefits between Texas and Mexico and areas east of Chicago where CP relies on trackage and haulage rights and where CP faces constraints in its US-Canada border crossings. Moreover, CP's lack of access to customers in the industrial heartland of Michigan would substantially impair any competitive benefits of a hypothetical CP-KCS merger. Finally, I find that CP's claimed benefits between the Midwest and the Gulf Coast ports in Louisiana and Alabama are unsubstantiated, given that CN's routing via Jackson, MS is less circuitous.

VERIFICATION

I, William J. Rennicke, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 6th day of July 2021.

William J. Rennicke

Exhibit 7

Index of Previously Submitted Voting Trust Support Letters

INDEX OF VOTING TRUST SUPPORT STATEMENTS[1]

STATEMENTS FROM GOVERNMENT AND PUBLIC OFFICIALS

1. The Honorable John Bel Edwards, Governor of Louisiana
2. The Honorable Michael L. Parson, Governor of Missouri
3. The Honorable Asa Hutchinson, Governor of Arkansas
4. The Honorable Sam Graves, U.S. House of Representatives, Ranking Member, Committee on Transportation and Infrastructure
5. The Honorable Bob Gibbs, U.S. House of Representatives*
6. The Honorable Bennie G. Thompson, U.S. House of Representatives
7. The Honorable Emanuel Cleaver, II, U.S. House of Representatives
8. The Honorable Henry Cuellar, U.S. House of Representatives
9. The Honorable Jack Bergman, U.S. House of Representatives
10. The Honorable Jeff Duncan, U.S. House of Representatives
11. The Honorable Jerry L. Carl, U.S. House of Representatives
12. The Honorable Mike Kelly, U.S. House of Representatives*
13. The Honorable Peter Meijer, U.S. House of Representatives *
14. Wisconsin State Representative Rob Summerfield
15. Wisconsin State Representative Warren Petryk
16. Mississippi State Senator Dean Kirby, President Pro Tempore
17. Louisiana State Representative Vincent J. Pierre
18. Missouri Department of Economic Development
19. Mayor Quinton Lucas, Kansas City, Missouri
20. Mayor President Sharon Weston Broome, City of Baton Rouge, Parish of East Baton Rouge, Louisiana
21. Mayor Jim Strickland, City of Memphis, Tennessee
22. Mayor Joanne Vanderheyden, Municipality of Strathroy, Ontario
23. Mayor Doug Jones, Town of Oyen, Alabama
24. Mayor Joseph Roudez Ill, Village of University Park, Illinois
25. Mayor Pierre Brodeur, Ville de Saint-Lambert, Quebec, Canada
26. Mayor Allen Dowhan, City of Dauphin, Manitoba
27. Larry Swales, Chancery Clerk, Rankin County, Mississippi
28. Reeve Cindy Trautman, Camrose County, Alberta, Canada
29. Reeve Dan Henn, Rocky View County, Alberta, Canada
30. Councilman Warren J. Torres, Jr., St. John the Baptist Parish, Louisiana
31. President Larry Rice, Rogers State University
32. The Honorable Dan Boren (Retired, U.S. House of Representatives)
33. Former Oklahoma State Senate Leader Stratton Taylor

[1] Asterisks denote voting trust letters attached in Exhibit 8.

STATEMENTS FROM CUSTOMERS

1. 4 STAR COURIER & LOGISTICS, INC
2. 5911 Trans, Ltd.
3. A.J. Hollander Enterprises, Inc.
4. A.S.M. Mining Corp.*
5. Accuristix
6. Aceites Especiales TH, S.A. de C.V.
7. Adeptus USA, Inc.
8. Advantage Solutions
9. Aeropres Corporation
10. Agri Trading Corp.
11. Agricultural Products Extension LLC (APEX)
12. Agridyne, LLC
13. Agro Meat Inc.
14. Agrocorp Processing Limited
15. Agrogen S.A. de C.V.
16. Agunsa L&D S.A. de C.V.
17. AJC International Inc.
18. A-Line Iron & Metals, Inc.
19. All Royal Tire Inc.
20. Allen’s Scrap & Salvage Ltd.
21. Alliance Energy Services
22. Allied Track Services
23. Alpha Chemical Limited
24. Altex Energy Ltd.
25. Amalgamated Dairies Limited
26. Amar Transport Inc.
27. Ampacet Canada Company
28. ANJI Logistics USA Inc.
29. AP International Inc.
30. APC Engineering S.A. de C.V.
31. AquaPower Chemicals Inc.
32. Arbec Bois d’Oeuvres Inc.
33. ArcelorMittal Tubular Products Monterrey, S.A. de C.V.
34. Armstrong Milling Co. Ltd.
35. Aspen Acres Organics
36. Asset Based Intermodal
37. Atlantic Container Line AB
38. Aurora Wood Pellets Ltd
39. Auto Lineas America, S.A. de C.V
40. Avatar Corporation

41. Avient Corporation
42. Azcon, Inc.
43. Azelis Canada, Inc.*
44. BarretteWood
45. Barry Callebaut LLC
46. Bartlett
47. BASF Corp.*
48. BCI Bulkhaul Carriers Inc.
49. BeerMex
50. Belle Pulses Ltd.
51. Beverage World Inc.
52. Blue Sky Agrisource
53. BlueLinx
54. Bois d'Oeuvre Beaudoin Gauthier Inc.
55. Bois d'oeuvre Cedrico Inc.
56. Borderless Consulting Group
57. Bornhorst Seeds Ltd.
58. Brandt Dealer Support, LLC
59. Brenntag Canada Inc.
60. Brenntag Mid-South, Inc.
61. BridgePoint Logistics Inc.
62. Briercrest Grain Limited
63. Bright Wood
64. Buckeye Mountain
65. Building Products of Canada Corp.
66. C. Czarnikow Sugar Mexico, S.A de C.V.
67. C. Keay Investments Ltd.
68. Calfrac Well Services Ltd.
69. Canada Malting Co. Limited
70. Canadian Phoenix Steel Products*
71. Canatal Industries, Inc.
72. Caneda Transport Ltd.
73. Canepta Enterprises LTD
74. Cantak
75. Canuck Energy Inc.
76. Canworld Foods Group Ltd.
77. Cargo County
78. Cargodec, MX S.C.
79. Carnival International Trading Ltd.
80. Cartones Ponderosa, S.A. de C.V.
81. Cascadia Metals Canada
82. Cat Bottoms Fuel Supply Incorporated

83. CEMEX SAB
84. Central Salvage Ltd.
85. Central States Enterprises, LLC
86. CFT Corporation
87. Chemours Company Mexicana, S. de R.L. de C.V.
88. ciaO Intermodal
89. Classic American Hardwoods, Inc.
90. Classic Freight Transport
91. CLN Industries International Inc.
92. Coalspur Mines (Operations) Ltd.
93. Coca-Cola Canada Bottling Ltd
94. Columbia Grain International, LLC*
95. ComAgro inc.
96. Comercializadora Interceramic, S.A. de C.V.
97. Comercializadora Toscal S.A. de C.V.
98. Complex Chemical Co., Inc.
99. Constellation Brands
100. Construcciones Ferroviarias del Golfo, S.A. de C.V.*
101. Construcciones y Maquinaria SEF
102. Construction Supply
103. Contour Logistiscs
104. Corporativo Grupo Vida International
105. COSCO SHIPPING Lines (North America) Inc.
106. Cosco Shipping Logistics (North America) Inc.
107. Creekside Transport
108. CST Canada Coal Limited
109. C-TAI Energy Corp.
110. Curricanes Outdoors, S.A. de C.V.
111. Dairy Fountain Inc./Fountain Food and Beverages Ltd.
112. Dakeryn Industries Ltd.
113. DeAcero S.A.P.I de C.V.
114. Dean Marine and Excavating Inc.
115. DeerGarden Resources Ltd.
116. Del Monte Foods, Inc.
117. Detroit Bulk Storage, Inc.
118. DG Global West Inc.
119. DICEX INTERNATIONAL INC.
120. DICEX LOGISTICA S.A. DE C.V.
121. Directright Cartage
122. Divine & David Inc.
123. Dominion Nickel Alloys Ltd.
124. Dorel Industries Inc.

125. DVL Logistics
126. Dymin Steel*
127. East & West Transportation
128. Economy Brick Sales, Inc.
129. ED&F Man Liquid Products LLC
130. Effingham Equity
131. Emerson Milling Inc.
132. Essex Hybrid Seed Company
133. Essity Higiene Y Salud Mexico S.A. de C.V.
134. Essity North America
135. Etimine USA Inc.
136. Evergreen Shipping Agency (America) Corp.
137. Expor San Antonio S.A. de C.V.
138. Express Grain Terminals LLC
139. Harinas Elizondo
140. Feed Products and Service Co.
141. Ferropolymers S.A. de C.V.
142. Fine Choice Foods LTD
143. First Cooperative Association
144. FLS Transport
145. Foremost International Ltd.
146. FQ Intermodal S.A. de C.V.
147. Freightera Logistics Inc.
148. Frisa Forjados S.A. de C.V.
149. Frontier Bag, Inc
150. Frontier Cargo Service S.A. de C.V.
151. FutureWood Corp.
152. Galaxy Lithium Canada Inc.
153. Gestion Énergie Quebec
154. GFL Environmental
155. Grupo Operador Multimodal SA de CV
156. Good Food for Good Inc.
157. Goodrich Terminal Ltd.
158. GPR Logistics Park
159. Grain Millers, Inc.
160. Grand Falls Agromart Ltd.
161. Grizzly Oil Sands ULC
162. GroundLinx Logistics Ltd.
163. Groupe de Scieries G.D.S. Inc.
164. Grupo CICE (Corporaclon Integral de Comerclo Exterior S.A. de C.V.)
165. Grupo Cyprus
166. Grupo Funsam, S.A. de C.V.

167. Grupo Perfimexa, S.A. de C.V.
168. Grupo Trimex, S.A. de C.V.
169. Grupo ZBC
170. Halltech Inc.
171. Hankins Lumber Company, Inc.
172. Harinas de Omalli, S.A.P.I. de C.V.
173. HCL Logistics Inc.
174. Henco Global S.A. de C.V.
175. Heritage Grain Cooperative*
176. Heritage Marine
177. Hi-Crush Inc.
178. Hiller Carbon, LLC
179. Holt Logistics Corp.
180. Hopewell Logistics Inc.
181. Howard Energy Partners
182. Hutton Forest Products
183. Hyundai Glovis Mexico
184. HZPC Americas Corp.
185. Idemitsu Apollo Corporation
186. IM Steel, Inc.
187. Indorama Ventures Polymers México, S. de R.L. de C.V.
188. Industria Nacional de Autopartes, AC (INA)
189. Innovative Ag Services
190. Innovative Transport Solutions (ITS)
191. Inteplast Bags & Films Corp.
192. Inter-Bentley, Inc.
193. Interdom LLC
194. Intermobil
195. Internacional de Fibras y Equipos S.A. de C.V.
196. International Suppliers and Contractors Inc. (Intersac)
197. IPL Plastics Inc.
198. Internacional Regiomontana de Acero, S.A. de C.V. (IRASA)
199. Iron Horse Energy Services
200. J.B. Hunt Transport, Inc.
201. J.B. Hunt Mexicana S.A. de C.V.*
202. Jasztex Fibers Inc.
203. JDS Energy & Mining Inc.
204. Jefo Nutrition Inc.
205. JEI, Inc.
206. JL Energy Corp.
207. JNL Industrial Supply Ltd.
208. Johnvince Foods/Planters Canada

209. Kahn Steel Company
210. KBB Transport Ltd.
211. KG Johnson (USA), Co.
212. Kletke Hay & Straw
213. Koch Foods
214. Kronos Canada Inc.
215. Lambton Diesel Specialists
216. Lapson Mexico S.A de C.V.
217. Legnochem
218. Les Fermes Michel Riendeau
219. Les Industries P.F Inc.
220. Les Systémes ADEX
221. LGP Energy Inc.
222. Linear Grain Inc.
223. Livingston Transportation Inc.
224. LOGIBEL
225. Logic, Inc.
226. Logistic Dynamics LLC
227. Logistica Perla Negra S.A. de C.V.
228. Louis Padnos Iron and Metal Company
229. Louisiana Sugar Refining, LLC
230. Lowfreightrate.ca LTD
231. LSM Commodities Ltd
232. Ludlow Cooperative Elevator Company
233. M&J Total Transport and Rigging Inc.
234. Magotteaux Inc.
235. Manitoba Starch Products Inc.
236. Manitoulin Global Forwarding
237. Manitoulin Transport Inc.
238. Mapei Inc.
239. Maple Leaf Foods
240. Maritime World Logistics Inc.
241. Maritime-Ontario Freight Lines Limited
242. Mar-Jac Poultry, Inc.
243. Marten Transport Ltd
244. Martin Product Sales
245. Martrex, Inc.
246. Matériaux Spécialés Louiseville Inc.
247. McCain Foods
248. McCain México, S.A. de C.V.
249. MCW Transport (2000) Inc.
250. Mediterranean Shipping Company (Canada) Inc.

251. Mediterranean Shipping Company USA Inc.
252. MEDLOG CANADA INC.
253. Menard, Inc.
254. Mercado de Arena Silicas, S.A. de C.V.
255. Messenger Freight Systems
256. Metal Ox Warehousing & Logistics LLC
257. Metalsa S.A. de C.V.
258. Michaud Petroleum Inc.
259. Mid Canada Transload Services Ltd.
260. Midatlantic Minerals Inc.
261. Mile End Logistics
262. Missouri Sugars, LLC
263. Mitsui de Mexcio, S. de R.L. de C.V.
264. MobilEx Terminal Ltd.
265. Mitsubishi Chemical America, Inc.*
266. Modular Fabrication Inc.
267. Mont Eagle Mills, Inc.
268. Montship Inc.
269. Moore Sales Co., Ltd.*
270. Motive Rail, Inc.
271. MQM Quality Manufacturing Ltd.
272. Mutual Transportation Services Inc.
273. Napuck Salvage of Waupaca, LLC
274. Nashville Generic Product (Export) Inc.
275. National Carbon Technologies, LLC
276. National Forest Products Ltd.
277. National Silicates
278. Navarro International Group, LLC
279. Navkin Transport Ltd.
280. NCIF USA CORP
281. New World Fuel, S.A. de C.V.
282. New World Global, LLC
283. NGS Logistics Mexico, LLC
284. NorClay Manufacturing
285. Norman Krieger, Inc.
286. North West Agri Logistics, Inc.
287. Nova Grain Inc.
288. Nufarm Americas, Inc.
289. Nuvision Commodities Inc.
290. Occidental Chemical Corporation
291. Ocean Network Express (ONE)
292. Oceanex Inc.

293. OEC Group
294. Oleum Energy Solutions, LLC
295. Olin Corporation
296. ONE Ocean Network Express Shipping Mexico, S.A. de C.V.
297. Optimodal, Inc.
298. Origin Floors
299. Overseas Orient Container Lines (OOCL)
300. Pacific Traverse Energy
301. Pacrim Steel ULC
302. Pantos Logistics Canada Inc.
303. Peco Foods, Inc.*
304. Peninsula Plastics
305. PERIN Resources, LLC
306. Phoenix Paper Wickliffe, LLC
307. Pipe and Piling Supplies Ltd.
308. PiVAL International
309. Plains States Commodities, LLC
310. Plásticos Ceccan
311. Polioles, S.A. de C.V.
312. Ponderosa Petroleum
313. PQ Corporation
314. Prarie River Minerals LLC
315. Premier Cooperative Inc.
316. Presto Enterprises Ltd.
317. Priam Logistics Inc.
318. PrimeTime Messenger Inc.
319. Propane Levac Propane Inc.
320. Pro-Tech Group, LLC
321. Proteinas Marinas y Agropecuarias S.A. de C.V.
322. Purely Canada Foods
323. Raeford Farms of Louisiana, LLC
324. Ragasa Industries, S.A. de C.V.
325. Rail Enterprises
326. Rail Logix Holdings, LLC
327. Ray-Carroll County Grain Growers
328. Reagent Chemical & Research, Inc.
329. Red Lava, Inc.
330. Reliance Carriers Inc.
331. Reliance Logistics Inc.
332. Rembos, Inc.
333. Resirene
334. Rio Tinto Aluminum

335. Ritchie Smith Feeds, Inc.
336. ROCKWOOL Inc.
337. Ronsco Inc.
338. Roslin Enterprises Inc.
339. Royal Canin Mexico S.A de C.V.
340. Rydex Freight Systems
341. Sabretooth Global Logistics
342. Sadoff Iron and Metal Company
343. SaniQ
344. Santa Fe Hacienda Furniture, S. de R.L. de C.V.
345. Savino del Bene Mexico S.A. de C.V.
346. Sayona Québec Inc.
347. Schreiber Mexico, S.A. de C.V.
348. Seaboard Special Crops
349. Sea-Sky Shipping (North America) Company Ltd.
350. SECURE Energy Services Inc.
351. Serafina Energy Ltd.
352. Shafer Commodities Limited
353. Simpolo Tile & Stone International Corp.
354. Simpson Seeds Inc.
355. Skye View Farms Ltd
356. Sleeman Breweries
357. SM Line Corporation
358. Solugaz Inc.
359. Solumet Metal & Powder Inc.
360. Soprema Inc.
361. Source Energy Services
362. Southeastern Timber Products
363. Southern Rock Energy Partners, LLC
364. SPB Equipments Inc.
365. Spiralco*
366. Steam Whistle Brewing
367. Stella-Jones Corporation
368. Stepan Company
369. Sterling Services, Ltd.
370. Sterling Site Access Solutions, LLC
371. STIHL Limited
372. Students on Ice Foundation
373. Stupp Bros., Inc. d/b/a Stupp Corporation
374. StyroChem Canada Ltee.
375. Sugar Services, LLC
376. Suit-Kote Corporation

377. Suministros Indutriales Potosinos, S.A. de C.V. (SIPSA)
378. Summit Plastics, Inc.
379. SunCoke Energy
380. Sunrise Metals Inc.
381. Superior Fuel
382. Superior Silica Sands
383. SureSource Commodities LLC
384. Surplus Furniture and Mattress Warehouse
385. Symrise, S. de R. L. de C.V.
386. Synergy Grain Trading Ltd.
387. Taves Management Inc.
388. Texel Technical Materials Inc.
389. Textiles León S.A. de C.V.
390. TFI International Inc.
391. TG Appliance Group
392. The Andersons, Inc.
393. The April Group (Verco International, April Super Flo and Teklub Canada)
394. The Chemours Company
395. The Straw Boss
396. Theriault & Hachey Peat Moss Ltd.
397. Thomas, Large & Singer Inc. (TLS)
398. Thomson Terminals Limited
399. Tidewater Midstream and Infrastructure Ltd.
400. Timber Products Company*
401. Timberstone Distribution Ltd.
402. Topflight Grain Cooperative Inc.
403. Total Grain Marketing, LLC
404. Transand Inc.
405. Transbordement St.-Hyacinthe
406. TransEnergy Services Ltd.
407. Transgroup Global Logistics
408. Transmodal S.C.
409. Transnet, Inc.
410. Traxxside Logistics Inc.
411. Tri Province Enterprises (1984) Ltd.
412. TriCounty FS Inc.
413. TrinityRail and TrinityRail de Mexico
414. Triumph Express Service Canada Inc.
415. Tropic Oil Company
416. Truper, S.A. de C.V.
417. Tubos de Acero de México, S.A. (TenarisTamsa)
418. TullTrans Global Logistics Inc.

419. Twin Rivers Paper Company LLC
420. United States Steel Corporation
421. United World Transportation
422. Urbanmine Inc.
423. Veladoras Místicas S. de R.L. MI
424. Veolia North America
425. Versant Supply Chain, Inc.
426. Via y Cimentaciones Xalostoc S.A. de C.V.
427. Viafield
428. Vicenza Energy
429. VPC Group Inc.
430. W. Robins Consulting Ltd. (WRC Freight Services)
431. Walters Group
432. Warner Petroleum Corporation
433. Westaqua Commodity Group Ltd.
434. Western Canada Express
435. Willowbrook Nurseries Inc.
436. Wilson Fuel Co. Limited
437. Winston Plywood & Veneer
438. Wirco Incorporated
439. Woolworth Trading S.A. de C.V.
440. Xolal Construcciones
441. XPT Grain Inc.
442. Zehr Transport Ltd.
443. Zhongkang International Trading Ltd.
444. ZIM Integrated Shipping Services (Canada) Co. Ltd.

STATEMENTS FROM SUPPLIERS

1. 3 Forwarding
2. Ab Ovo North America, Inc.
3. Acceso Automotriz
4. Acty Virtual Systems S.A.P.I. de C.V.
5. Ado Technologies
6. AGS Solutions
7. Alben Suministros
8. Albero
9. Alexa Marian Rodriguez Moreno
10. Alliance Wheel Services LLC
11. American Refining Group, Inc.
12. Amix Marine Services Ltd.
13. AmSpec

14. Amsted Rail Company, Inc.
15. Ana Gricelda Munoz Parra
16. Ana Patricia Huertas de la riva
17. AOC Integrated Services
18. Arguindegui Oil Company
19. ARI Arquitectura e Ingenieria, S.A. de C.V.
20. Ariza De Mexico, S.A. de C.V.
21. Asfaltos Asfacer, S.A. de C.V.
22. Asfaltos y Terracerias de Rioverde, S.A. de C.V.
23. Asphalt & Fuel
24. Atlantic Track & Turnout Co.
25. Atlas Oil Company
26. Autokam Motors, S.A. de C.V.
27. Autokam Regiomontana, S.A. de C.V.
28. Automoviles Tecnologico, S.A. de C.V.
29. Autopolis Premium, S.A. de C.V.
30. Bebidas Purificadas de Uruapan S.A. de C.V.
31. BeyondTalent
32. Bluewater Regional Networks, Inc.
33. Bobby Baker Construction LLC
34. Boots Factory, S.A. de C.V.
35. Bridgefarmer & Associates, Inc.
36. BSD Enterprise Group, S.A. de C.V.
37. Buho Tech Services, S.A. de C.V.
38. Bureau Veritas Commodities and Trade, Inc.
39. C2FO
40. CAAFF Consultoria Forestal, S. de R.L. de C.V.
41. Canad Inns
42. Capital Oil, Inc.
43. Capital Transport, Inc.
44. Car One Gonzalitos, S.A. de C.V.
45. CB Constantini Ltd.
46. CBS Maintenance Ltd.
47. Construcciones y Edeficaciones Garza Elias, S.A. de C.V.
48. CHN Hoteles by Wyndham
49. CIT Rail
50. Clean Service, S.A. de C.V.
51. CloudOps, Inc.
52. Constructora Carlos, S.A. de C.V.
53. Construccion e Instalaciones Tecnica de Monterrey, S.A. de C.V.
54. Colliers Macaulay Nicolls Inc
55. Comercial Ordizia SA de CV/ To

56. Comercializadora RIVELA, S.A. de C.V.
57. Commercial Essex, S.A. de C.V.
58. Communications Transcript
59. Computer Connection of CNY, Inc.
60. Comsertec, S.A. de C.V.
61. Connectronics
62. Constructora Quid, S.A. de C.V.
63. Constructoria Consultoria e Ingenieria, S.A. de C.V.
64. Consultoria Especializada en Impacto Ambiental S.A. de C.V.
65. Continental Paper Grading of Canada*
66. Convartec, S.A. de C.V.
67. Corbin Project, LLC (Subsidiary of Arq, LLC)
68. Coseta, S.A. de C.V.
69. Cushman & Wakefield Edmonton
70. Custom Packaging Company, Inc.
71. CW& W Contractors, Inc
72. Cyclonaire
73. CYFSA Constructora y Ferroviaria, S.A.
74. Dalko Resources
75. Desarrollo de Materiales Personalizados, S.A. de C.V.
76. Desarrollo Integral Electrico Industiral, S.A. de C.V.
77. Destroyer Industrial
78. Deteccion de Fuego y Plagas Ortiver, S.A. de C.V.
79. Dicomex
80. Diseno Creativo de Muebles Para Oficina S.A. de C.V.
81. Distribuidora de Diesel Rio Panuco
82. Distribuidora de Filtros FYR S.A. de C.V.
83. DLG Industrias, S.A. de C.V.
84. Dos Diseño construcción, S.A. de C.V.
85. DPS Electronics, Inc.
86. Durmientes y Postes Utilirail, S.A. de C.V.
87. E Environmental
88. E3 Environmental
89. Eastman Kodak
90. Extraccion Basalticas, S.A. de C.V.
91. Eco & Lube
92. Ecocel Express
93. Eco-Ferroviaire
94. Edgar Efrain Cordova Castro
95. Edmonton Exchanger Group of Companies
96. Efecto Directo, S.A. de C.V.
97. EHS Labs de Mexico

98. Einsa Polyurethane Elastomors, S.A. de C.V.
99. Electrogaza
100. Elemsa Instalaciones, S.C. de R.L. de C.V.
101. Elite Comunicaciones
102. Energeticos Centrifugados del Norte, S.A. de C.V.
103. Esbelta Edificacion Industrial, S.A. de C.V.
104. Estco, Inc.
105. Event Logistics Worldwide, Inc.
106. Fast Dolphin, Inc.
107. Ferrovias Apodaca
108. Flex-Box
109. Flowsis SAPI de C.V.
110. Foclan de Mexico
111. Ford Automores Cumbres, S.A. de C.V.
112. Forestal Sierra Madre, S.A. de C.V.
113. Fuchs Lubricants Co.
114. Fuerza Grafica del Norte S.A. de C.V.
115. GCG Construccion Manteniento y Tecnolgia S.A. de C.V.
116. GES Construcciones de México, S.A. de C.V.
117. Gian Multiservicios S.A. de C.V.
118. Gilkes, Inc.
119. Grapevine Designs
120. The Greenbrier Companies, Inc.
121. Gross & Janes Company
122. Grupo Constructor Peasa S.A. de C.V.
123. Grupo de Comunicacion Digital, S.A. de C.V.
124. Grupo de Consultoria en Seguridad y Medio Ambiente, SC
125. Grupo Deintec
126. Enlaceforte, S.A. de C.V.
127. Grupo Ferretero Valmar S.A. de C.V.
128. Grupo Itrac Logistics, S.A. de C.V.
129. Grupo Posadas
130. Grupo Servitexatl S.A. de C.V.
131. Hallcon Corporation
132. Haltek
133. Hamamatsu Automotor del Norte, S.A. de C.V. (Suzuki)
134. Hanson Professional Services Inc.
135. Hayden Tower Service, Inc.
136. Henrry Monsivais S.
137. Herrajes Ferroviarios del Potosi, S.A. de C.V.
138. Herzog Railroad Services, Inc.

139. HESCA Environmental LLC and HESCA Environmental Services de Mexico S.A. de C.V.
140. HHCS Handheld USA, Inc.
141. Hodde and Hodde Land Surveying, Inc.
142. Holden America IL, LLC
143. Holden America Mexico
144. Hoteles Camino Real Monterrey
145. Hublance México S.C.
146. IAT International Inc.
147. Icom America Inc.
148. IEM Americas (International Electronic machines Corp) International Electronic Machines Corporation
149. IEMS AMERICAS, S.C.
150. INCA Corporation
151. Industria Renovadora de Llantas Victoria, S.A. de C.V.
152. Industrias SCR, S.A. de C.V.
153. Inge Instalaciones, S.A. de C.V.
154. Ingenieria y Servicios Ferroviarios, S.A. de C.V.
155. Ingeníera Ambiental Aquaterra S.A. de C.V.
156. Ingeniería y Biodiversidad S.A. de C.V. (IBIO)
157. Intermodal Support Services, Inc.
158. Iron Road Software & Simulation Inc.
159. ISAAC Instruments Inc.
160. ITISA
161. ITONICS GmbH
162. J.W. Westcott Company
163. Jack Spring Electrical Contractors, Inc.
164. Jackson International, Inc. (JAXON)
165. JaKay Signaling Inc.
166. Jalamaar del Centro S.A. de C.V.
167. JAX Engineering, Inc.
168. JCMB Technology
169. JDTM Servicios S.A. de C.V.
170. Jeronimo Alvarado Construcciones y Montajes, S.A. de C.V.
171. Jhams Uniformes S.A. de C.V.
172. JOLAM Construccion y Diseno S.A. de C.V.
173. Jones Lang LaSalle Real Estate Services, Inc.
174. Jorge Morton Gomez
175. José Luis Valle Canales
176. JRB Strategic Consulting
177. KBest Technologies de Mexico S.A. de C.V.
178. Kansas City Railcar Service, Inc.

179. Key Capital, S.A.P.I. de C.V.
180. K-Libra
181. Koppers
182. Krech Ojard & Associates, Inc.
183. Krusinski Construction Company
184. L&W Industries*
185. Lascasiana, S.A de C.V.
186. Lee & Associates of Illinois, LLC
187. Lee-Potter S.E.N.C.
188. Lewis Bolt & Nut Company
189. Lexair, Inc.
190. Lilee Systems
191. LMD Forensic Accountants Inc.
192. Lone Star Specialties, LLC
193. Loram Maintenance of Way, Inc.
194. Lumietri de México, S.A. de C.V.
195. M3G Consultores, S.C.
196. Mainline Services, LLC
197. Manufacturas Quezher, S.R.L. de C.V.*
198. Maquinados de Piezas Especiales Saga S.A. de C.V.
199. Maria Arcadia Lugo Melendez
200. Marshtel S.A. de C.V.
201. McConway & Torley, LLC
202. Merex Diesel Power Partes Internacionales, S.A. de C.V.
203. Meter, Inc.
204. Metro East Industries Inc.
205. Mexicana Automotriz S.A. de C.V.
206. Mid America Car, Inc.
207. Midwest Energy & Communications
208. Miller Ingenuity
209. ModalSupport Equipo de Mexico
210. Modauto Motors S.A. de C.V. (Hyundai)
211. Motive Glazing Products Inc.
212. MovIT Solutions Group, S.A. de C.V.
213. Mundo Hidráulico Ferretería S.A. de C.V.
214. NASCENT Technology LLC
215. National Maintenance & Repair, Inc.
216. Nazareth (Construcciones y Redes Ferrovioarias Nazareth S.A. de C.V.)
217. New York Air Brake LLC
218. Northway Bulk Fuel
219. Nortrak-Damy Cambios de Vía S.A.P.I. de C.V.
220. NOVIPRO Inc.

221. Novum Energy Trading Inc.
222. Novum México Trading S. de R.L de C.V.
223. Nylco Mexicana, S.A. de C.V.
224. O&C Consultores Independientes
225. Ocean Pacific Construcciones S.A. de C.V.
226. OCR Canada
227. Omega Industries, Inc.
228. One Mali (OMA) Consorcio One Industrial (One Mali, S.A. de C.V. (OMA))
229. Optima Consulting, LLC
230. Optimus Electrolineas S.A. de C.V.
231. Ordizia (OBYMAN) (Comercial Ordizia S.A. de C.V.)
232. Overture Promotions
233. Pacific Rail Services, LLC
234. Pat Baker Company, Inc.
235. Patton Industrial Services
236. Pegaso Tecnologia
237. Pehler Oil, LLC
238. Pennsylvania Rail Car Co.
239. Pentaquark Empresarial S.A. de C.V.
240. Pepco
241. Petrogas Corporation, S.A. de C.V.
242. Petro Industrial, S.A. de C.V. (PINSA)
243. Piezas Industriales Monterrey, S.A.
244. Pinkerton Oil Company, Inc.
245. Poligoma S. de R.L.
246. Power Rig LLC
247. PowerRail Distribution, Inc.
248. Pramsei
249. Private Security Contractors de México, S.A. de C.V.
250. Procesos Ambientales Alfa, S.A. de C.V.
251. Proceti IT Services
252. Productos y Estrategias del Noreste
253. Progress Rail Maintenance de Mexico S.A. de C.V.
254. Prottsa, S.A. de C.V.
255. Proyectos y Estudios Ferroviarios, S.A. de C.V.
256. Quality Rail Service Inc.
257. Quimica Logistics S.A. de C.V.
258. Quinta Real Monterrey
259. R. H. Little Company
260. hRadar, Customs & Logistics S.A.P.I. de C.V.
261. Rail Plus, LLC
262. Rail to Door Consulting

263. RailPros
264. Railroad Software
265. Railtech Calomex, S. de R.L. de C.V. (Pandrol Mexico)
266. Raloy Lubricantes, S.A. de C.V.
267. Red Flag Cargo Security Systems LLC
268. REFRIGERACION MONSA, S.A. DE C.V.
269. Refrisa Aire, S.A. de C.V.
270. Regio Servicios Industriales y Ferroviarios S.A. de C.V.
271. Remcan Projects LP
272. Representaciones Lozoya, S.A. de C.V.
273. RIOLIM S.A de C.V.
274. Rivero Linda Vista S.A. de C.V.
275. Rocla Concrete Tie, Inc.
276. Robledo Constructora, S.A. de C.V.
277. Rocore
278. Roland J. Robert Distributor, Inc.
279. Romo Tobias Construcciones, S.A. de C.V.
280. Rvv de San Luis S.A. de C.V.
281. RYASA
282. Sabisu Telecomunicaciones S. de R.L. de C.V.
283. Salud Ocupacional Ramazinni
284. Sani Rent de Mexico S.A. de C.V.
285. Servicios de Autotransporte Mexicano
286. Servicios de Seguridad Privada y Limpieza Del Noreste S.A. de C.V.
287. Servicios Ferroviarios de Norteamérica S.A. de C.V.
288. Servicios Integrales de Capacitación y Administración de Salud en el Trabajo S.C.
289. Servicios Intersec S.A. de C.V.
290. Silicas Potosí
291. SIMSA
292. Sky Eye Measurement Inc.
293. SM Logistics (SM Line Corporation OR Impulsora Industrial SM Logistics)
294. Snyder Equipment
295. Softtek
296. Soldaduras y Superaleaciones, S.A. de C.V.
297. Solin & Equipos, S.A. de C.V.
298. Solucion e Ingenio S.A. de C.V.
299. Soluciones Integrales en Proteccion Personal, S.A de C.V.
300. Soluciones en Ingenieria y Manufactura S.A. de C.V.
301. Soluciones RGR S.A. de C.V.
302. Sonav, S.A. de C.V.
303. Stealth Monitoring

304. STIMSA Corporativo S.A. de C.V.
305. Strato Inc.
306. Sumitomo Canada Ltd
307. Sumitomo Corporation of Americas - Canada
308. Sumitomo Corporation of Americas (SCOA)
309. Surrette Battery Company LTD.
310. Surtidora Industrial
311. Surveying and Mapping, LLC
312. Sutidora Industrial
313. Tania Guadalupe Ovalle Villarreal
314. TCS 365, LLC
315. Technology Group Solutions
316. Tejas Surveying, Inc.
317. TeleComunicaciones JR, S.A. de C.V.
318. Telecon Inc.
319. TESSCO Technologies Inc.
320. The Aloft Group, LLC
321. Tideworks Technology
322. TIM
323. Tolmaz Serviciois Integrales
324. Toplift North America
325. Topografia Aguiñaga
326. Track Speq, S.A. de C.V.
327. Tracsa S.A.P.I. de C.V.
328. Transportes y Acarreos Modernos S.A. de C.V.
329. Transportes y Servicios Ambientales Ara S.A.de C.V.
330. TRC
331. Trinity Industries
332. Tuberias, Accesorios y Recubrimientos, S.A. de C.V.
333. TSO-NGE Mexico S.A. de C.V.
334. Tuberías, Accesorios y Recubrimientos, S.A. de C.V.
335. U.S. Oil
336. United Steel and Fasteners, Inc.
337. Universal Rail Systems Inc.
338. Useagility
339. V3 Companies
340. Valor Motriz S. de R.L. de C.V.
341. Villarreal Express S.A. de C.V.
342. Vilt Construcciones S.A. de CV.
343. Vintelligent, Inc.
344. VISE S.A. de C.V.
345. Voss Engineering, Inc

346. Vulcafrio S.A. de C.V.
347. W.T. Byler Co., Inc.
348. Wabtec
349. Wabtec Mexico Corporation
350. Wellington
351. WiTronix
352. xMatters*
353. Dirección de Obras y Proyectos Xquadra, S.A. de C.V.
354. Zebra Technologies

STATEMENTS FROM SUPPLY CHAIN PARTNERS

1. Accel Logistics
2. Administracion Portuaria Integral de Lázaro Cárdenas, S.A. de C.V.
3. Administracion Portuaria Integral de Veracruz, S.A. de C.V.
4. A.F. Cargas y Descargas S.A. de C.V.
5. AFS Forwarding LLC*
6. AGACE Asesoria y Gestoria al Comercio Exterior, S.C.
7. Agencia Aduanal Welldex del Norte, S.C.*
8. Agencia Aduanal Zegolar, S.C.*
9. Alabama Export Railroad, Inc.
10. Alabama State Port Authority
11. ALFER GROUP
12. Alfredo de León y Cía, S.C.
13. Almacenadora Afirme S.A. de C.V.
14. Alpenglow Rail
15. APM Terminals
16. APM Terminals Lázaro Cárdenas
17. APM Terminals Mobile LLC
18. Argom Global Trade S.A. de C.V.
19. Arrowhead Intermodal Services, LLC
20. AS Trucking
21. Autotransportes El Bisonte, S.A. de C.V.
22. AV Cargo LLC Freight Forwarders Warehousing
23. Azinsa Logistics S.A. de C.V.
24. Bailly's Transload
25. Battle River Railway
26. Big Sky Rail Corp.
27. Bulk Plus Logistics
28. C. Reiss Company, LLC
29. Cadena Vazquez, S.C.
30. California Trucking Company LLC

31. Ceres Terminal Holdings
32. Charron Warehousing Inc.
33. Consorcio INTERCOM S.A. de C.V.
34. Despachos Aduaneros Baci, S.C.
35. Despacho Aduaneros Garber,, S.C.*
36. DICEX International Integral Trade
37. Distribution Business Management Association
38. Materias Primas Dyasa, S.A. de C.V.
39. East Camden & Highland Railroad
40. Effingham Railroad Company
41. Fastco, Inc.
42. Fernando Yarza Rodriguez*
43. Ferroservicios S.A. de C.V.
44. Flowood Developers LLC *
45. FR Terminales S.A. de C.V.
46. G2 Logix
47. Gaelic Tugboat Company
48. Genesee & Wyoming, Inc.
49. GIO Railways Corp.
50. GP Reload Ltd.
51. Great West Distribution Ltd.
52. Grupo Aralo
53. Grupo Galvan
54. GTO Logistics Center
55. Hamilton Container Terminal
56. Hutchison Ports Holdings Limited
57. Hutchison Ports Mexico
58. Impex Forwarding Agency, Inc.
59. Indiana Business Railroad
60. In-Terminal Services de Mexico S. de R.L. de C.V.
61. J.O. Alvarez, Inc.
62. Jefferson Energy Companies Terminal
63. Keystone Shipping Co.
64. La Société du Chemin de Fer de la Gaspésie (SCFG)
65. Lake Drive Logistics
66. Lancer Transport & Logistics
67. Last Mountain Railway
68. Lazaro Cardenas API
69. LBC Baton Rouge LLC*
70. Lewis C. Howard Inc.
71. Liniar Logistics
72. Little River Intermodal Logistics Park

73. Lockwood Logistics International Ltd.
74. Logistec Stevedoring Inc.
75. Logistica Ferroviaria Villa de Reyes S.A. de C.V.
76. Logistica Internacional de Comercio, S.C.*
77. Lotus Terminals Ltd.
78. M Corr and Associates
79. Madawaska Victoria Industrial Park
80. MapleLeaf Distribution Services, Inc.
81. Martha Beatriz Cano Solis*
82. Martha Reyes y Cia S.C.
83. Matagami Transload
84. McDonald Companies*
85. Meridian Southern Railway, LLC
86. MGT Management Inc.
87. Midstream Texas Operating LLC
88. Mississippi Export Railroad Company (MSE)
89. Mone Forwarding LLC *
90. New Orleans Terminal, LLC
91. Node Park (formerly known as Tubesa)
92. North Thompson Rail Terminals, Inc.
93. PAR Sales & Transportation, Inc.
94. Parsec, Inc.
95. Pextrans Container Group Inc.
96. Pickands Mather Group
97. Port of Brownsville, Texas
98. Port of Saguenay (Port of Saguenay)
99. QSL America Inc.
100. Québec Port Authority (QPA)
101. Quickload Logistics
102. R.J. Corman Railroad Group
103. Rankin County Parkway Properties LLC*
104. Ray-Mont Logistics
105. Retail Logistics Canada
106. RM Logistic
107. Rubicon VLS
108. Rycroft Reload
109. Sartigan Railway
110. SEGA Carriers
111. Services Nolitrex Inc.
112. Servicios Aduanales y Logisticos
113. Servicios Logistico del Norte*
114. Sharp Base Cold Storage

115. Side Group Rail
116. Sistemas Aduanales del Golfo Mexico
117. Soporte Logistico en Distribución S.A. de C.V.
118. SPI Logistics
119. Sporta Logistics
120. SR Asesores Aduanales de Nuevo Laredo S.C.*
121. Standard Distribution Co.
122. Suministros Industriales Potosinos, S.A. de C.V. (SIPSA)
123. The Mercury Group
124. Transrail FN 27 Inc.
125. TSIM Internacional S.A. de C.V.
126. UFP Transportation, Inc.
127. Union City Terminal Railroad
128. Verplank Dock Co.
129. VIP Rail ULC
130. WATCO
131. The Waterloo Central Railway
132. Windsor Transload Limited
133. Wolverine Terminals ULC
134. WWL Vehicle Services (Mexico) S. de R.L. de C.V.
135. ZIN Logistics

STATEMENTS FROM INDUSTRY ASSOCIATIONS

1. Agencia Aduanera de America en Laredo, S.C.
2. AMANAC
3. Arkansas State Chamber/Associated Industries of Arkansas
4. Asociación de Agentes Aduanales del Puerto de Veracruz
5. Asociación de Industriales del Estado de Michoacán A.C.
6. Asociación Mexicana de Agentes Navieros, A.C.
7. Asociación Mexicana de Distribuidores de Automotores, A.C.
8. Baton Rouge Area Foundation
9. Canada Pork, Canadian Meat Council and the Canadian Pork Council
10. Canadian Chamber of Commerce in Monterrey, Mexico
11. Canadian International Freight Forwarders Association (CIFFA)
12. Consejo Mexicano de Comercio Exterior del Noreste, A.C. (COMCE)
13. Greater Fort Dodge Growth Alliance
14. Greater Kansas City Chamber of Commerce
15. Greater Memphis Chamber of Commerce*
16. Greater Shreveport Chamber of Commerce
17. Kansas City Area Development Council
18. KC SmartPort

19. Logistics Innovation Cluster of Queretaro CILQRO
20. Mexican Association of Industrial Parks (AMPIP)
21. Missouri Chamber of Commerce and Industry
22. Prairie Oat Growers Association
23. Ray-Carroll County Grain Growers
24. Toronto Transportation Club
25. Wisconsin Manufacturers and Commerce

<u>STATEMENTS FROM LABOR ORGANIZATIONS</u>

1. Brotherhood of Locomotive Engineers and Trainmen (BLET) GCA 360
2. Brotherhood of Locomotive Engineers and Trainmen (BLET) GCA 390 CN/IC Employees
3. Brotherhood of Locomotive Engineers and Trainmen (BLET) GCA 390 KCS Employees
4. Brotherhood of Locomotive Engineers and Trainmen (BLET) GCA 910
5. International Brotherhood of Boilermakers
6. SMART Transportation Division GO-377
7. "SMART Transportation Division GO-433
8. SMART Transportation Division General Committee of Adjustment 987
9. Unifor National Council 4000
10. United Steelworkers Local 2004

<u>STATEMENTS FROM OTHER ENTITIES</u>

1. City Development Corporation of El Campo, Texas
2. All Commodities (AC) Trading Ltd.
3. East Mississippi Business Development Corporation
4. Golden Triangle Development LINK
5. Guelph Historical Railway Association Inc.
6. Jerseyville Economic Development Council, Inc.
7. LaSalle Partners, S. de R.L. de C.V.*
8. NAI James E. Hanson, Inc.*
9. Rankin First Economic Development Authority
10. The Alliance (Corinth, Mississippi)
11. Denton Economic Development Partnership

Exhibit 8

Additional Voting Trust Support Letters

BOB GIBBS
7TH DISTRICT, OHIO

2217 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-6265

110 COTTAGE STREET
ASHLAND, OH 44805
(419) 207-0650

110 CENTRAL PLAZA SOUTH
CANTON, OH 44702
(330) 737-1631

Congress of the United States
House of Representatives
Washington, DC 20515–3507

TRANSPORTATION AND
INFRASTRUCTURE COMMITTEE
SUBCOMMITTEES
RANKING MEMBER,
COAST GUARD AND MARITIME TRANSPORTATION
HIGHWAYS AND TRANSIT

OVERSIGHT AND REFORM COMMITTEE
SUBCOMMITTEES
ENVIRONMENT
NATIONAL SECURITY

June 30, 2021

The Honorable Martin J. Oberman
Chairman
U.S. Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Chairman Oberman:

I appreciate your leadership at the Surface Transportation Board (STB) in providing a platform for shippers, customers, and freight railroads to address the issues and opportunities they face.

United States freight railroads provide an important service to my state, reliably linking businesses, large and small, to markets around the world in a sustainable manner. Many of my constituents work at these railroads, earning good wages and committing themselves to operating these networks safely.

The Kansas City Southern Railway Company and the CN Railway have proposed combining their operations, creating new, single-line service and providing sustainable supply chain solutions. In the coming months, the STB will receive their merger application – we look forward to a fulsome review and discussion of their proposal.

In order for that to occur, I write to support the Kansas City Southern Railway and the CN Railway in their application before you to establish a Voting Trust and urge you to approve it in a timely manner.

Sincerely,

Bob Gibbs

Bob Gibbs
Member of Congress

REPRESENTATIVE MIKE KELLY
SIXTEENTH DISTRICT, PENNSYLVANIA

COMMITTEE ON WAYS AND MEANS
RANKING MEMBER, SUBCOMMITTEE ON OVERSIGHT
SUBCOMMITTEE ON HEALTH

Congress of the United States
House of Representatives
Washington, DC 20515

July 2, 2021

The Honorable Martin J. Oberman
Chairman
U.S. Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Chairman Oberman:

I appreciate your leadership at the Surface Transportation Board (STB) in providing a platform for shippers, customers, and freight railroads to address the issues and opportunities they face. I write STB to urge approval of the voting trust proposed by Canadian National (CN) railroad with respect to its proposed merger with Kansas City Southern railroad (KCS).

The CN/KCS merger has the potential to create the premier railway for the 21st century, connecting ports in the United States, Mexico, and Canada to facilitate trade and economic prosperity. Freight railroads in the United States provide an important service, reliably linking businesses, large and small, to markets around the world in a sustainable manner.

For many years, CN has been a significant part of the transportation system in my district through their freight railroad which operates in northwestern Pennsylvania and northeastern Ohio. Many of my constituents work at these railroads, earn good wages, and commit themselves to operating these networks safely.

The Kansas City Southern and the CN have proposed combining their operations, creating new, single-line service and providing sustainable supply chain solutions. In the coming months, the STB will receive their merger application – we look forward to a fulsome review and discussion of their proposal.

In order for that to occur, I write to support the Kansas City Southern and the CN in their application before you to establish a Voting Trust and urge you to approve it in a timely manner.

Sincerely,

Mike Kelly

Mike Kelly
Member of Congress

WASHINGTON, DC OFFICE
1707 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
TEL.: (202) 225-5406
FAX: (202) 225-3103

ERIE OFFICE
208 EAST BAYFRONT PARKWAY
SUITE 102
ERIE, PA 16507
TEL.: (814) 454-8190
FAX: (814) 454-8197

SHARON OFFICE
33 CHESTNUT AVENUE
SHARON, PA 16146
TEL: (724) 342-7170
FAX: (724) 342-7242

BUTLER OFFICE
245 PITTSBURGH RD
SUITE 300
BUTLER, PA 16001
TEL.: (724) 282-2557
FAX: (724) 282-3682

PETER J.F. MEIJER
THIRD DISTRICT OF MICHIGAN

WASHINGTON OFFICE
1508 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3831

DISTRICT OFFICE
110 MICHIGAN STREET NW, SUITE 460
GRAND RAPIDS, MI 49503
(616) 451-8383

Congress of the United States
House of Representatives
Washington, DC 20515–2203

COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEES:
OVERSIGHT, MANAGEMENT, AND ACCOUNTABILITY – RANKING MEMBER
INTELLIGENCE AND COUNTER TERRORISM
COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE:
EUROPE, ENERGY, ENVIRONMENT, AND CYBER
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
SUBCOMMITTEES:
ENERGY
RESEARCH AND DEVELOPMENT

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E. St., SW
Washington, DC 20423

RE: FD 36514 Canadian National Railway Company, et al. — Control — Kansas City Southern, et al.

Dear Ms. Brown:

I write today to the Surface Transportation Board (STB) to urge approval of the voting trust proposed by Canadian National ("CN") with respect to the proposed merger with Kansas City Southern ("KCS"). I support its equal consideration alongside the Surface Transportation Board's ("SIB") previously approved trust arrangement for the proposed CP/KCS voting trust. Considering both voting trust proposals on a level playing field in this phase of the SIB's review is essential to ensuring a neutral and fair review process.

The proposed CN/KCS trust is identical to the trust that the SIB recently approved for a proposed CP/KCS transaction. In approving the CP's proposed voting trust, the STB determined that the trust structure meets the two criteria for approval of such trusts: (1) it would not cause unlawful, premature control, and (2) it was in the public interest, meaning the carriers were financially sound and would not suffer financial hardship in the event KCS is divested from the trust.

The CN/KCS transaction will strengthen competition by adding a stronger rail competitor in the north-south lanes in the industrial center of the country and opens markets with new single-line hauls, creating more efficient movements among Canada, the United States, and Mexico. This merger is a true end-to-end merger that preserves existing routing options and enhances competition with its new, single-line routing options for shipper

Thank you for the opportunity to comment on the voting trust. It is my hope that the STB will review it fairly and approve the voting trust expeditiously.

Sincerely,

Peter Meijer
Member of Congress

June 4, 2021

Chief, Section of Administration Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Attention: Cynthia T. Brown

RE: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries-Control-Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

A.S.M. Mining Corp. (A.S.M.) is in the process of negotiating contracts with CN and/or KCS. We have been in discussions with CN for the past two (2) years while our start-up company has been developing. We should be up and operational by Q3/Q4 2021. Our first contracts with CN will be to deliver product from Manitoba, Canada to Western Canadian Provinces, as well as from Manitoba, Canada south into the United States.

A.S.M. Mining Corp. supports the approval of CN's voting trust. CN proposes the same voting trust structure as CP, which the Board recently approved with a modification. For the reasons STB provided in making its decision, we believe CN's voting trust should also receive approval. This outcome will allow KCS and its shareholders to make a fair, informed decision when choosing between the competing offers. We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

The main form of transportation for A.S.M. to move product is by rail. For very short haul, we will utilize truck transport, but our primary markets are long haul destinations within Canada and the United States and rail is the key to our logistics and distribution. The combined company would create network with enhanced end-to-end single-owner, single operator service which will result in a faster, safer and more economical rail option for us as truck transport for many of these routes/destinations is not economical enough for us to pursue. We are hopeful about this transaction given that a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

We trust that you will find the foregoing complete and to your satisfaction. If you have any questions, concerns or comments, please contact the undersigned at your convenience.

Yours truly,
A.S.M. Mining Corp.

Phillip John Cook
Chairman

12028 103 ST. NW. Edmonton, Alberta Canada T5G 2J6 ▯ 780-340-7650 ▯ a.s.m.energycorp@gmail.com

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

AFS Forwarding LLC & Logistics is a current client of CN for nearly a decade. We have been in use of their services to ship large project amounts of steel products, iron products, industrial sized paper, and other goods from all over the North American. During this decade, we have used of their services and have been very satisfied with their customer support and service relations of any matter.

AFS Forwarding LLC & Logistics supports the combination of Canadian National and Kansas City Southern because it will create faster, safer, cleaner, and more direct service for North-South trade. The combination will help achieve the potential of the USMCA.

We believe that a combination of Canadian National and Kansas City Southern would help us to win in our markets. Canadian National's strong track record of success providing superior service, intermodal capabilities, and safety, gives us confidence that a combined Canadian National-Kansas City Southern would be best positioned to serve our needs. Additionally, Canadian National's successful track record of combinations over the past 25+ years also provides assurance that Canadian National will effectively and seamlessly be able to integrate and partner with Kansas City Southern.

As our business continues to grow to satisfy the continuous needs of the growing market, we look forward to seeing the better business opportunities that a combination of Canadian National and Kansas City Southern may provide us. We have noticed an increasing demand with regards to products that North America in general requires and with more available avenues of transportation, be able to provide this growing market.

The combined company would create a network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a Canadian National – Kansas City Southern rail well be able to provide the seamless transportation and service that would not survive available through Kansas City Southern should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of paper from Canada to Mexico.

- Canadian National has significant experience providing seamless intermodal service throughout their network and across borders.

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. AFS unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

AFS Forwarding LLC & Logistics is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

Benito Cavazos
Manager Laredo Office

July 02 ,2021

WELLDEX
DEL NORTE, S. C.

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: **FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company**

Dear Ms. Brown:

AGENCIA ADUANAL WELLDEX DEL NORTE, S.C. is [INSERT brief overview of customer's relationship with Canadian National and/or Kansas City Southern – e.g., what/where it ships, satisfaction with service, business relationship over time, polyvinyl chloride resin, and oil canol.

AGENCIA ADUANAL WELLDEX DEL NORTE, S.C. supports the combination of Canadian National and Kansas City Southern because it will create faster, safer, cleaner, and more direct service for North-South trade. The combination will help achieve the potential of the USMCA.

We believe that a combination of Canadian National and Kansas City Southern would help us to win in our markets. Canadian National's strong track record of success providing superior service, intermodal capabilities, and safety, gives us confidence that a combined Canadian National-Kansas City Southern would be best positioned to serve our needs. Additionally, Canadian National's successful track record of combinations over the past 25+ years also provides assurance that Canadian National will effectively and seamlessly be able to integrate and partner with Kansas City Southern.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us. We are hopeful this transaction will be able to provide the seamless transportation and service that is not otherwise available.

For example:

Nuevo Laredo, Tam.
Paseo Colon No. 3649
7o Piso L-A Col. Jardín
C.P. 88260
Nuevo Laredo, Tam. MEXICO
Tels.: 01(867)
7156536 7156539
7156620 7158407
Fax: 7155857 7157639
e-mail:
hinojosanla@welldex-nte.com.mx

Monterrey, N.L.
Calle UNAM No. 828
Col. Villa Universidad
C.P. 66450
San Nicolás de los Garza, N.L. MEXICO
Tels.: 01(81)
83766053 83761744
83762204 al 06
83320981 Fax: (81) 83320980
e-mail:
hinojosamty@welldex-nte.com.mx

Laredo, Tx.
801 y 802 Hallmark
Eastpoint Industrial Park
Laredo, Texas 78045
Phone: (956) 7263442
Fax:(956) 7241468
e-mail:
hinojosalar@welldex-nte.com.mx

Reynosa, Tam.
Carr. Reynosa-Pharr Z Km. 2 L-7
Parque Ind. Puente Pharr
C.P. 88699
Reynosa, Tam. MEXICO
Tel.: (899) 946-0359
925-9704
e-mail:
hinojosarey@welldex-nte.com.mx

McAllen, Tx.
5701-2 South Ware Road
Southwest Centre.
Mc.Allen, Tx. 78503
PH.:(956) 683-8422 (956) 683-8493
Fax:(956) 683-8938
e-mai
hinojosamcl@welldex-nte.com.mx

Del Bajio
Del Palmar No. 235
Villa de Pozos, C.P. 78421
Tel.:(444) 803-3140
Fax:(444) 803-3141
Tel.:(833) 125-1809
San Luis Potosi, S.L.P.

www.welldex-nte.com.mx

WELLDEX
DEL NORTE, S. C.

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments from USA to MEXICO.

- Canadian National has significant experience providing seamless intermodal service throughout their network and across borders.

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. AGENCIA ADUANAL WELLDEX DEL NORTE, S.C. unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

AGENCIA ADUANAL WELLDEX DEL NORTE, S.C. is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

ING. Jesus Humberto Medina Castillo
Representante Legal
Agencia Aduanal Welldex del Norte, S.C.

cc: Parties of Record

Nuevo Laredo, Tam.

Paseo Colon No. 3649
7o Piso L-A Col. Jardin
C.P. 88260
Nuevo Laredo, Tam. MEXICO
Tels.: 01(867)
7156536 7156539
7156620 7158407
Fax: 7155857 7157639
e-mail:
hinojosanla@welldex-nte.com.mx

Monterrey, N.L.

Calle UNAM No. 828
Col. Villa Universidad
C.P. 66450
San Nicolás de los Garza, N.L. MEXICO
Tels.: 01(81)
83766053 83761744
83762204 al 06
83320981 Fax: (81) 83320980
e-mail:
hinojosamty@welldex-nte.com.mx

Laredo, Tx.

801 y 802 Hallmark
Eastpoint Industrial Park
Laredo, Texas 78045
Phone: (956) 7263442
Fax:(956) 7241468
e-mail:
hinojosalar@welldex-nte.com.mx

Reynosa, Tam.

Carr. Reynosa-Pharr Z Km. 2 L-7
Parque Ind. Puente Pharr
C.P. 88699
Reynosa, Tam. MEXICO
Tel.: (899) 946-0359
925-9704
e-mail:
hinojosarey@welldex-nte.com.mx

McAllen, Tx.

5701-2 South Ware Road
Southwest Centre.
Mc.Allen, Tx. 78503
PH.:(956) 683-8422 (956) 683-8493
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e-mai
hinojosamcl@welldex-nte.com.mx

Del Bajio

Del Palmar No. 235
Villa de Pozos, C.P. 78421
Tel.:(444) 803-3140
Fax:(444) 803-3141
Tel.:(833) 125-1809
San Luis Potosi, S.L.P.

www.welldex-nte.com.mx

GRUPO ZEGO
CORPORATIVO ADUANAL

Nuevo Laredo a 01 de Julio del 2021.

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: **FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company**

Dear Ms. Brown:

AGENCIA ADUANAL ZEGOLAR, S.C., supports the combination of Canadian National and Kansas City Southern because it will create faster, safer, cleaner, and more direct service for North-South trade. The combination will help achieve the potential of the USMCA.

We believe that a combination of Canadian National and Kansas City Southern would help us to win in our markets. Canadian National's strong track record of success providing superior service, intermodal capabilities, and safety, gives us confidence that a combined Canadian National-Kansas City Southern would be best positioned to serve our needs. Additionally, Canadian National's successful track record of combinations over the past 25+ years also provides assurance that Canadian National will effectively and seamlessly be able to integrate and partner with Kansas City Southern.

Our clients need rail service for the saafe shipment of goods by rail in a timely manner..

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us. We are hopeful this transaction will be able to provide the seamless transportation and service that is not otherwise available.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of AGENCIA ADUANAL from North to South.
- Canadian National has significant experience providing seamless intermodal service throughout their network and across borders.
- EXPEDITING SHIPPING

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. AGENCIA ADUANAL ZEGOLAR, S.C. unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

AGENCIA ADUANAL ZEGOLAR, S.C. is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

ZEGOLAR, S.C.

AGENTE ADUANAL
JOSE HERNANDEZ CABRERA

cc: Parties of Record

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Azelis Canada Inc is using the CN company in order to move R/C of Methanol from Québec City across Canada. We have a fleet of approx. 100 cars and CN is a major partner for us.

Azelis Canada Inc unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust,Azelis Canada Inc also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

Azelis Canada Inc is proud of our 27 year relationship with CN and appreciate their outreach to us since April 20 regarding the proposed KCS-CN combination. Their voting trust—as well as their request that the STB review their voting trust concurrently with its review of CP's trust with a period for public comment—demonstrates clearly the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We look forward to seeing CN's commitment to fairness and efficiency reflected in the STB's review of the voting trust as well as the entire transaction.

Sincerely,

Normand Brisson
Business Unit Manager

Azelis Canada Inc, an Azelis Americas company

1570 rue Ampère, suite #106
Boucherville, Québec, Canada, J4B 7L4
Tel : 450-449-6363 / Fax : 450-449-5280

BASF
We create chemistry

BASF Corporation

June 28, 2021

Cythia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: Docket No. FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

BASF Corporation, headquartered in Florham Park, New Jersey, is the North American affiliate of BASF SE, Ludwigshafen, Germany. BASF has approximately 17,000 employees in North America and had sales of $18.7 billion in 2020. At BASF, we create chemistry for a sustainable future. We combine economic success with environmental protection and social responsibility.

Our portfolio is organized into six segments: Chemicals, Materials, Industrial Solutions, Surface Technologies, Nutrition & Care and Agricultural Solutions. We rely on the Canadian National Railway (CN) to provide safe and efficient rail transportation for these segments, shipping over 9,500 railcars per year. Of which, 4,600 railcars originate from our largest North American manufacturing facility in Geismar, Louisiana.

BASF Corporation is in support of the CN's acquisition of the Kansas City Southern Railway (KCS) under the Surface Transportation Board Post-2001 merger rules for the benefits it provides its customers, stakeholders, and the communities it serves. Fewer handoffs, improved transit time, and single line service to many of our customers in the US, Canada, and Mexico make for a more efficient rail network thereby keeping BASF competitive in the markets it serves. Our support however, is contingent on the merger providing enhanced competition and CN's divesture of the KCS Baton Rouge to New Orleans track and associated haulage rights.

Additionally, BASF requests the STB approve CN's voting trust which represents the same voting trust structure as Canadian Pacific Railway, which the Board recently approved. The approval of CN's voting trust will allow KCS shareholders to make fully informed decision when placing their votes to approve the transaction, and upon approval, to receive the full value of their shares while the STB considers CN's case for a combined, end-to-end network. The STB shall however in its voting trust approval require the CN to preserve KCS in its pre-voting trust state as part of any divestiture of KCS from the voting trust if a merger ultimately cannot be approved and finalized.

BASF has had a trusted partner in the CN and its predecessor railroads for more than 50 years and looks forward to a connected continent that is Safer. Faster. Cleaner. Stronger.

Sincerely,

Michael P. Vogt

Michael Vogt
Director Logistics Procurement

BASF Corporation
100 Park Avenue
Florham Park NJ 07932
Tel: (800) 526-1072
www.basf.us

CANADIAN PHOENIX STEEL PRODUCTS

289 Horner Avenue, Toronto, Ontario, Canada M8Z 4Y4
TEL: (416) 259-1113 • FAX: (416) 259-6951
info@canadianphoenix.com

June 30, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Truck Corporation, and CN's Rail Operating Subsidiaries - Control – Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Canadian Phoenix Steel Products manufactures spiral welded pipe and wire mesh and has been doing business with CN for over 35 years servicing clients in both Canada and the US construction market. We have historically relied on CN to provide rail, intermodal, and container services. We have come to rely on CN as a major partner in our logistics program, in terms of delivery to our customers, intercompany stock distribution, as well as material arriving from our global suppliers.

Canadian Phoenix Steel Products unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, Dymin Steel also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

Canadian Phoenix Steel Products is proud of our 35-plus year relationship with CN and appreciate their outreach to us since April 20 regarding the proposed KCS-CN combination. Their voting trust – as well as their request that the STB review their voting trust concurrently with its review of CP's trust with a period for public comment – clearly demonstrates the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We look forward to seeing CN's commitment to fairness and efficiency reflected in the STB's review of the voting trust as well as the entire transaction.

Sincerely,

Steven Kert
Logistics Manager

c.c. Parties of Record

Columbia Grain
CULTIVATING GROWTH

1300 SW 5th Avenue
29th Floor
Portland, OR 97201-5636

tel 503 224 8624
fax 503 241 0296

columbiagrain.com

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Columbia Grain International, LLC is a shipper with the CN and KCS railways.

Columbia Grain International, LLC unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, Columbia Grain International, LLC also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

Columbia Grain International, LLC is proud of our 3 year relationship with CN and appreciate their outreach to us since April 20 regarding the proposed KCS-CN combination. Their voting trust—as well as their request that the STB review their voting trust concurrently with its review of CP's trust with a period for public comment—demonstrates clearly the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We look forward to seeing CN's commitment to fairness and efficiency reflected in the STB's review of the voting trust as well as the entire transaction.

Sincerely,

Tony Roelofs
Vice President Pulse Division

Tony Roelofs

cc: Parties of Record

Construcciones Ferroviarias del Golfo, S.A. de C.V.

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Construcciones Ferroviarias del Golfo SA de Cvis a company with 30 years of experience in the discharge of various materials such as coal, salt, polyethylene, steel, etc. We have worked with Kansas City Southern during these 30 years, always helping to improve our facilities and helping to have continuous work and in the best way.

Construcciones Ferroviarias del Golfo SA de CV supports the combination of Canadian National and Kansas City Southern because it will create faster, safer, cleaner, and more direct service for North-South trade. The combination will help achieve the potential of the USMCA.

We believe that a combination of Canadian National and Kansas City Southern would help us to win in our markets. Canadian National's strong track record of success providing superior service, intermodal capabilities, and safety, gives us confidence that a combined Canadian National-Kansas City Southern would be best positioned to serve our needs. Additionally, Canadian National's successful track record of combinations over the past 25+ years also provides assurance that Canadian National will effectively and seamlessly be able to integrate and partner with Kansas City Southern.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us. We are hopeful this transaction will be able to provide the seamless transportation and service that is not otherwise available.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of coal from salt to steel.
- Canadian National has significant experience providing seamless intermodal service throughout their network and across borders.

Constructiones Ferroviarias del Golfo, S.A. de C.V.

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. Construcciones Ferroviarias del Golfo SA de CV unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

Construcciones Ferroviarias del Golfo SA de CV is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

Ma. Ana Hdz Cabello

Maria Ana Hernández Cabello
General director

cc: Parties of Record

LIBRAMIENTO NORESTE KM. 27.5 ESCOBEDO, N.L. TELS. (81) 83-84-98-53 Y 83-84-98-55

CPG
Continental Paper Grading
Solutions for Global Paper Needs

The Honorable Cynthia T. Brown

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Continental Paper Grading of Canada (CPG) is long term partner with CN rail and has developed a great business relationship over the two decades of working together.

CPG unequivocally supports approval of CN's voting trust. CN proposes the same voting trust structure as CP, which the Board recently approved with a modification. For the reasons STB provided in making its decision, we believe CN's voting trust should also receive approval. This outcome will allow KCS and its shareholders to make a fair, informed decision when choosing between the competing offers.

CPG is proud of our 20] year relationship with CN and appreciate their outreach to us since April 20 regarding the proposed KCS-CN combination. Their voting trust—as well as their request that the STB review their voting trust concurrently with its review of CP's trust with a period for public comment—demonstrates clearly the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We look forward to seeing CN's commitment to fairness and efficiency reflected in the STB's review of the voting trust as well as the entire transaction.

Sincerely,

Dan Mior
President

Continental Paper Grading
of Canada Inc.
6790 Century Avenue, Suite 301
Mississauga, ON L5N 2V8

P: 905.286.3690
F: 905.286.3677 (sales)
F: 905.286.3699 (accounting)

www.cpgco.com

DESPACHOS ADUANEROS GARBER, S.C.
A.A. CARLOS A. GARCIA GONZALEZ
A.A. IVETT BERMEA VAZQUEZ

MATAMOROS	BROWNSVILLE	REYNOSA	NUEVO LAREDO	LAREDO TX.	MONTERREY
Primera #49	G.B. Logistics, Inc.	Blvd. Luis Donaldo C. #1025-2	Paseo Colon #3822	G.B. Logistics, Inc.	Uruguay #114
Col. Lucero	Padre Island Hwy, Ste. 300	Parque Ind. Rey. Sec. Norte	Plaza Cristal, Col. Jardin	Quivira Dr. #4018 Ste. A	Col. Vista Hermosa
H. Matamoros, Tam. 87350	Brownsville, Tx. 78521	Reynosa, Tam. 88788	Nuevo Laredo, Tam. 88260	Laredo, Texas 78045	Monterrey, N.L. 64620
Tel: (868) 816-6198, 816-6560	Tel: (956) 550-9693	Tel: (899) 946-0050	Tel: (867) 713-4564, 713-4445	Tel: (956) 722-3778, 722-1795	Tel: (81) 1768-7772

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Despachos Aduaneros GARBER, SC is a Customs agency with 25 years of experience, we carry out import and export operations for our clients in FFCC service.

Despachos Aduaneros GARBER, SC. supports the combination of Canadian National and Kansas City Southern because it will create faster, safer, cleaner, and more direct service for North-South trade. The combination will help achieve the potential of the USMCA.

We believe that a combination of Canadian National and Kansas City Southern would help us to win in our markets. Canadian National's strong track record of success providing superior service, intermodal capabilities, and safety, gives us confidence that a combined Canadian National-Kansas City Southern would be best positioned to serve our needs. Additionally, Canadian National's successful track record of combinations over the past 25+ years also provides assurance that Canadian National will effectively and seamlessly be able to integrate and partner with Kansas City Southern.

Customs agency with 25 years of experience, we carry out import and export operations for our clients in FFCC service.

DESPACHOS ADUANEROS GARBER, S.C.
A.A. CARLOS A. GARCIA GONZALEZ
A.A. IVETT BERMEA VAZQUEZ

MATAMOROS	BROWNSVILLE	REYNOSA	NUEVO LAREDO	LAREDO TX.	MONTERREY
Primera #49	G.B. Logistics, Inc.	Blvd. Luis Donaldo C. #1025-2	Paseo Colon #3822	G.B. Logistics, Inc.	Uruguay #114
Col. Lucero	Padre Island Hwy, Ste. 300	Parque Ind. Rey. Sec. Norte	Plaza Cristal, Col. Jardin	Quivira Dr. #4018 Ste. A	Col. Vista Hermosa
H. Matamoros, Tam. 87350	Brownsville, Tx. 78521	Reynosa, Tam. 88788	Nuevo Laredo, Tam. 88260	Laredo, Texas 78045	Monterrey, N.L. 64620
Tel: (868) 816-6198, 816-6560	Tel: (956) 550-9693	Tel: (899) 946-0050	Tel: (867) 713-4564, 713-4445	Tel: (956) 722-3778, 722-1795	Tel: (81) 1768-7772

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us. We are hopeful this transaction will be able to provide the seamless transportation and service that is not otherwise available.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of USA from Mexico.

- Canadian National has significant experience providing seamless intermodal service throughout their network and across borders.

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. Despachos Aduaneros GARBER, SC unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

Despachos Aduaneros GARBER, SC is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

AA. Gloria Ivett Bermea Vazquez

Karla Lizet Rosas Fuentes
Representante Legal

cc: Parties of Record

DYMIN STEEL
133 Van Kirk Drive, Brampton, Ontario, Canada L7A 1A4

Tel: 905-840-0808
Fax: 905-840-5333
Toll Free: 1-800-461-4675
www.dymin-steel.com

June 30, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Truck Corporation, and CN's Rail Operating Subsidiaries - Control – Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Dymin Steel is a steel service center doing business with CN for over 25 years servicing clients in both Canada and the US construction market. We have historically relied on CN to provide rail, intermodal, and container services. We have come to rely on CN as a major partner in our logistics program, in terms of delivery to our customers, intercompany stock distribution, as well as material arriving from our global suppliers.

Dymin Steel unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, Dymin Steel also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

Dymin Steel is proud of our 25-plus year relationship with CN and appreciate their outreach to us since April 20 regarding the proposed KCS-CN combination. Their voting trust – as well as their request that the STB review their voting trust concurrently with its review of CP's trust with a period for public comment – clearly demonstrates the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We look forward to seeing CN's commitment to fairness and efficiency reflected in the STB's review of the voting trust as well as the entire transaction.

Sincerely,

Steven Kert
Logistics Manager

c.c. Parties of Record

ISO 9001:2008 QUASAR REGISTERED

Fernando Yarza y CIA. S.C.
AGENTE ADUANAL LIC. FERNANDO YARZA RODRIGUEZ
PATENTE ADUANAL No. 3469 REG. LOCAL No. 240-D506
Calzada Hacienda el Rosario No. 4 Local 23 Col. Hacienda del Rosario CP. 27106 Torreón Coahuila.

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

My company Fernando Yarza Rodriguez has been working with KANSAS for approximately 16 years, and in which we handle merchandise such as grains, polyethylene; oils, butter, handling imports and exports.

Fernando Yarza Rodriguez supports the combination of Canadian National and Kansas City Southern because it will create faster, safer, cleaner, and more direct service for North-South trade. The combination will help achieve the potential of the USMCA.

We believe that a combination of Canadian National and Kansas City Southern would help us to win in our markets. Canadian National's strong track record of success providing superior service, intermodal capabilities, and safety, gives us confidence that a combined Canadian National-Kansas City Southern would be best positioned to serve our needs. Additionally, Canadian National's successful track record of combinations over the past 25+ years also provides assurance that Canadian National will effectively and seamlessly be able to integrate and partner with Kansas City Southern.

My company Fernando Yarza Ródriguez supports the importation of general cargo in products such as grains, oils, butter, to our importers and currently import shipments are received between the Kansas City Southern companies.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us. We are hopeful this transaction will be able to provide the seamless transportation and service that is not otherwise available.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of We handle Import products such as grains, oils and butter with destinations from the Canada, United States to Mexico, so to speak, Torreon Coahuila and Exports from Mexico to the United States with origins from the Canada, United States and Mexico.

Sucursal Nuevo Laredo
Independencia 2117
Col. Centro CP. 88000
Nuevo Laredo Tamaulipas
Tel: 867-7135981

Fernando Yarza y CIA. S.C.
AGENTE ADUANAL LIC. FERNANDO YARZA RODRIGUEZ
PATENTE ADUANAL No. 3469 REG. LOCAL No. 240-D506
Calzada Hacienda el Rosario No. 4 Local 23 Col. Hacienda del Rosario CP. 27106 Torreón Coahuila.

- Canadian National has significant experience providing seamless intermodal service throughout their network and across borders.

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. Fernando Yarza Rodriguez unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

Fernando Yarza Rodriguez is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

Fernando Yarza Rodriguez

cc: Parties of Record

Sucursal Nuevo Laredo
Independencia 2117
Col. Centro CP. 88000
Nuevo Laredo Tamaulipas
Tel: 867-7135981

Flowood Develpers LLC

Dr,Stephen Davidson

2550 Flowood Dr, Suite 100

Flowood Ms.

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Flowood Developers LLC is transload facility in Flowood Ms We hope to expand our product line. We presently ship limestone and have a new tenet that wanting to transload sheetrock and building supplies. Flowood Developers LLC supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate.

- CN's significant experience providing seamless intermodal service throughout their network and across borders.

Central to the CN's bid for KCS is the establishment of a voting trust that benefits KCS shareholders. Flowood Developers LLC unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, Flowood Developers LLC also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

Flowood Developers LLC is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

Stephen Davidson
Flowood Develepers LLC

cc: Parties of Record

GREATER MEMPHIS CHAMBER

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

The Greater Memphis Chamber of Commerce has been a long time supporters and collaborator with CN railway.

Greater Memphis Chamber of Commerce supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

The Greater Memphis Chamber of Commerce's goal is to relentlessly pursue prosperity for all. We support CN efforts which strengthen our business community.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- CN's significant experience providing seamless intermodal service throughout their network and across borders.

Central to the CN's bid for KCS is the establishment of a voting trust that benefits KCS shareholders. Greater Memphis Chamber of Commerce unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, Greater Memphis Chamber of Commerce also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

Greater Memphis Chamber of Commerce is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

Ted Townsend
Chief Economic Development Officer

Heritage Grain
COOPERATIVE

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: **FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company**

Dear Ms. Brown:

Heritage Grain is a 25 Car shipper on CN. The CN is a vital part our business.

Heritage Grain Cooperative supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

We ship approximately 15-20% of our annual volume on the CN. We would expect the KCS merger would give more destinations for our grain.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of CORN from Dalton City IL to southern & southeastern end users.
- CN's significant experience providing seamless intermodal service throughout their network and across borders.

Central to the CN's bid for KCS is the establishment of a voting trust that benefits KCS shareholders. Heritage Grain unequivocally supports approval of CN's voting trust. CN proposes the same voting trust structure as CP, which the Board recently approved with a modification. For the reasons STB provided in making its decision, we believe CN's voting trust should also receive approval. This outcome will allow KCS and its shareholders to make a fair, informed decision when choosing between the competing offers.

Heritage Grain is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

Heritage Grain Cooperative
Dale Plumer
General Manager

cc: Parties of Record

J.B. HUNT
John N. Roberts
Presidente

June 29, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: *FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company*

Dear Ms. Brown:

Hunt Mexicana S.A. de C.V. (hereafter "Hunt Mexicana") has an established commercial relationship with both CN and KCS. We do business with both rail carriers for the movement of freight throughout Canada, the United States and Mexico, creating efficiencies by virtue of the relationship between truck and rail services to meet our customers' needs. Hunt Mexicana has a business model and vision to convert long-haul road freight to intermodal rail freight and appreciates the efforts of CN and KCS to facilitate such intermodal growth.

Hunt Mexicana is pleased that the STB has set a timetable for reviewing the voting trust proposed by CN and KCS, and I write to voice our support for its approval. We support the voting trust to preserve the operational *status quo* during the pendency of the STB's full evaluation of the merits of the proposed merger agreement. We also support it as a responsible measure needed to ensure and preserve KCS's independence and financial well-being during the evaluation process. For these reasons, Hunt Mexicana believes the voting trust for the KCS and CN combination should be approved.

Thank you for your consideration of our comments on this important matter.

Sincerely,

John N. Roberts,
Presidente

cc: Parties of Record

YOUR PROJECTS ON TRACK

3850 E. Mustard Way
Springfield, MO 65803
417-864-5411
(Fax) 417-864-4473
sales@lwind.com

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

L&W Industries is a manufacturer and distributor of signaling and communication equipment in the rail industry. L&W provides equipment for both KCS and CN as well as other Class I railroads dating back over 50 years ago. Products include wayside signaling products such as MLPs and signals, bungalows (wired and un-wired) for crossing and other signaling and communication applications, signal bridges and cantilevers, crossing equipment as well as a host of other warehouse products that are sourced or manufactured by L&W.

L&W Industries supports the combination of Canadian National and Kansas City Southern because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

As a supplier to the railway industry, this combination will be strategic as it will support the growth of trade between Mexico, USA and Canada and the growth of investment in rail network which will be both beneficial to us and also to the overall economy.

We are also very supportive of the positive impact of converting truck freight to rail on our environment.

CN's successful track record of combination over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

We see the combination as only beneficial, we do not anticipate any negative impacts to our company, the environment or market competition.

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. L&W Industries unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

L&W Industries is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

Jennifer "Jenny" Carr
President

cc: Parties of Record

June 16, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

LaSalle Partners, S. de R.L. de C.V. (JLL Mexico) has been a business partner with Kansas City Southern for more than one decade creating synergy with transportation and real estate in benefit of our clients .

LaSalle Partners, S. de R.L. de C.V. (JLL Mexico) supports the combination of Canadian National and Kansas City Southern because it will create faster, safer, cleaner, and more direct service for North-South trade. The combination will help achieve the potential of the USMCA.

We believe that a combination of Canadian National and Kansas City Southern would help us to win in our markets. Canadian National's strong track record of success providing superior service, intermodal capabilities, and safety, gives us confidence that a combined Canadian National-Kansas City Southern would be best positioned to serve our needs. Additionally, Canadian National's successful track record of combinations over the past 25+ years also provides assurance that Canadian National will effectively and seamlessly be able to integrate and partner with Kansas City Southern.

JLL Mexico helps National and International companies to select the best site for to move or establishing new plants to do business in Mexico. Transportation of products and finished goods either through Mexico or to export them to other countries around the globe is essential.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us. We are hopeful this transaction will be able to provide the seamless transportation and service that is not otherwise available.

For example:

- The combined company's single-owner, single-operator service would enhance our client's ability to be competitive in the markets in which they operate, benefiting shipments through Mexico and exports to US, Canada and Europe.

- Canadian National has significant experience providing seamless intermodal service throughout their network and across borders.

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. LaSalle Partners, S. de R.L. de C.V. (JLL Mexico) unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

LaSalle Partners, S. de R.L. de C.V. (JLL Mexico) is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

LaSalle Partners, S. de R.L. de C.V. (JLL Mexico)
Gerardo Rosalino Ramirez Barba

cc: Parties of Record

June 25, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation,and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

LBC Baton Rouge LLC ("LBC") located in Sunshine, Louisiana, a subsidiary of LBC Houston LP, is a terminal is located within the Geismar Industrial Complex ten miles south of Baton Rouge, Louisiana, on the Mississippi River. The terminal is one of the northern most independent deep-water terminals on the river, providing economical barge distances to the upper Mississippi and Ohio River valleys. The terminal also serves the immediate industrial area. The terminal is equipped to handle a wide range of liquid products, heated and non-heated, hazardous and non-hazardous products and has a marine and land vapor handling system. The terminal can accommodate truck, barge, ship and rail access. It is serviced by the Canadian National Railroad. We have had a long standing and positive business relationship with the Canadian National Railroad. Our customers use our terminal to conduct business throughout North America and our Baton Rouge terminal is a vital link in the trade of Petroleum and Chemicals product in the US Gulf of Mexico.

Central to Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. LBC unequivocally supports approval of Canadian National's voting trust. Canadian National proposes to use the same voting trust structure as Canadian Pacific Railway, which the Board approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. The approval of Canadian

Regional Corporate Office USA

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2625 Bay Area Boulevard
Houston, Texas 77058-USA

T +1 281 474 4433
F +1 281 291 3428

E info-usa@lbctt.com
www.lbctt.com

National's voting trust will allow Kansas City Southern shareholders to make a fully informed decision when placing their votes to approve the transaction, and upon approval, to receive the full value of their shares while the STB considers Canadian National's case for a combined, end-to-end rail network.

LBC is proud of our nearly 20 year relationship with Canadian National and appreciate their outreach to us since April 20 regarding the proposed Kansas City Southern-Canadian National combination. Their voting trust—as well as their request that the STB review their voting trust with a period for public comment—demonstrates clearly the customer-focused approach to business that Canadian National has demonstrated since the inception of our relationship. We look forward to seeing Canadian National's commitment to fairness and efficiency reflected in the STB's review of the voting trust as well as the entire transaction.

Sincerely,

Michael Patton
VP Marketing & Business Development

cc: Parties of Record

ZAGA LOGIC Logística Internacional de Comercio, S.C.

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Logistica Internacional de Comercio, S.C is a Company that has been in a business relationship with Kansas City Southern for many years now, working together having an excellent service and support that accomplish our expectative.

Logistica Internacional de Comercio, S.C. supports the combination of Canadian National and Kansas City Southern because it will create faster, safer, cleaner, and more direct service for North-South trade. The combination will help achieve the potential of the USMCA.

We believe that a combination of Canadian National and Kansas City Southern would help us to win in our markets. Canadian National's strong track record of success providing superior service, intermodal capabilities, and safety, gives us confidence that a combined Canadian National-Kansas City Southern would be best positioned to serve our needs. Additionally, Canadian National's successful track record of combinations over the past 25+ years also provides assurance that Canadian National will effectively and seamlessly be able to integrate and partner with Kansas City Southern.

For Logistica Internacional de Comercio, S.C. it is important to have this kind of service because there are so many of our customers using this mode of rail transportation for their convenience with Kansas City Southern because it's safe and reliable service.

REYNOSA NO. 1445, FRACC. OJO CALIENTE, NUEVO LAREDO, TAMPS 88040 TELS. (867) 712 9558 AL 60
WEB PAGE: www.ZagaLogic.com

ZAGA LOGIC Logística Internacional de Comercio, S.C.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us. We are hopeful this transaction will be able to provide the seamless transportation and service that is not otherwise available.

For example:

- The combined company's single-owner, single-operator service, would enhance our ability to be competitive in the markets that our customers are involved.

- Canadian National has significant experience providing seamless intermodal service throughout their network and across borders.

1.

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. Logistica Internacional de Comercio, S.C. unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

Logistica Internacional de Comercio, S.C. is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

Sergio A. Muzza Garza
Mexican Customs Broker
License No. 3071

REYNOSA NO. 1445, FRACC. OJO CALIENTE, NUEVO LAREDO, TAMPS 88040 TELS. (867) 712 9558 AL 60
WEB PAGE: www.ZagaLogic.com

Manufacturas
QUEZHER

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Manufacturas Quezher is a company that provides products and services, such as: Manufacturing, engineering, paving, structure and everything related to the railway, oil, automotive, construction industries, etc., complying with the norms and quality standards that our clients require.

We also mention the customer-supplier relationship, dated December 05, 2019, the start of operations with KCSM, for which we hope to continue maintaining the support and trust of our customers.

Manufacturas Quezher supports the merger of Canadian National and Kansas City Southern because of the superior benefits that a CN-KCS railroad would have by offering faster, safer, cleaner and more direct service for North-South trade.

As a supplier to the railway industry, this merger will be strategic, as it will support the growth of trade between Mexico, the United States and Canada and the growth of investment in the railway network, which will be beneficial for us and also for the economy in general.

We also support the positive impact on our environment by converting freight transport by truck to rail.

Manufacturas QUEZHER

CN's successful merger history over the past 25 years also provides assurance that CN will be able to integrate and partner with KCS effectively and seamlessly.

We believe that the merger will have commercial benefits, we do not forecast any negative impact on our company, the environment or market competition.

Central to Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits the shareholders of Kansas City Southern. Manufacturas Quezher unequivocally supports the approval of the Canadian National voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe that the Canadian National voting trust should also receive approval. This outcome will allow Kansas City Southern shareholders to make a fair and informed decision regarding the merger with Canadian National.

Manufacturas Quezher trusts and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons mentioned above. We look forward to seeing the first train of the 21st century come to life.

Jacob Quezada Hernández
Director General

Manufacturas Quezher S.R.L. DE C.V.
MANUFACTURA MANTENIMIENTO ESTRUCTURA PAILERÍA
(55) 2239 3717 (55) 2911 5846
www.manquezher.com.mx ventas@manquezher.com.mx maquinariaquezada77@yahoo.com.mx manquezher77@yahoo.com.mx
Calle Segunda Sur No. 6 Col. Independencia Tultitlán, Edo. de México

Martha Beatriz Cano Solís
AGENTE ADUANAL

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: **FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company**

Dear Ms. Brown:

Mexican customs broker Martha Beatriz Cano Solis is pleased to mention that you have great satisfaction with the commercial service that Kansas City Southern has offered to us for more than 20 years.

Martha B. Cano Solis supports the combination of Canadian National and Kansas City Southern because it will create faster, safer, cleaner, and more direct service for North-South trade. The combination will help achieve the potential of the USMCA.

We believe that a combination of Canadian National and Kansas City Southern would help us to win in our markets. Canadian National's strong track record of success providing superior service, intermodal capabilities, and safety, gives us confidence that a combined Canadian National-Kansas City Southern would be best positioned to serve our needs. Additionally, Canadian National's successful track record of combinations over the past 25+ years also provides assurance that Canadian National will effectively and seamlessly be able to integrate and partner with Kansas City Southern.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us. We are hopeful this transaction will be able to provide the seamless transportation and service that is not otherwise available.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting the shipments of our customers from the United States to Mexico.

- Canadian National has significant experience providing seamless intermodal service throughout their network and across borders.

GONZÁLEZ 7 Y 8 No. 703 CENTRO
TELS.: (868) 812-0425, 812-4825
816-0021, 812-4774 Y 813-7663
H. MATAMOROS, TAM. C.P. 87300

AMFCO
34 E. FRONTON ST.
PHONE: (956) 541-8151 Y 541-8112
FAX: (956) 542-3766
BROWNSVILLE, TEXAS 78520

Martha Beatriz Cano Solís
AGENTE ADUANAL

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. Martha B. Cano Solis unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making

its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

Martha B. Cano Solis is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

Martha B. Cano Solis
Customs broker

cc: Parties of Record

GONZÁLEZ 7 Y 8 No. 703 CENTRO
TELS.: (868) 812-0425, 812-4825
816-0021, 812-4774 Y 813-7663
H. MATAMOROS, TAM. C.P. 87300

AMFCO
34 E. FRONTON ST.
PHONE: (956) 541-8151 Y 541-8112
FAX: (956) 542-3766
BROWNSVILLE, TEXAS 78520

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

We operate 3+ Million feet of warehouse and industrial facilities in Wisconsin. We feel the proposed transaction will help assure the continuation of such service and preserve and enhance our ability to efficiently reach the national rail network.

Central to Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. McDonald Companies unequivocally supports approval of Canadian National's voting trust. Canadian National proposes to use the same voting trust structure as Canadian Pacific Railway, which the Board approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. The approval of Canadian National's voting trust will allow Kansas City Southern shareholders to make a fully informed decision when placing their votes to approve the transaction, and upon approval, to receive the full value of their shares while the STB considers Canadian National's case for a combined, end-to-end rail network.

McDonald Companies is proud of our decade's long relationship with Canadian National and appreciate their outreach to us since April 20 regarding the proposed Kansas City Southern-Canadian National combination. Their voting trust—as well as their request that the STB review their voting trust with a period for public comment—clearly demonstrates the customer-focused approach to business that Canadian National has demonstrated since the inception of our relationship. We look forward to seeing Canadian National's commitment to fairness and efficiency reflected in the STB's review of the voting trust as well as the entire transaction.

Sincerely,
Chester "Chip" McDonald
President
McDonald Company
1032 Bay Beach Road
920-465-3230
Email chip.m@cmmcdonald.com

cc: Parties of Record

MITSUBISHI
CHEMICAL

Mitsubishi Chemical America, Inc. | Methacrylates Division
6070 Poplar Ave, Ste 600 | Memphis, TN 38119-3918

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Mitsubishi Chemical America, Inc. formerly Lucite International has manufacturing plants in Memphis, TN and Nederland, TX. Memphis is served by the CN and Nederland by the KCS. Service levels have met our customer demand requirements. We recently announced the closure of our Nederland, TX facility and will move these rail shipments to Memphis. Our Mexican rail customers have been served by the KCS for decades and we look forward to continuing to serve them via the CN out of Memphis and the KCS moving into Mexico.

Central to Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. Mitsubishi America, Inc. unequivocally supports approval of Canadian National's voting trust. Canadian National proposes to use the same voting trust structure as Canadian Pacific Railway, which the Board approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. The approval of Canadian National's voting trust will allow Kansas City Southern shareholders to make a fully informed decision when placing their votes to approve the transaction, and upon approval, to receive the full value of their shares while the STB considers Canadian National's case for a combined, end-to-end rail network.

Mitsubishi Chemical America, Inc. is proud of our 25+ year relationship with Canadian National and appreciate their outreach to us since April 20 regarding the proposed Kansas City Southern-Canadian National combination. Their voting trust—as well as their request that the STB review their voting trust with a period for public comment—clearly demonstrates the customer-focused approach to business that Canadian National has demonstrated since the inception of our relationship. We look forward to seeing Canadian National's commitment to fairness and efficiency reflected in the STB's review of the voting trust as well as the entire transaction.

Sincerely,

Paul Mills
Logistics Manager
cc: Parties of Record

MONE FORWARDING LC

710 UNION PACIFIC BLVD.
MILO DISTRIBUTION CENTER
LAREDO, TEXAS 78045
PH:956)7239153 FX:956)7234241

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corp. and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company.

Dear Ms Brown:

Mone Forwarding LC is being handling some services as Freight Forwarder on USA with some Importers in Mexico that has been realized some shipments by railroad thru KCS since long time ago by this border at Laredo, Tx. We have been favored with satisfaction with service and information when it is requested to follow up with the status of railroad shipments by your team at KCS.

Mone Forwarding LC supports the combination of Canadian National and Kansas City Southern because it will create faster, safer, cleaner, and more direct service for North-South trade. The combination will help achieve the potential of the USMCA.

We believe that a combination of Canadian National and Kansas City Southern would help us to win in our markets. Canadian National's strong track record of success providing superior service, intermodal capabilities, and safety, gives us confidence that a combined Canadian National-Kansas City Southern would be best positioned to serve our needs. Additionally, Canadian National's successful track record of combinations over the past 25+ years also provides assurance that Canadian National will effectively and seamlessly be able to integrate and partner with Kansas City Southern.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us. We are hopeful this transaction will be able to provide the seamless transportation and service that is not otherwise available.

- Canadian National has significant experience providing seamless intermodal service throughout their network and across borders.
- We believe this join will guarantee a maximum of information contained on their website is truthful and updated at the moment you look for it.

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. Mone Forwarding LC unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

Mone Forwarding LC is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

Mirna Ramos
Traffic Clerk

Cc: Parties of Record

Moore Sales Co., Ltd

Suite 403 – 39 Sixth Street
New Westminster, BC, V3L 0B3
Tel: 604-254-7765

June 30, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Moore Sales Co. Ltd is a regular customer of Canadian National utilizing their rail network to ship steel products across North America.

Moore Sales Co. Ltd supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS is best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

Moore Sales co., Ltd sees many sales growth opportunities on the North-South corridor, which would benefit from a CN-KCS combined railway. Global logistics are currently under great pressure, a CN-KCS railway would assist in providing us a new delivery option while minimizing delays and reducing costs.

The combined company would create network with enhanced end-to-end single-owner, single-operator service that will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

Moore Sales Co., Ltd unequivocally supports approval of CN's voting trust. CN proposes the same voting trust structure as CP, which the Board recently approved with a modification. For the reasons STB provided in making its decision, we believe CN's voting trust should also receive approval. This outcome

Moore Sales Co., Ltd
Suite 403 – 39 Sixth Street
New Westminster, BC, V3L 0B3
Tel: 604-254-7765

will allow KCS and its shareholders to make a fair, informed decision when choosing between the competing offers.

Best Regards,

Derek Spibey
CEO

NAI James E. Hanson
COMMERCIAL REAL ESTATE SERVICES, WORLDWIDE

195 North Street, Suite 100
Teterboro, New Jersey 07608
201 488 5800

naihanson.com

June 21, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

NAI James E. Hanson, Inc. I am the national chairperson for NAI Global which one of the largest worldwide International and National Global full service real estate companies. I specialize in working with the Class one and short line railroads to help them develop and implement Real estate strategies so they can grow with their clients. For example (see enclosed flyer). This EL Campo project will allow the KCS to grow with their clients by servicing their clients to and from Mexico and NOW Canada once this hopefully gets approved. This rail to truck NEW Park once it's built will allow the KCS to grow expeditiously to cover their current markets as well as Canada with their clients. This is a win, win for the client. My methodology is to put together the development team to build many more of this extremely efficient industrial rail parks throughout the United States and Canada.

NAI James E. Hanson, Inc. supports the combination of Canadian National and Kansas City Southern because it will create faster, safer, cleaner, and more direct service for North-South trade. The combination will help achieve the potential of the USMCA.

We believe that a combination of Canadian National and Kansas City Southern would help us to win in our markets. Canadian National's strong track record of success providing superior service, intermodal capabilities, and safety, gives us confidence that a combined Canadian National-Kansas City Southern would be best positioned to serve our needs. Additionally, Canadian National's successful track record of combinations over the past 25+ years also provides assurance that Canadian National will effectively and seamlessly be able to integrate and partner with Kansas City Southern.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us. We are hopeful this transaction will be able to provide the seamless transportation and service that is not otherwise available.

For example

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments for existing and new clients.

- Canadian National has significant experience providing seamless intermodal service throughout their network and across borders.

-

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. NAI James E. Hanson, unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

NAI James E. Hanson, is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

NAI JAMES E. HANSON

Steve Pastor

VP, Global Supply Chain & Ports/Rail Logistics
NAI Global Industrial Chairperson

Cc: Parties of Record

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The Honorable Martin J. Oberman
Chairman
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Chairman Oberman:

Recently, Canadian National and Kansas City Southern announced they would combine to create the premier railway for the 21st century, connecting ports in the United States, Mexico, and Canada to facilitating trade and economic prosperity across the United States. I believe that this combination would expand the collective reach of both railroads and bringing new, sustainable transportation solutions to businesses in Mississippi and the Southeast Region

For many years, Canadian National has been an integral part of the transportation system. Their railroad safely and reliably connects Mississippi businesses, large and small, to markets around the world. Perhaps more importantly, as the most fuel-efficient railroad in North America, Canadian National offers a sustainable transportation alternative to trucks – the more products we move by rail, the more we can help reduce greenhouse gas emissions and free up capacity on already congested roads and highways.

To my knowledge, we have not worked directly with Canadian National. We understand that Canadian National has operated in the United States for more than 100 years and is committed to being a strong local partner in every community where it operates.

Finally, I was encouraged by the STB's decision to approve the voting trust for Canadian Pacific's proposed acquisition of Kansas City Southern and urge the STB to promptly reach the same decision with respect to the identical voting trust put forward for Canadian National's proposed acquisition of Kansas City Southern. Approving their voting trust will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National. For all of the reasons outlined above, I strongly support Canadian National's proposed combination with Kansas City Southern and urge you and the Board to give the proposal every consideration.

Sincerely,

Mark Hickman

Mark Hickman
Chairman/CEO/President
Peco Foods, Inc.

cc: Parties of Record

Rankin County Parkway Properties LLC
Dr Stephen Davidson
2500 Flowood Dr, Suit 100
Flowood Ms. 39232

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Rankin County Parkway Properties LLC is a large property owner in the Jackson Ms area. We have appox 1000ac between downtown and the airport with three plus miles of CN serviced track also close to the KCS railyard in Richland Ms.

Rankin County Parkway Properties LLC supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

The combination of CN and KCS would greatly enhance the potential of our site and would create a network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of limestone from Paduch, KY to Jackson, MS

- CN's significant experience providing seamless intermodal service throughout their network and across borders.

Central to the CN's bid for KCS is the establishment of a voting trust that benefits KCS shareholders. Rankin County Parkway Properties LLC unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, Rankin County Parkway Properties LLC also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

Rankin County Parkway Properties LLC is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely

Stephen Davidson
Rankin Co Parkway Properties LLC
Member Manager

cc: Parties of Record

SERVICIOS LOGISTICOS DEL NORTE, S.C.

Calle Maple No. 3 Esq. Santos Degollado

Fraccionamiento Arboledas H. Matamoros, Tamaulipas Tel.813-14-36, 812-53-85

==

H. MATAMOROS, TAM 03 DE JULIO DE 2021.

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

SERVICIOS LOGISTICOS DEL NORTE, S.C, we have a relationship comercial to cross shipments in railcar since 2019, the service is very good so also the customer service and support.

SERVICIOS LOGISTICOS DEL NORTE, S.C supports the combination of Canadian National and Kansas City Southern because it will create faster, safer, cleaner, and more direct service for North-South trade. The combination will help achieve the potential of the USMCA

We believe that a combination of Canadian National and Kansas City Southern would help us to win in our markets. Canadian National's strong track record of success providing superior service, intermodal capabilities, and safety, gives us confidence that a combined Canadian National-Kansas City Southern would be best positioned to serve our needs. Additionally, Canadian National's successful track record of combinations over the past 25+ years also provides assurance that Canadian National will effectively and seamlessly be able to integrate and partner with Kansas City Southern

We needs go on doing team work, customs-broker-railcar, to optimisize the shipments in the frontier with Canadian National/Kansas City Southern, we are very interesting in this fusion.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us. We are hopeful this transaction will be able to provide the seamless transportation and service that is not otherwise available.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of CANADA from USA to Mexico.
- Canadian National has significant experience providing seamless intermodal service throughout their network and across borders.

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. **SERVICIOS LOGISTICOS DEL NORTE, S.C** unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

SERVICIOS LOGISTICOS DEL NORTE, S.C is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

H. Matamoros, Tamaulipas., a 03 de julio del 2021.

LIC. ING. GUILLERMO ORTEGA HURTADO DE MENDOZA

Agente Aduanal

LA QUALITÉ PAR L'INGÉNIOSITÉ
QUALITY THROUGH INGENUITY

June 30, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Truck Corporation, and CN's Rail Operating Subsidiaries - Control – Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Spiralco manufactures spiral welded pipe and has been doing business with CN for over 10 years servicing clients in both Canada and the US construction market. We have historically relied on CN to provide rail, intermodal, and container services. We have come to rely on CN as a major partner in our logistics program, in terms of delivery to our customers, intercompany stock distribution, as well as material arriving from our global suppliers.

Spiralco unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, Dymin Steel also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

Spiralco is proud of our 10-plus year relationship with CN and appreciate their outreach to us since April 20 regarding the proposed KCS-CN combination. Their voting trust – as well as their request that the STB review their voting trust concurrently with its review of CP's trust with a period for public comment – clearly demonstrates the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We look forward to seeing CN's commitment to fairness and efficiency reflected in the STB's review of the voting trust as well as the entire transaction.

Sincerely,

Steven Kert
Logistics Manager

c.c. Parties of Record

S.R. ASESORES ADUANALES DE NUEVO LAREDO, S.C
A.A. JOSE SALVADOR ROSAS QUINTANILLA PAT. 3277

NUEVO LAREDO, TAMPS. JULY 02 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

SR Asesores Aduanales de Nuevo Laredo S.C. , As a Customs Agency, it has a working relationship with Kansas City Souther for the transport of imported goods from the USA to Mexico.

SR Asesores Aduanales de Nuevo Laredo S.C. supports the combination of Canadian National and Kansas City Southern because it will create faster, safer, cleaner, and more direct service for North-South trade. The combination will help achieve the potential of the USMCA.

We believe that a combination of Canadian National and Kansas City Southern would help us to win in our markets. Canadian National's strong track record of success providing superior service, intermodal capabilities, and safety, gives us confidence that a combined Canadian National-Kansas City Southern would be best positioned to serve our needs. Additionally, Canadian National's successful track record of combinations over the past 25+ years also provides assurance that Canadian National will effectively and seamlessly be able to integrate and partner with Kansas City Southern.

As a Customs Agency, the need to use the Railroad service as a means of transport for the importation of goods is very important, and the expansion that they will make, Canadian National/Kansas City Southern benefits us a lot.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us. We are hopeful this transaction will be able to provide the seamless transportation and service that is not otherwise available.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of import merchandise from [Worthington, MN] to [Salinas Victoria Mexico].

- Canadian National has significant experience providing seamless intermodal service throughout their network and across borders.

1.

- decrease delivery time

RIO DE SANTIAGO 3802 / COL. MADERO / NUEVO LAREDO TAMPS / C.P. 88270 / TEL OFIC. NVO LDO : 867- 715 31 82,
TEL OFIC. COLOMBIA : 867- 203 01 47 EXT 422 **CONTACTO: RITA GOMEZ CEL: 867 198 55 81**
E-mail: traficoffcc@srforwarding.com, ritagomez@srforwarding.com

S.R. ASESORES ADUANALES DE NUEVO LAREDO, S.C
A.A. JOSE SALVADOR ROSAS QUINTANILLA PAT. 3277

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. [SR Asesores Aduanales de Nuevo Laredo S.C.] unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

[SR Asesores Aduanales de Nuevo Laredo S. C.] is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

As a Customs Agency, the need to use the Railroad service as a means of transport for the importation of goods is very important, and the expansion that they will make

Sincerely,

LIC. RITA A. GOMEZ SANTAMARIA
SUPERVISOR

cc: Parties of Record

RIO DE SANTIAGO 3802 / COL. MADERO / NUEVO LAREDO TAMPS / C.P. 88270 / TEL OFIC. NVO LDO : 867- 715 31 82,
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Corporate Office
305 S 4th Street
Springfield, OR 97477

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Timber Products has had rail service provided at our Munising MI facility for many years and have enjoyed great service operationally as well as customer service. We have a facility in Corinth, MS that is currently served by the KCS and looking to expand our rail shipments from this facility.

Timber Products unequivocally supports approval of CN's voting trust. CN proposes the same voting trust structure as CP, which the Board recently approved with a modification. For the reasons STB provided in making its decision, we believe CN's voting trust should also receive approval. This outcome will allow KCS and its shareholders to make a fair, informed decision when choosing between the competing offers.

Timber Products is proud of our 30-year relationship with CN and appreciate their outreach to us since April 20 regarding the proposed KCS-CN combination. Their voting trust—as well as their request that the STB review their voting trust concurrently with its review of CP's trust with a period for public comment—demonstrates clearly the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We look forward to seeing CN's commitment to fairness and efficiency reflected in the STB's review of the voting trust as well as the entire transaction.

Sincerely,

Tami Chesnut
Logistics Manager
Timber Products Company
(541) 799-5012

cc: Parties of Record

xMatters | Service Reliability Platform

xmatters.com

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

xMatters has been providing service reliability platform services (notifications/communications) to The Kansas City Southern Railway Company since 2017.

xMatters Supports the combination of Canadian National and Kansas City Southern because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

As a supplier to the railway industry, this combination will be strategic as it will support the growth of trade between Mexico, USA and Canada and the growth of investment in rail network which will be both beneficial to us and also to the overall economy.

We are also very supportive of the positive impact of converting truck freight to rail on our environment.

CN's successful track record of combination over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

We see the combination as only beneficial, we do not anticipate any negative impacts to our company, the environment or market competition.

Central to the Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. xMatters unequivocally supports approval of Canadian National's voting trust. Canadian National proposes the same voting trust structure as Canadian Pacific, which the Board recently approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. This outcome will allow Kansas City Southern's shareholders to make a fair and informed decision on combining with Canadian National.

xMatters is confident in and strongly supports Canadian National's proposed acquisition of Kansas City Southern for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

Marie Glines
Enterprise Account Manager
mglines@xmatters.com | 1-385-275-6591

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xmatters.com

cc: Parties of Record

Exhibit 9

William Clyburn, Jr. "CN Voting Trust Clears STB New Merger Rules Tests. It Should Be Approved," Railway Age (June 8, 2021)

RAILWAY AGE

June 08, 2021

CN Voting Trust Clears STB New Merger Rules Tests. It Should Be Approved

Written by William Clyburn, Jr.

William Clyburn, Jr.

Having been one of the three Surface Transportation Board (STB) Members who voted on the 2001 Major Merger Rules, it seems clear to me that the CN voting trust satisfies the new rules requirements addressing "unlawful control" and the "public interest" when deciding to approve or reject a voting trust. As such, it should be approved so that the Board and the public may move forward to consider the merits of the proposed transaction.

In adopting the 2001 new merger rules with respect to voting trusts, the STB voting trust regulation focused on the impending control application and did not create a "new test" to pre-judge the "public interest" merits of the entire proposed transaction before approving a voting trust. The Board was looking at the public interest factors it believed were relevant to voting trust approval, not approval of the merger itself.

In reviewing voting trusts, the STB focused on two factors:

Would the trust insulate the target company from unlawful control by the acquiring company during the regulatory review process?

Would the acquiring company and target company remain financially sound so as to not jeopardize either railroad in the event the transaction was eventually denied?

The new rules were designed to require applicants to formally meet these tests before the Board would approve the use of a voting trust.

Prior to adoption of the Major Merger Rules, parties proposing use of a voting trust were free to use it without Board approval. As a result, unless there was a controversy, the Board itself rarely reviewed voting trusts. As part of the 2001 proceeding, the STB wanted more authority over and transparency into the voting trust process. In that proceeding, the Board adopted rules that now require:

Applicants of a major transaction to file a voting trust for approval.

The Board to hold a "brief" period of time for the public to comment on the use of a voting trust.

The Board to issue a decision after the comment period to either accept or reject the trust.

As part of that formal review process, the STB examines the trust to ensure there is no unlawful control and to determine whether the voting trust is in the public interest regarding the financial integrity of the applicant carriers.

When considering the public interest of a voting trust, and as explained in the merger rules themselves, the STB was concerned about the financial health of the applicants and the divestiture of the target railroad if the STB did not ultimately approve the transaction. Specifically, the STB wrote then that the Board is "responsible for ascertaining whether a proposed transaction would undermine the financial integrity of the applicant carriers."

As such, the STB adopted a public interest standard designed to focus on the financial fitness of the merging parties, which was one of the five public interest factors in the statute, and the most important factor in reviewing voting trusts.

The proposed CN/KCS trust should be approved. It incorporates the same elements that have already been approved for the now moot Canadian Pacific/Kansas City Southern voting trust and proposes to use the same trustee. In approving the CP/KCS trust, the Board has already determined that the trust structure does not cause unlawful, premature control. The Board should reach the same conclusion with respect to the CN/KCS trust. Similarly, in the CP/KCS decision, the STB found that KCS will be financially fit while in trust, and the STB reached the same conclusion with respect to CP's financial fitness.

Based upon the recent motion from CN regarding their proposed voting trust, it seems clear that CN is one of the most financially sound railroads, and that it can more than cover any debt it must take on to acquire KCS. CN has agreed to forgo share repurchases until its debt ratio returns to pre-deal levels. CN, like CP, should be found financially fit.

Likewise, in approving the CP/KCS trust, the STB inherently found that there was no concern about divestiture of KCS in the event that the STB did not approve the transaction. Such a finding becomes even more poignant with respect to the CN/KCS trust because CP has been clear that it remains interested in acquiring KCS. On May 21, 2021, CP issued a press release stating that "[w]ere KCS presented with the question of how to proceed following a decision by the Board not to approve CN's proposed use of a voting trust, CP anticipates being available to engage with KCS to enter into another agreement to acquire KCS." And it has again said so in its recent motion for a declaratory order filed at the STB.

The CN-KCS transaction appears to strengthen competition by adding a strong competitor in the North-South lanes in the industrial center of the country, and opens markets with new single-line hauls, creating more efficient movements among Canada, the United States and Mexico. CN has committed to divest the only overlapping line between the CN and KCS systems, a short 70-mile line between New Orleans and Baton Rouge, and to maintain open gateways. The CN-KCS combination is therefore a classic end-to-end merger that preserves existing route options, enhances competition with new, single-line routing options for shippers, and creates new rail-to-rail competition.

Based upon my first-hand knowledge of the internal conversations within the Board from when I voted on the 2001 Major Merger Rules, it is my opinion that the CN voting trust more than clears the two tests the STB established for such trusts in 2001 and should be considered on a level playing field with CP's approved trust. The CN trust should be approved so that the Board and the public may move forward to consider the merits of the transaction.

Mr. Clyburn is the Principal of Clyburn Consulting LLC, a government relations and business development firm that has focused on addressing health disparities as well as transportation and infrastructure policy. He was the fourth Member to serve on the United States Surface Transportation Board since its inception in 1996. He joined the Board in 1998 and served until the end of 2001, including as Vice Chairman. Prior to joining the Board, Mr. Clyburn served as the Commerce Counsel to former U.S. Senator Chuck Robb of Virginia and as Staff Counsel to the United States Senate Committee on Commerce, Science and Transportation from 1993 to 1995. He also served as senior counsel to U.S. Senator Zell Miller. From 1992 to 1993, he served as a Judicial Attorney for the Hon. Rodney A. Peeples of South Carolina's Second and Ninth Circuit Courts. He has been a consultant to Kansas City Southern.

Mr. Clyburn received his undergraduate degree in ceramic engineering from the Georgia Institute of Technology and law degree from the University of South Carolina. He has done pioneering research regarding high level radioactive waste disposal at Savannah River Site, one of the nation's premier federal laboratories. In addition to having served on the board of directors for the HSC Foundation (formerly Hospital for Sick Children), Mr. Clyburn is currently serving on the board of directors of the National Caucus & Center on Black Aging, Inc. (NCBA) and the Georgia Tech Materials Science and Engineering External Advisory Board. He uses his engineering background to volunteer as a STEM (Science, Technology, Engineering, Mathematics) mentor for elementary, middle, and high school students and is an advocate for youth health and education initiatives.

For additional perspective, listen to the Rail Group On Air podcast with CN's JJ Ruest and Kansas City Southern's Pat Ottensmeyer.

Exhibit 10

Dr. William Huneke, "Why CN's Open Gateways Offer is a Big Deal," Railway Age (June 22, 2021)

RAILWAY AGE

June 22, 2021

Why CN's Open Gateways Offer is a Big Deal

Written by Dr. William Huneke, Consulting Economist

CN's offer to keep gateways open on commercially reasonable terms is not getting the attention that it is due. This offer is a key part of its proposal to combine with Kansas City Southern—a transaction that significantly enhances competition.

CN's open gateways offer is a big deal. It means new, enhanced rail-to-rail competition. But for this to even be considered, the Surface Transportation Board must first approve the CN/KCS voting trust.

I was the STB's chief economist for 10 years, and I am surprised by the lack of attention to the open gateways commitment. This commitment ensures that shippers who today enjoy competitive joint line routings with either CN or KCS will continue to have those routings available to them in a post CN/KCS merger environment, even if a merged CN/KCS could handle the entire movement via a single-line routing. This means continued competition, and we know that competition encourages lower rates, better service and innovation.

The commitment is not just about maintaining physical routings, but also about ensuring that the routings are commercially reasonable to the shipper. What is meant by "open on commercially reasonable terms"? This means all market participants, railroads and shippers will benefit: They will get a fair chance to compete. They will pay and receive remunerative rates and get efficient service. If a shipper is not happy with their service, they can switch to another carrier because they will still have a choice.

A CN/KCS combination will create a strong new rail-to-rail competitor that will provide new single-line rail movements in competition with other rail carriers. In addition, with the gateway commitment, shippers will also have the option to use an existing routing or other routings involving more than just the merged CN/KCS.

Single-line hauls have long been a strong benefit of rail mergers because they are more efficient, eliminate costly and time-consuming handlings, and often create better routes. In the past, there was concern that such new single-line combinations might result in closing such gateways and preventing shippers from using routes involving multiple railroads. This is why CN/KCS's offer to protect existing gateways commercially is a game-changer.

The STB (and its predecessor, the Interstate Commerce Commission) used to impose rigid gateway protection in order to protect a shipper from losing alternative service in a rail merger. For more than three decades the ICC imposed so-called DT&I conditions, which required the merged railroad to preserve the gateway and "to maintain and keep open all routes and channels of trade via existing junctions and gateways" between it and another railroad that connected at that gateway. It also imposed a "rate equalization" condition, which froze rates.

In other words, in addition to the single-line service that the merged railroad could offer, the imposition of the DT&I conditions kept another option in play because the merged railroad could move the freight to the gateway and hand it off to another railroad. That multi-railroad move acted as a competitive constraint to the single-line move of the merged railroad. That was a good thing.

But the rate equalization requirement (requiring equal rates to all railroads at a gateway) meant that the newly merged railroad could not reduce its own rates at the gateways to reflect its new found single-line efficiencies. This rate equalization requirement actually inhibited competition by preventing railroads from adapting to ever changing market conditions or to reduce rates depending upon the route so as to respond to the increased competition by other modes. As such, the ICC abandoned the DT&I gateway conditions and stopped imposing them. It realized that the onerous "rate equalization" feature of that condition prevented rather than enhanced competition.

CN's gateway commitment is intended to preserve the commendable parts of the DT&I conditions, which were intended to preserve shippers' choices, but without the anticompetitive elements of rate equalization. Keeping gateways open on commercially reasonable terms will enhance competition by supplementing the benefits of new single line routes, with the opportunity for customers to access other railroads at gateways affected by a merger. The commitment avoids the anti-competitive “rate equalization” features that doomed the prior approach in favor of one that favors flexibility, customer choice and enhanced competition.

Besides keeping gateways open, CN and KCS have also committed to divest KCS’s 70 mile parallel rail line to CN’s rail line between Baton Rouge and New Orleans to address the minimal competitive overlap between the two networks. This too is commendable.

As a result of both the divestiture commitment in Louisiana and the gateway protection commitment, the result is a combined CN/KCS network with no competitive overlaps, commercially open gateways, and a stronger railroad able to offer new and vibrant single-line service to compete rail-to-rail with other Class I’s, especially the two dominant western railroad carriers, Union Pacific and BNSF. The merger thus allows CN/KCS, UP and BNSF to compete across major U.S. rail gateways that include Kansas City, Chicago, New Orleans, St. Louis and Memphis. These are the central hubs of U.S. rail commerce.

Lake Superior
ONTARIO
NORTH DAKOTA
MINNESOTA
MICHIGAN
Minneapolis
St. Paul
WISCONSIN
SOUTH DAKOTA
Lake Huron
Lake Michigan
Toronto
MICHIGAN
Milwaukee
Detroit
94
401
Lake Erie
35
IOWA
Chicago
Des Moines
NEBRASKA
Fort Wayne
55
ILLINOIS
OHIO
Springfield
INDIANA
Kansas City
WEST VIRGINIA
St. Louis
KANSAS
MISSOURI
Lexington
35
KENTUCKY
55
OKLAHOMA
Nashville
Oklahoma City
ARKANSAS
TENNESSEE
NORTH CARO
Memphis
Little Rock
ALABAMA
SOUTH CAROLINA
MISSISSIPPI
GEORGIA
Dallas
Jackson
Montgomery
LOUISIANA
TEXAS
35
55
Austin
Mobile
Baton Rouge
Pascagoula
Houston
New Orleans
Laredo
Gulf of Mexico
CN — CN Railway
BNSF — BNSF Railway
CSX — CSX Transportation
KCS — Kansas City Southern
KCSM — Kansas City Southern de México
UP — Union Pacific
NS — Norfolk Southern
CP — Canadian Pacific
Interstate or Highway
Mississippi, Ohio and Illinois Rivers

The CN/KCS merger—with its divestiture commitment and its offer to protect gateways commercially—is a huge step forward for competition. But shippers will not be able to avail themselves of either the new single-line efficiencies or the gateway commitment if the CN-KCS merger is never allowed to be considered by the STB in the first place.

For the merger to even be considered, the STB must first approve the use of a voting trust. That is why I am supporting CN's proposal to use a voting trust and urge shippers and other interested parties to do so as well. Without the voting trust, shippers will not benefit from the pro-competitive commitments made by CN and KCS, squandering the unique opportunity to enhance competition through the gateway commitment. I support this new, enhanced competition in the rail sector and ask others to do so as well.

Dr. Huneke is former Director of the Office of Economics and Chief Economist at the Surface Transportation Board. He is now a consulting economist and provides economic advice to private sector clients. He has provided testimony and litigation advice to Class I railroads, including KCS, and to the American Short Line and Regional Railroads Association.

Exhibit 11

CP White Paper (December 15, 2015)

CP

CP responds to Norfolk Southern white paper

December 15, 2015 / Calgary, AB

Canadian Pacific (TSX:CP)(NYSE:CP) today responded to Norfolk Southern's December 7, 2015 white paper. The full text of CP's white paper is below.

On December 7, 2015, the Norfolk Southern Corporation ("NS") posted to its website a "white paper" authored by Chip Nottingham and Frank Mulvey, two former Surface Transportation Board ("STB") members retained by NS. In the white paper, Mulvey and Nottingham explain why they think a CP+NS merger and related voting trust would have difficulty gaining regulatory approval. It is important to note that neither Mulvey nor Nottingham participated in the review of a "major" merger transaction while at the STB and did not consult with CP to ascertain the details of what CP is proposing or might propose before publishing their white paper. In fact, Nottingham and Mulvey assumed for the purpose of their analysis that NS would be put in trust when in fact CP intends for CP to be in trust rather than NS. Their white paper was published before CP delivered its detailed presentation describing the key features of the proposed merger and related voting trust including our proposal to put CP in trust. As such, their white paper is based largely on inaccurate assumptions, rumor, speculation, and conclusions that are unsupported by fact or by law.

We would not presume to predict the conclusion of the current STB. We are, however, confident that the STB will not prejudge the transaction, and that whatever voting trust structure and merger application is ultimately presented to the STB for regulatory approval will be considered fairly and impartially by the current STB, with the benefit of a full record and under the proper legal standards.[1]

Mulvey and Nottingham make four primary assertions: [1] that a voting trust cannot be used as proposed; [2] that the STB would not approve a voting trust or a CP+NS merger application due to its concerns that it will trigger other mergers; [3] that the STB would not approve a CP+NS merger application under its public interest standard; and [4] that, if it approved such a transaction, it would be subject to "onerous" conditions. We explain below why their conclusions are wrong.

In preparing this response, we have been advised by Stinson Leonard Street, LLP, which is nationally recognized for its rail regulatory practice. The firm supports the analyses and conclusions set forth below.

1. Use of a voting trust to protect and enhance the value of NS pending regulatory approval is lawful and in the public interest

Voting trusts have long been held to be an effective and lawful means of insulating a carrier from unlawful control pending regulatory approval.[2] They have and continue to be a common feature of rail transactions.[3] Such trusts are crucial to the proper functioning of the market, and can provide other important public benefits. As may be the case here, use of a voting trust can be the determinative factor in whether a transaction occurs as it enables the target carrier's stockholders to receive consideration prior to regulatory approval and substantially reduces the target carrier's exposure to regulatory risk.[4] Thus, denial of the use of a voting trust would interfere with the market place, restricting stockholder's ability to realize the full value of their investment. Such intrusive regulatory action would represent a marked departure from STB precedent and policy, and would be inconsistent with its statutory mandate.[5]

The law and regulations governing use of voting trusts have not changed

Importantly, and contrary to Mulvey and Nottingham's assertions that "voting trust regulations have become far more stringent," the STB has not changed, much less made more restrictive, the governing principles for evaluating voting trusts. Rather than adopting comprehensive mandatory regulations, the STB opted to maintain its limited guidelines related to independence and irrevocability[6] as the minimal regulatory approach needed to prevent abuse consistent with the principal statutory objectives of maximizing competition and minimizing the need for federal regulatory control over the rail transportation system.[7]

While the 2001 new merger rules impose a procedural requirement that applicants in a "major" transaction seek pre-approval for the use of a trust, they do not overturn the long-standing practice of determining whether the public benefits of using a trust outweigh the risk of improper usage of voting trusts.[8] If anything, the pre- approval procedure reduces the risk that trusts will be used improperly because the STB can make adjustments if and as needed, prior to implementation.[9]

The STB should rule expeditiously on the use of a voting trust

The STB's rules provide for decision on use of a voting trust after a "brief" notice and comment period. Precedent suggests that the Board would act expeditiously and rule on a voting trust petition within two or three months of a petition.[10]

Management changes do not constitute unlawful control

Contrary to what Mulvey and Nottingham assumed, CP contemplates that the CP operating entities would be placed in a voting trust. Mr. Harrison would sever ties with CP and be hired as CEO at NS. Pending regulatory approval, CP and NS would continue to operate as independent carriers. Neither Mr. Harrison nor the CP holding company would exercise any control over the carrier in trust. At NS, Mr. Harrison would follow the same roadmap used at Illinois Central ("IC"), Canadian National ("CN"), and CP to dramatically improve operating efficiencies and service, making NS more competitive and increasing its value.

In prior precedent, the ICC (the STB's predecessor) allowed management changes between the trust and non-trust companies, explaining that such changes between carriers would not be subject to regulatory approval in the ordinary course of business, and that restricting such changes would be inconsistent with its minimalist regulatory approach. When concerns have been raised about independence, the ICC has exercised its conditioning authority and relied on its oversight ability to address concerns and to ensure compliance, rejecting intrusive regulatory interference with personnel decisions.[11]

Management changes are consistent with the public interest

A properly established voting trust has long been recognized as a permissible means of changing management so that the public can obtain the benefits of more efficient operations.[12] The highly-successful CN-IC merger in which Mr. Harrison moved from the carrier that was put in trust (IC) to the non-trust carrier (CN) is a highly relevant example of how the STB has permitted management change during the merger approval period.[13]

Contrary to the claim that "the public interest standard is completely new," and thus allegedly uncertain, the new regulations follow, as they must, the same public interest standard set by the statute that has been used for decades.[14] The public interest standard is met by a showing that the public will gain sufficient benefits from the arrangement to warrant its approval.[15]

In applying the public interest standard, the Board's primary concern is with the risk of financial harm in the event regulatory authority is denied and the carrier must be disgorged.[16] We are confident of our ability to demonstrate that the risk of financial harm is low. CP is already running extremely well having achieved enormous operating improvements under Mr. Harrison and Mr. Creel's leadership. In our proposed transaction, Mr. Harrison would leave CP approximately one year earlier than contemplated in his employment contract, making a clean break with CP, to run NS. Other than Mr. Harrison, CP's management team would remain intact and is expected to continue to make substantial progress under Mr. Creel and the leadership team while it is held in trust for likely less than 18 months. Under Mr. Harrison's management, we expect that NS's operations will materially improve. Rather than cause financial harm, we believe that the use of a trust for CP and the transfer of Mr. Harrison to become CEO of NS will vastly improve the operations and value of both railroads.[17]

2. Hypothetical downstream merger effects are not a basis for rejecting a merger that is in the public interest

The STB has a long-standing rule of considering only the application actually before it. Although the new merger rules now require applicants to discuss potential impacts of future hypothetical mergers in anticipation of a final round of consolidation, the stated purpose is to help the STB "initiate a commentary" that would allow the Board "to develop a consistent set of principles for analyzing all of the applications that could be brought to us in such a final round of mergers."[18]

Mulvey and Nottingham do not explain why it would be reasonable, or lawful, for the STB to deny a merger that is in the public interest just because other carriers might propose mergers that are not in the public interest. We are confident the STB would not do so. The STB may, of course, deny subsequent merger proposals if and when any such mergers are proposed if they are not in the public interest.

Further, the STB has a statutory obligation to consider whether a merger application is in the public interest, and to do so based on a full record and in accordance with their own rules and procedures.[19] Mulvey and Nottingham speculate that the current STB would reject a proposed voting trust in a bid to deter any future Class I mergers. In other words, the STB would make a determination that no Class I merger is in the public interest, and would do so prior to the filing of a primary application and before considering any evidence. Such action would be a clear abrogation of the STB's legal obligations. Moreover, the Merger Rules Decision adopts no presumptions or bias against future Class I mergers and was not pre-judging the merits of any future merger proposals.[20]

Significantly, as reflected in the table below, a CP+NS merger does not create a dominant carrier that would necessitate a reflexive merger in response. Rather, CP+NS would be better able to compete with the other large carriers. In this way, the merger adds competitive balance to the industry, making the industry more competitive as a whole. It also improves capacity around Chicago, alleviating a key source of pressure on other carriers to merge.

Comparison of Class I Carriers[21]

2014	**UP**	**BNSF**	**CP+NS**	**CSX**	**CN**
Revenue (MM)	$23,988	$23,239	$17,624	$12,699	$11,031
Route Miles	31,974	32,754	33,759	20,769	20,000
Employees	47,201	48,000	44,035	31,500	24,635
RTMs (MM)	549,629	711,321	355,967	246,237	232,138
GTMs (MM)	1,014,905	1,326,098	694,299	482,729	448,765

3. We are confident in our belief that the merger meets the STB's standard

The "public interest" standard test in the new merger rules balances anti-competitive harm, risk of service disruption and other merger-related harm against the public benefits. Applicants must show that "substantial and demonstrable gains in important public benefits — such as improved service and safety, enhanced competition and greater economic efficiency — outweigh any anticompetitive effects, potential service disruptions, or other merger-related harms."[22] Further, applicants can tip the scale in favor of the public interest by proposing competitive enhancements.[23] On its merits, we are confident that a CP+NS merger easily satisfies the STB standard. The proposed innovative competition enhancements assure a balance in the public interest.

No potential competitive harm

Notably, Mulvey and Nottingham identify no anti-competitive harm from this proposed end-to-end merger because there is in fact no such harm. To the extent that any such potential harm is identified, it would be addressed and outweighed by the proposed competitive enhancements. [24]

Low risk of service disruption

Mulvey and Nottingham's suggestion that merger-related service disruption is inevitable is not supported by the most relevant precedent – the highly successful CN-IC merger. Mr. Harrison moved to CN from the IC while the IC was in trust. The operational improvements at CN, directed by Mr. Harrison and CN management, were to the substantial benefit of CN and the public during the pendency of the trust and thereafter, and were not contingent on the ultimate regulatory outcome. Those operational changes helped ensure a smooth integration once STB approval was obtained. In fact, the merger was so successful that the STB terminated its five-year oversight period after just two years, noting the lack of service issues.[25]

Moreover, the STB expressly rejected the suggestion that it has adopted a presumption that merger-related service disruptions are inevitable.[26] Further, the STB specifically contemplates that applicants can offset any risk by offering enhanced competition proposals, which CP would do.

No other-merger related harms

Mulvey and Nottingham also reference more nebulous "other merger-related harms." In an attempt to substantiate this claim, Mulvey and Nottingham focus almost entirely on the possibility that other carriers will seek to merge in response to a CP-NS merger. But as noted above, potential downstream mergers are not part of the STB's "public interest considerations" and should not be a basis for denying a merger that is in the public interest. We do not believe that there are other merger-related harms.

Substantial and demonstrable public benefits

On the public benefits side of the equation, Mulvey and Nottingham ignore the many public benefits that the STB has previously found to be important, including more efficient single line service, reduced costs and improved asset utilization, opening new domestic and global markets to customers, reduced fuel consumption, reduced highway congestion, improved environmental impacts and enhanced competition. All of these benefits and more would be demonstrably and substantially present in the CP+NS combination.

Alleviating pressure on Chicago benefits everyone

One important benefit is the impact on Chicago, the most important rail transportation hub in North America. As noted by CP management with extensive railroad operations experience (compared to the two former STB Board members retained by NS who have no such experience), there are material opportunities to reroute CP+NS traffic away from or around Chicago, but that is only part of the picture. A merger opens up opportunities to interchange traffic with other carriers at alternative gateways, as well as streamline traffic that will continue to route through Chicago. These routing changes would free up needed capacity in Chicago and result in a more robust, resilient and competitive rail transportation system.

Improved metrics means delivering superior service at a lower cost

Promoting efficient operations and management are at the core of the public interest, and a central tenant of both national rail policy and the economic principles underlying rail regulation. In fact, the STB's merger standards expressly identify "greater economic efficiency" as an "important public benefit."[27] Improved metrics, such as increased train speeds, lengths and weight, lower operating costs, and better on time performance, create additional capacity, strengthen the network, and enhance a carrier's ability to compete and to avoid and recover from future service disruptions in both the short and long terms. Greater economic efficiency strengthens competition by enabling a carrier to offer superior service at a lower cost.

Mr. Harrison has repeatedly demonstrated that greater efficiency can be achieved on a sustained basis and results in a stronger and more competitive carrier. The two highest performing Class I carriers today, CN and CP are proof positive that the changes Mr. Harrison would make at NS would be good for NS, for its customers, and for the industry.

Substantial public benefits can be achieved only through a merger

While a substantial amount of improvements can be made to NS on a stand-alone basis (provided that the right management is in place), a merger would allow for additional material improvements that would demonstrably and substantially benefit the combined CP+NS network as well as the rest of the rail network. They include efficiencies from transcontinental single-line service, greater routing flexibility including the ability to avoid Chicago, and greater interchange flexibility with other carriers.[28] Those broader efficiencies can only be achieved in the context of a merger.

Far from degrading service, CP+NS would be able to offer shippers new and enhanced service products including safe, reliable, efficient single-line service that connects CP+NS customers to domestic and global markets.

Enhanced competition

Standing alone, a CP+NS merger is in the public interest; the proposed competitive enhancements should "assure" it.

Mulvey and Nottingham state incorrectly that CP is proposing "open access" which they say will be operationally disruptive and costly. CP is not proposing "open access." CP is proposing modified terminal access which would allow another carrier to operate over CP+NS lines to serve a customer if the customer is not receiving adequate service or is being charged an unreasonable rate. CP is also proposing ending the bottleneck pricing approach, allowing customers to obtain a separately challengeable rate to the customer's preferred interchange location.[29]

Importantly, CP's proposed competitive enhancements would be neither disruptive nor costly. Rather, they would heighten competition which, according to Congress and the STB, is a virtue. A principal objective of the national rail policy states that it is the U.S. government's policy "to allow to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail."[30] The STB review of the transaction is governed by that policy.[31]

Moreover, an efficient carrier, as CP+NS would be, would have nothing to fear from competition. CP and CN are subject to forced inter-switching in Canada, and yet, they are the two most efficient carriers in the industry today, demonstrating that a low-cost, service-focused carrier can increase revenues, operate efficiently, and reinvest in infrastructure in a competitive environment.

The STB may not take the full statutory time period to review the merger

In setting the procedural schedule for merger review, the STB seeks to provide sufficient time "to produce a complete, thorough decision, to which all parties have had an adequate opportunity to contribute, *as expeditiously as possible*."[32] So, while the law allows a generous maximum of 16 months from the filing and acceptance of the application to a decision, the STB has consistently processed major merger reviews in a shorter period of time.[33] CN/IC and BN/SF were each approved 10 months from the filing of the respective primary applications. Even the Conrail/CSX/NS review, which involved a fundamental restructuring of rail competition east of the Mississippi, was decided in 395 days. The STB's policy or rationale towards processing merger applications expeditiously has not changed in the interim. Accordingly, we think it possible that the STB would seek to resolve a CP+NS application in fewer than the statutory maximum 16 months from filing of the primary application.

In reaching this conclusion, we are mindful of the fact that this would be the first "major" transaction reviewed since 1999 and the first under the new merger rules. Nevertheless, we do not believe that the STB would want to or need to use the statutory maximums. We are also aware that some believe that the STB lacks staff resources and merger experience necessary to expedite consideration. The STB staff, however, is capable, experienced in reviewing and analyzing mergers and related issues, and has a slightly higher headcount than when it reviewed the Conrail/CSX/NS and CN-IC transactions.[34] Lastly, we are aware that the environmental review process in a merger can be lengthy, and can delay a final STB decision. However, we are aware of no reasonable basis at this time on which to expect a lengthy environmental review.

4. Potential conditions would not be onerous

The proposed competitive enhancements obviate the need for any service conditions. As to employee protection,[35] since CP anticipates that headcount reductions attributable to the transaction would be achieved through attrition, CP+NS would not incur significant costs under the STB's standard employee protective conditions that Mulvey and Nottingham acknowledge would apply.

We do not agree with Mulvey and Nottingham's speculation that imposition of onerous environmental conditions is likely. Mulvey and Nottingham cite the heavily conditioned CN-EJ&E merger experience.[36] However, that merger involved a very different transaction and circumstance. The EJ&E was a small railroad with pre-existing environmental problems such as blocked crossings, train noise and safety risks. CN's acquisition and plans to integrate it into "the very heart of the [CN] system," changed "the character" of the line and would have significantly exacerbated these pre-existing problems.[37] By contrast, CP+NS are both Class I carriers and the merger would not change the character of their rail lines. Accordingly, speculation that onerous conditions would be imposed is unfounded.

Moreover, this is an environmentally friendly merger that should result in capacity improvements through efficiencies rather than construction. More efficient operations including new single line service will reduce fuel consumption. More competitive service will take trucks off highways, reducing congestion. That said, CP expects that environmental conditions, as well as other conditions, will either be mandated or agreed to voluntarily as in past transactions, but we do not expect those conditions to materially impair the transaction's value.

If the STB were to impose onerous conditions, CP can opt not to consummate the transaction and to divest CP or NS. In that scenario, because of the value added improvements made to NS during regulatory review, CP, NS, shareholders and shippers will still be better off than under NS's standalone plan.

About Canadian Pacific

Canadian Pacific (TSX:CP)(NYSE:CP) is a transcontinental railway in Canada and the United States with direct links to eight major ports, including Vancouver and Montreal, providing North American customers a competitive rail service with access to key markets in every corner of the globe. CP is growing with its customers, offering a suite of freight transportation services, logistics solutions and supply chain expertise. Visit cpr.ca to see the rail advantages of Canadian Pacific.

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[1] 49 U.S.C. §10101(2)("In regulating the railroad industry, it is the policy of the United States Government— * * *(2) . . . to require fair and expeditious regulatory decisions when regulation is required").

[2] *See, e.g., Water Transport Ass'n v. ICC*, 715 F.2d 581, 582 (D.C. Cir. 1983)(noting that the "ICC has long permitted carriers" to use independent voting trusts in merger situations "because the acquiring carrier does not 'control' the acquired carrier").

[3] *E.g., Genesee & Wyoming Inc.—Control—Railamerica, Inc.* Decision No. 5, STB Finance Docket No. 35654 (served Dec. 20, 2012); *Canadian Pacific Ry. Co.—Control—Dakota, Minn. & E. RR Corp.*, Decision No. 11, STB Finance Docket No. 35081 (served Sept. 29, 2008).

[4] *E.g., Water Transport Ass'n*, 715 F.2d at 786 (noting voting trusts are "common acquisition device" that if disallowed "would force railroads to use less desirable alternative means if they could, and foreclose acquisition entirely if it could not be made by purchase contract").

[5] *See* 49 U.S.C. §§ 10101(1) and (2)("(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail; (2) to minimize the need for Federal regulatory control over the rail transportation system").

[6] 49 CFR §§ 1013.1 and 1013.2.

[7] *See generally* Voting Trust Rules, 44 Fed. Reg. 59908, 59909/1 (ICC Oct. 17, 1979) ("Instead of comprehensive mandatory regulations, we are adopting guidelines governing the provisions of voting trust agreements which concern the independence of the trustee and the irrevocability of the trust. The guidelines are intended to inform the public of the provisions which should be included in a voting trust agreement to insure that it is not used to obtain unauthorized control of a regulated carrier.").

[8] *See Gilbertville Trucking Co. v. United States*, 371 U.S. 115, 128 (1962) (noting that even where a statutory control violation exists, merger may be approved "upon consideration of all the facts, [if] it clearly appears that the public interest will be best served by such approval") (citations omitted); *see also* Voting Trust Rules, 44 Fed. Reg. at 59909/1 ("the Commission has granted approval of the application in spite of violations involving improper usage of voting trust because the benefits to the public were found to outweigh the harm resulting from the violations") (citations omitted).

[9] *Ill. Cent. Corp.—Common Control—Ill. Cent. Railroad Co. & the Kansas City S. Ry. Co.,* STB Finance Docket No. 32556 (served Oct. 21, 1994) (seeking comments on proposed voting trust and possible conditions).

[10] *E.g., id.* (establishing a 35-day briefing schedule regarding the proposed voting trust structure).

[11] *See Santa Fe Southern Pacific Corporation-Control-Southern Pacific Transportation Co.: Merger-The Atchison, Topeka And Santa Fe Railway Company And Southern Pacific Transportation Company,* 1983 ICC LEXIS 70 (Dec. 22, 1983) (noting that "under normal circumstances" the ICC "would be powerless to prevent" movement of managers, but conditioning managers' move to prevent use of information to obtain a competitive advantage or to participate in management decisions affecting the competitive relationship).

[12] *E.g., Eastern Freight Ways, Inc. – Investigation of Control – Associated Transport, Inc.*, 122 MCC 143, 153 (1975) (noting that "allow[ing] large publicly held carriers to be bought out through the use of properly established independent voting trusts . . . [means that] ineffectual management can be removed, and adequate transportation can be assured to the public").

[13] *See Canadian Nat'l Ry. Co.—Control—Ill. Cent. Ry. Co.*, 4 STB 122 (1999) ("CN-IC Decision").

[14] Major Rail Consolidation Procedures, STB Ex Parte No. 582 (Sub-No. 1), at 13 (served June 11, 2001) ("Merger Rules Decision") ("we retain in general the traditional balancing test that has always governed our determination of whether mergers are consistent with the public interest"); *e.g.*, *Penn-Central Merger and N & W Inclusion Cases*, 389 U.S. 486, 499 (1968); *Missouri-Kansas-Texas R. Co. v. United States*, 632 F.2d 392, 395 (5th Cir. 1980), *cert. denied*, 451 U.S. 1017 (1981) ("[t]he Act's single and essential standard of approval is that the [Board] find the [transaction] to be 'consistent with the public interest'") (citation omitted).

[15] *See, e.g., Gilbertville Trucking Co.,* 371 U.S. 115, 127 (1962); *Lamoille Valley R. Co. v. ICC*, 711 F.2d 295, 330 (D.C. Cir. 1983) (independent control "is simply a factor in the Commission's overall decision whether a merger is in the public interest") (citation omitted). CN-IC Decision, 4 STB at 139 ("In determining the public interest, we balance the benefits of the merger against any harm to competition, essential service(s), labor, and the environment that cannot be mitigated with conditions").

[16] Merger Rules Decision, at 29. In the event that the trust carrier must be disgorged, the STB would allow as much time as necessary to ensure an orderly divestiture process. Two years is common, but the STB would allow longer if necessary. *See, e.g.*, *Santa Fe S. Pacific Corp.-Control-S. Pacific Transp. Co.*, 2 I.C.C. 2d 709, 835-36 (July 30, 1987) (SFSP's "offer to sell SPT within two years (as stated in the Voting Trust Agreement) does not override the public interest. SFSP may of course sell the ATSF instead, or it may take longer than two years to sell SPT, if it becomes necessary").

[17] *See Eastern Freight Ways, Inc.*, 122 MCC at 157-58 ("Eastern has been a successful, well-financed carrier which has in the past taken over failing carriers and made them profitable. . . . It now certainly appears capable, especially based on its past successes, of making the Associated operations profitable again while giving improved service to the public. The operating rights of the two carriers are compatible and will allow more beneficial service to the public by use of a combined and coordinated Eastern-Associated system able to serve most of the Northeast, and permit operations with greater economies to the carriers involved").

[18] Merger Rules Decision at 44.

[19] 49 U.S.C. §10101(2) ("In regulating the railroad industry, it is the policy of the United States Government— * * *(2) . . . to require fair and expeditious regulatory decisions when regulation is required"); 49 U.S.C. § 11324(c) ("The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest.").

[20] *See* Merger Rules Decision at 12-13.

[21] Based on data reported in each carrier's R-1 Report to the STB and Annual Report.

[22] 49 CFR § 1180.1(c).

[23] *Id.*

[24] *See, e.g.*, *Union Pacific Corp.—Control and Merger—S. Pacific Ry. Corp.*, 1 STB 233, 375 (1996) ("UP-SP Decision") ("In sum, the merger benefits here outweigh any competitive harms of the transaction, and the public interest requires that we approve it. The conditions we are imposing will effectively mitigate the competitive harms of the merger, while preserving its benefits").

[25] *Canadian National Railway Company, Grand Trunk Corporation, And Grand Trunk Western Railroad Incorporated — Control — Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central And Pacific Railroad Company, And Cedar River Railroad Company*, STB Finance Docket No. 33556, Decision No. 4 (Dec. 27, 2001) ("Our oversight during the first and second years has revealed no significant problems following implementation of the CN/IC merger. We are therefore concluding our formal oversight process in the CN/IC merger proceeding").

[26] *See* Merger Rules Decision at 13.

[27] *E.g.,* 49 C.F.R. § 1180.1(c)(1) ("mergers can generate important public benefits such as improved service, more competition, and *greater economic efficiency*") (emphasis added).

[28] *See* Merger Rules Decision at 18 (noting "other benefits that can be achieved through mergers in terms of creating single-line service and other efficiencies that can improve rail service and lower rail costs and thus make merging railroads more competitive and more responsive to their customers").

[29] The proposals are consistent with the type of competitive enhancements that the STB has found would offset "merger-related harms that cannot be directly or effectively mitigated." Merger Rules Decision at 10.

[30] 49 USC § 10101(1).

[31] *See* 49 CFR § 1180.1(b).

[32] *BN/SF*, Finance Docket No. 32549, Decision No. 4 at *2 (Oct. 5, 1994) (emphasis added).

[33] *Id.* ("Since the enactment of the maximum statutory time periods nearly 20 years ago, we have repeatedly demonstrated that proceedings such this one can be completed much more promptly").

[34] Compare "STB FY 1998/1999/2000/2001 Report" at Appendix B (Sept. 20, 2002)(131 Average FTE in 1999) with "STB FY 2013 Report at Appendix B (June 2, 2015)(136 Average FTE in 2013).

[35] We anticipate that the Board would impose the *New York Dock* employee protective conditions in this transaction.

[36] *Canadian Nat'l Ry. – Control – EJ&E W. Co.*, STB Finance Docket No. 35087 (served Dec. 24, 2008).

[37] *Id.*, slip op. at 46.

Exhibit 12

CP White Paper (February 3, 2016)

Effective regulatory approval fact-based and free of political interference, CP argues in white paper

February 3, 2016 / Calgary, AB

Canadian Pacific (TSX: CP) (NYSE: CP) today released a white paper detailing the comprehensive, merit-based process any merger application would be subject to at the Surface Transportation Board.

The full text of the white paper, *CP-NS: A Comprehensive Approach to Regulatory Approval,* is below. A PDF version can be downloaded at: http://www.cpr.ca/en/investors.

CP-NS: A Comprehensive Approach to Regulatory Approval

The status quo is not an option for North American rail

In 2001, the U.S. Surface Transportation Board (STB) issued new merger rules that clarified how the "public interest" standard would be applied in Class I rail consolidation cases. The new rules place a greater emphasis on showing that a proposed transaction enhances competition and proactively ensures that the public benefits of the transaction will be realized while minimizing the risk of any potential harm from transitional service problems.

In advancing its proposal to combine CP and Norfolk Southern Corp. (NS), CP is confident that the proposal can meet this standard and its voting trust structure will be approved because a CP-NS combination will more than satisfy the STB's public interest standard by introducing features that will enhance competition through a number of shipper-friendly options.

Together, CP and NS will form an integrated transcontinental railroad with the scale and reach to deliver unsurpassed levels of service and safety to customers and communities while increasing competition, supporting continued economic growth and creating significant shareholder value.

CP believes that all stakeholders will benefit if the proposed transaction is evaluated on its merits and based on a full record that includes the opportunity for all interested parties to comment within the STB's prescribed framework, free from political interference.

Benefits of the Staggers Rail Act

In 1980, the Staggers Rail Act deregulated the failing rail industry. Economic regulation had made it virtually impossible for the industry to reinvest in its crumbling infrastructure, which led to several railroad bankruptcies. To stem this tide, Congress removed much of the existing regulatory regime so the industry could make rational, market-based decisions.

By all measures, Staggers has been a success. The industry was able to shed excess capacity, price services based on the market, and consolidate. This resulted in a dramatic and sustained increase in productivity levels, service, and reinvestment in rail infrastructure, coupled with steadily declining rail rates (see Figure 1: US Freight Railroad Performance Since the Staggers Act).

Today's rail industry is healthier than it has been in decades, largely due to consolidation and a minimalist regulatory approach. To bolster these improvements, Congress, in 1995 enacted the Interstate Commerce Commission (ICC) Termination Act, which replaced the ICC with the much smaller and independent STB. The Act vested the STB with exclusive jurisdiction over rail consolidation, while retaining the Staggers Act mandate that the STB minimize regulatory control over the free market operation of the rail industry.

While the number of fully functioning Class I railroads has decreased from 18 in 1980 to the current seven[1], merger approval under the statutory "public interest" standard has assured that the rail industry is not only as fiercely competitive as ever, but also healthier and more efficient.

Figure 1. US Freight Railroad Performance Since the Staggers Act ***[2]***

The Introduction of New Rules for Class I Consolidation

In 2001, the STB's revised merger policy and procedures refined the "public interest" standard for Class I (major) mergers. The updated merger rules require applicants to show that a transaction enhances competition and has sufficient, proactive conditions to mitigate potential service harms.

To protect the public interest, the STB can impose conditions to mitigate potential harm. The STB added safeguards to protect the public against service disruptions by requiring applicants to present detailed plans that show both how service will be achieved and propose remedies to alleviate any identified disruptions.

Applicants are also required to discuss downstream effects, or, in other words, potential impacts stemming from any other future hypothetical mergers. This would "initiate a commentary" that allows the STB "to develop a consistent set of principles for analyzing all of the applications that could be brought to us in such a final round of mergers."[3]

These new STB policies do not "reflect an anti-merger bias" or "reverse a statutory policy favoring mergers."[4] In fact, the STB reaffirmed that it "welcomes private-sector initiatives that enhance the capabilities and the competitiveness of the transportation infrastructure," and recognizes that Class I mergers can "advance our nation's economic growth and competitiveness through the provision of more efficient and responsive transportation."[5] Importantly, the rules do not change the Staggers Act mandate to approve transactions that advance the public interest[6] and minimize regulatory control.[7]

These updated rules, although untested, establish a clear process for reviewing proposed Class I mergers, provide for the development of a full evidentiary record and the opportunity for all interested stakeholders to participate and raise concerns in an open and transparent proceeding, ensuring that the public interest is well-served.

The Practicality of Voting Trusts

As part of the merger process, voting trusts have been used in hundreds of transactions as effective insulation against the unlawful exercise of control over a railroad prior to STB approval. Without them, railroads would face a major impediment to transactions involving more than one carrier and thus be at a severe disadvantage vis-à-vis non-rail bidders.[8] Voting trusts also protect against potential lessening of competition among carriers by placing the stock of one carrier in the hands of an independent trustee while the STB considers the transaction. In addition, voting trusts enable the target carrier's stockholders to receive consideration prior to regulatory approval, thus removing their exposure to regulatory risk during the STB process.

In 2001, due to concerns regarding the potential risk of financial harm to the carrier in trust in the event regulatory approval is denied and the carrier must be divested, the STB required that Class I applicants seek pre-approval following the submission of the notice of intent to file a merger application. To gain approval, applicants must show that the proposed trust would insulate the carrier in trust from unlawful control and would be consistent with the public interest.[9] Insulation from unlawful control is demonstrated by showing the voting trust is irrevocable and the trustee independent. The public interest standard is satisfied by showing either that the risk of financial harm from divestiture is low or that countervailing public benefits outweigh the risk.[10] The STB rules on such requests after a "brief" notice and comment period.[11]

In considering voting trust structures that also involve management swaps, the STB has focused on the risk to competition. Consistent with its mandate and policy to minimize regulatory control, the STB does not ordinarily intervene in personnel decisions and has rejected calls to do so in the context of a voting trust. If specific concerns regarding the potential for unlawful control can be demonstrated, the STB has relied on its authority to set conditions that address such concerns by limiting the types of communications and operations in which the swapped officers or directors can engage.[12] If the STB is concerned about future misconduct, the STB relies on the well-tested independent voting trust structure to prevent this possibility and the STB's oversight and enforcement authority to resolve such problems if they ever arise.[13]

Of the 144 voting trusts that have been used since the Staggers Act of 1980, none have been rejected despite several challenges, including some involving management swaps. This record largely reflects that the principles central to a voting trust – independence and irrevocability – were established many decades ago and are embodied in the STB's regulations.[14]

Congress Established the STB as an Independent Agency to Protect Against Political Influences

The STB operates under the Staggers Act's basic regulatory mandate to minimize regulatory control over the rail industry. In order to insulate the STB from political pressures causing deviation from this long-standing statutory mandate, Congress established the STB as a decisionally independent agency, albeit with administrative ties to the Department of Transportation (DOT). This independence remains central to the STB's role. For example, during the Kansas City Southern and Texas Mexico Railway proposed merger hearings (July 31, 2003), then Chair Roger Nober stated that he was, "wary of attempts by competitors to politicize mergers. Congress made our Agency independent, and vested us with exclusive merger review authority to avoid precisely that circumstance, where merger review becomes subject to political influence."[15]

In December 2015, Congress not only reauthorized the STB, but also strengthened its independence by severing its administrative ties to the DOT. Moreover, although news of the proposed CP-NS transaction was public, no changes were made to the STB merger policies. Clearly, Congress continues to have confidence in the STB to carry out its mandate on mergers.

CP's Approach to Regulatory Approval is Thoughtful and Comprehensive

CP has carefully reviewed the new STB merger rules and standards, including those of the voting trust structure, and has a thoughtful and comprehensive plan to address the regulatory process.

In general, the proposed CP-NS merger would more than satisfy the public interest standard by offering enhanced pro-shipper options, including elimination of bottleneck pricing and modified terminal access, and important public benefits, such as, single line haul, access to new markets, improved asset utilization, routing efficiencies, and increased capacity.

As to downstream mergers, while CP believes that further consolidation is inevitable and necessary to support future economic growth, a combined CP-NS would still be smaller than both UP and BNSF, and therefore creates no pressure on other carriers to merge in order to remain competitive. Instead, CP-NS would be better able to compete intermodally and intramodally, which in turn increases balanced competition as a whole. Like the CP-NS proposal, approval of any future downstream merger must be determined on its own merits to be in the "public interest".

As to a voting trust, CP would structure one to meet the independence and irrevocability requirements. With regard to the public interest showing, CP is confident that in the unlikely event that divestiture is ordered because the merger is disapproved, it and the carrier-in-trust and both their customers and shareholders will be, at a minimum, in the same financial position they were when the trust was approved, and, indeed, that the more likely outcome would be that they all have benefited while the voting trust structure is in place. Consequently, the risk of harm from divestiture is quite low. In addition, CP is also confident that it can show several public benefits that would accrue to customers from approval of the trust structure, including reduced costs and increased efficiency and competitiveness of NS' operations.

It has been suggested that the STB would entertain a declaratory order motion seeking an advanced indication on a voting structure that has not yet been agreed upon by CP and NS. It is difficult to imagine why the STB would expend valuable time and resources to address whether a voting trust could be used, when the STB's own precedent and regulations provide well-established certainty as to how and when a voting trust will be approved. It is also difficult to imagine why the STB would entertain a hypothetical question about possible voting trust structure and related conditions,[16] when its own regulations set clear procedures for review of an actual, formulated voting trust presented to it for approval. As such, CP will not be seeking a declaratory order from the STB on a voting trust structure.

The Importance of a Fair and Objective STB Review of the CP-NS Proposal

Under the new rules, a merger is in the "public interest" if there are "substantial and demonstrable gains in important public benefits." Applicants are encouraged to propose provisions for "enhanced competition" in order "to assure a balance in favor of the public interest."[17] CP's proposed merger with NS more than satisfies the public interest standard by offering a number of innovative pro-shipper initiatives that will enhance competition.

In light of ample STB precedent and its regulatory mandate to reduce regulatory control, CP is confident that a proposed voting trust structure would be approved, but only at the appropriate time and under the clear procedure set out in the STB's merger rules.

Congress has established an effective regulatory framework governing railroads. The proposed CP-NS transaction should be evaluated within that framework on its merits and based on a full record – free from political interference, just as Congress intended.

[1] *Competition in the Railroad Industry*, STB Docket No. EP 705, Initial Comments of the Association of American Railroads, at 19 (Apr. 12, 2011)"; some reduction in the total number of Class I's since 1980 is due to change in definition of Class I and factors other than consolidation.

[2] https://www.aar.org/Pages/US-Freight-Rail-Performance-Since-Staggers-Act.aspx (accessed January, 26, 2016).

[3] Major Rail Consolidation Procedures, STB Ex Parte No. 582 (Sub-No. 1), at 44 (served June 11, 2001) ("Merger Rules Decision").

[4] *Id.*, at 12 n.12.

[5] 49 C.F.R. § 1180.1.

[6] 49 U.S.C. § 11324(c) ("The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest").

[7]49 U.S.C. § 10101(2) (U.S. policy is "to minimize the need for Federal regulatory control over the rail transportation system").

[8] *See, e.g., Water Trans. Ass'n v. ICC*, 715 F.2d 581, 586 (D.C. Cir. 1983)(holding that allowance of voting trust was consistent with policy to minimize need for Federal regulatory control as rejection would have foreclosed railroad from "common acquisition device of the tender offer" and could "foreclose acquisition entirely").

[9] *See* 49 CFR § 1180.4 (b)(4)(iv).

[10] Merger Rules Decision at 29.

[11] 49 CFR § 1180.4 (b)(4)(iv).

[12] *See e.g., Santa Fe Southern Pacific Corp.-Control-Southern Pacific Trans. Co.: Merger-The Atchison, Topeka And Santa Fe Ry Co. and Southern Pacific Trans. Co.*, 1983 ICC LEXIS 70, **15-16 (Dec. 22, 1983) (refusing to prohibit management swap during voting trust which "under normal circumstances," ICC "would be powerless to prevent").

[13] *Id.* at 19 (finding concerns regarding potential exercise of unlawful control to be without merit "[g]iven the fact of a *voting trust* designed and monitored so as prevent impermissible cooperative action" and noting that ICC retained plenary authority to address specific problems).

[14] 49 CFR Part 1013.

[15] Transcript of Public Hearing on Proposed "KCS-TEX MEX" Railroad Merger (July 31, 2003) (available at www.stb.dot.gov).

[16] CP anticipates that the trust structure including management changes would be the subject of negotiations and agreement between the parties. In addition, voting trust decisions focus largely on the financial harm if divestiture is ordered. *See* Merger Rules Decision at 29. But NS financial data to calculate the necessary baseline and projected income and balance sheet financial statements for that analysis are unavailable to CP prior to a merger agreement.

[17] 49 CFR 1180.1(c).

Forward Looking Statement

This news release contains certain forward-looking information within the meaning of applicable securities laws relating, but not limited, to CP's proposal to NS regarding a possible business combination, the anticipated results and benefits of the proposed transaction and matters relating to regulatory approvals and changes. This forward-looking information also includes, but is not limited to, statements concerning expectations, beliefs, plans, goals, objectives, assumptions and statements about possible future events, conditions, and results of operations or performance. Forward-looking information may contain statements with words or headings such as "financial expectations", "key assumptions", "anticipate", "believe", "expect", "plan", "will", "outlook", "should" or similar words suggesting future outcomes.

Undue reliance should not be placed on forward-looking information as actual results may differ materially from the forward-looking information. Forward-looking information is not a guarantee of future performance. By its nature, CP's forward-looking information involves numerous assumptions, inherent risks and uncertainties that could cause actual results to differ materially from the forward-looking information, including but not limited to the following factors: the ability of the parties to agree to the terms of a proposed transaction; the ability of the parties to obtain the required regulatory approvals; the ability to recognize the financial and operational benefits of the transaction; changes in business strategies; general North American and global economic, credit and business conditions; risks in agricultural production such as weather conditions and insect populations; the availability and price of energy commodities; the effects of competition and pricing pressures; industry capacity; shifts in market demand; changes in commodity prices; uncertainty surrounding timing and volumes of commodities being shipped via CP; inflation; changes in laws and regulations, including regulation of rates; changes in taxes and tax rates; potential increases in maintenance and operating costs; uncertainties of investigations, proceedings or other types of claims and litigation; labour disputes; risks and liabilities arising from derailments; transportation of dangerous goods; timing of completion of capital and maintenance projects; currency and interest rate fluctuations; effects of changes in market conditions and discount rates on the financial position of pension plans and investments; and various events that could disrupt operations, including severe weather, droughts, floods, avalanches and earthquakes as well as security threats and governmental response to them, and technological changes. The foregoing list of factors is not exhaustive.

These and other factors are detailed from time to time in reports filed by CP with securities regulators in Canada and the United States. Reference should be made to "Management's Discussion and Analysis" in CP's annual and interim reports, Annual Information Form and Form 40-F. Readers are cautioned not to place undue reliance on forward-looking information. Forward-looking information is based on current expectations, estimates and projections and it is possible that predictions, forecasts, projections, and other forms of forward-looking information will not be achieved by CP. Except as required by law, CP undertakes no obligation to update publicly or otherwise revise any forward-looking information, whether as a result of new information, future events or otherwise.

Rule 425 Disclosure

This announcement is neither an offer to purchase or exchange nor a solicitation of an offer to sell securities. Subject to future developments, additional documents regarding the proposed transaction may be filed with the SEC. Investors and security holders are urged to read such disclosure documents regarding the proposed transaction, if and when they become available, because they will contain important information. Investors and security holders may obtain a free copy of the disclosure documents (when they are available) and other documents filed by CP with the SEC at the SEC's website at www.sec.gov. The disclosure documents and these other documents may also be obtained for free from CP at http://www.cpr.ca/en/investors or by directing a request to Canadian Pacific Railway Limited, 7550 Ogden Dale Road S.E., Calgary, Alberta, Canada, T2C 4X9, Attention: Office of the Corporate Secretary.

CP and its directors, executive officers and other employees may be deemed to be participants in any solicitation of CP or NS shareholders in connection with the proposed transaction. Information about CP's executive officers and directors is available in CP's Annual Report on Form 40-F for the year ended December 31, 2014, which was filed with the SEC on February 23, 2015. Additional information about the interests of potential participants will be included in any proxy statement filed in connection with the proposed transaction.

About Canadian Pacific

Canadian Pacific (TSX:CP)(NYSE:CP) is a transcontinental railway in Canada and the United States with direct links to eight major ports, including Vancouver and Montreal, providing North American customers a competitive rail service with access to key markets in every corner of the globe. CP is growing with its customers, offering a suite of freight transportation services, logistics solutions and supply chain expertise. Visit cpr.ca to see the rail advantages of Canadian Pacific.

Media

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Investment Community

Nadeem Velani
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Exhibit 13

Email Correspondence Between Counsel
Concerning Workpapers (July 1, 2021)

From:	Vandergrift, Sophia A.
To:	Warren, Matthew J.
Cc:	Atkins, Raymond; Bill A. Mullins (wmullins@bakerandmiller.com); David Meyer; Sciales, Joseph C.
Subject:	RE: CP workpapers
Date:	Thursday, July 01, 2021 3:57:42 PM

Hi Matt,

In connection with the letter we filed with the Board on Tuesday, we received a request from STB staff for the workpapers associated with our Monday filing in FD36514. We are providing to you now via FTP the same workpapers that we produced to the STB this afternoon. Please note that the workpapers related to the Majure Verified Statement are designated as highly confidential, as they rely on confidential waybill data.

Kind Regards,

Sophie

From: Warren, Matthew J. <mjwarren@sidley.com>
Sent: Tuesday, June 29, 2021 10:36 AM
To: David Meyer <david@meyerlawdc.com>
Cc: Vandergrift, Sophia A. <vandergrifts@sullcrom.com>; Atkins, Raymond <ratkins@sidley.com>; Bill A. Mullins (wmullins@bakerandmiller.com) <WMullins@bakerandmiller.com>
Subject: [EXTERNAL] RE: CP workpapers

We're not looking for discovery of materials that weren't provided to the Board, and I don't think we need authority for the proposition that we are entitled to see anything you provided to the Board. But since CP did not provide the Board with any workpapers, it's a moot point.

MATT WARREN

SIDLEY AUSTIN LLP
+1 202 736 8996 (office)
+1 571 334 7736 (mobile)
mjwarren@sidley.com

> **From:** David Meyer <david@meyerlawdc.com>
> **Sent:** Tuesday, June 29, 2021 10:24 AM
> **To:** Warren, Matthew J. <mjwarren@sidley.com>
> **Cc:** Vandergrift, Sophia A. <vandergrifts@sullcrom.com>; Atkins, Raymond <ratkins@sidley.com>; Bill A. Mullins (wmullins@bakerandmiller.com) <WMullins@bakerandmiller.com>
> **Subject:** Re: CP workpapers
>
> We did not file work papers
>
> We will assemble and then get back to you - if you have authority for the proposition that we are required to provide them pre-Application, we'd be happy to review it.
>
> Sent from my iPhone
>
>> On Jun 29, 2021, at 10:21 AM, Warren, Matthew J. <mjwarren@sidley.com> wrote:
>>
>> I don't follow. CN and KCS explicitly stated in the motion for voting trust approval that upon request they would provide other parties with the workpapers that they provided to the STB. Several other parties requested and received those workpapers, but CP never asked for them. If CP is asking for them now, we're happy to provide.
>>
>> Just to be clear, we are requesting that CP immediately provide all workpapers that it filed with the STB to support last night's filing.
>>
>> **MATT WARREN**
>>
>> **SIDLEY AUSTIN LLP**
>> +1 202 736 8996 (office)
>> +1 571 334 7736 (mobile)
>> mjwarren@sidley.com
>>
>>> **From:** David Meyer <david@meyerlawdc.com>
>>> **Sent:** Tuesday, June 29, 2021 10:11 AM
>>> **To:** Warren, Matthew J. <mjwarren@sidley.com>
>>> **Cc:** Vandergrift, Sophia A. <vandergrifts@sullcrom.com>; Atkins, Raymond <ratkins@sidley.com>; Bill A. Mullins (wmullins@bakerandmiller.com) <WMullins@bakerandmiller.com>
>>> **Subject:** Re: CP workpapers
>>>
>>> I assume you'd provide yours if we provided ours?
>>>
>>> Sent from my iPhone

On Jun 29, 2021, at 10:08 AM, Warren, Matthew J. <mjwarren@sidley.com> wrote:

No, we're asking for any workpapers provided to the Board to support that testimony.

MATT WARREN

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mjwarren@sidley.com

From: David Meyer <david@meyerlawdc.com>
Sent: Tuesday, June 29, 2021 9:39 AM
To: Warren, Matthew J. <mjwarren@sidley.com>
Cc: Vandergrift, Sophia A. <vandergrifts@sullcrom.com>; Atkins, Raymond <ratkins@sidley.com>; Bill A. Mullins (wmullins@bakerandmiller.com) <WMullins@bakerandmiller.com>
Subject: Re: CP workpapers

Is this a discovery request?

Sent from my iPhone

On Jun 29, 2021, at 9:35 AM, Warren, Matthew J. <mjwarren@sidley.com> wrote:

David and Sophia,

Can you please provide the workpapers for the Velani statement, the Gamiero/Harman statement, and the Majure statement?

Matt

MATT WARREN

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