



Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

Christopher P. Bertram, Staff Director

Katherine W. Dedrick, Democratic Staff Director

January 6, 2016

The Honorable Dan Elliott
Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

The Honorable Ann Begeman
Vice Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

The Honorable Deb Miller
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Dear Chairman Elliott, Vice Chairman Begeman, and Member Miller:

We write to express our concerns regarding recent reports of a potential hostile takeover or acquisition of the Norfolk Southern Corporation (NS) by the Canadian Pacific Railway, Ltd. (CP).

The Surface Transportation Board (STB or Board) has the power to approve or disapprove mergers and acquisitions in the railroad industry. In approving a merger, an applicant must demonstrate to the satisfaction of the Board that a proposed transaction would be in the public interest by requiring them, among other things, to demonstrate that the transaction would enhance competition where necessary to offset negative effects of the merger, such as competitive harm or service disruptions. Employee protection, environmental impacts, safety, and downstream and upstream effects are also considered.

We do not believe this acquisition or hostile takeover, if CP chooses to go in that direction, is in the public interest, nor will it benefit rail shippers, workers, and the standards set forth in the Board's 2001 rulemaking on mergers and acquisitions.

In that rulemaking, the STB raised significant concerns about the dramatic reduction of the overall number of railroad companies since 1980, and the corresponding increase in the size of the remaining carriers. According to the Board: "The prospect of reducing the already small number of major Class I railroads even further, perhaps to the point where only two major railroads remain in the U.S. and Canada, gives us substantial concern." Indeed, an impetus for the 2001 rulemaking was the STB's concern that "future major merger proposals would trigger other proposals that, if approved,

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could result in the consolidation of the Class I railroad industry into only two North American transcontinental railroads.”

That is exactly what will happen if this merger is approved. Since 1980, over 40 railroads have consolidated into just four major Class I's: BNSF Railway, Union Pacific Railroad, CSX Transportation, and Norfolk Southern Corporation. Shippers, including many in our congressional districts, have raised significant concerns over rates and service disruptions as a result of those mergers. Contrary to CP's claims that a takeover of NS will increase competition and lead to more efficient operations, further consolidations in the railroad industry will only exacerbate shipper concerns. There are already strong indications that this merger will serve as a catalyst for even more consolidation in the railroad industry, thereby creating a duopoly, leaving shippers with fewer choices, less competition, and prolonged service disruptions. Fortunately, most shippers are wise enough to realize that the only benefit to this ill-conceived transaction is to CP – to pad the pockets of Wall Street investors and corporate executives at the expense of captive shippers, and the public interest.

We also have significant concerns with CP's proven track record of boosting profits at the expense of its workforce. In March 2013, CP's Chief Executive Officer (CEO), Hunter Harrison, announced a restructuring of the railway which would include job losses that could reach upward of 30 percent of CP's 19,500 workers in an effort to increase CP's operating ratio, which seemingly came to fruition. This past October, when CP released its record-breaking third-quarter results, its Chief Operating Officer, Keith Creel, noted CP's total workforce was down to just under 14,000 employees, a 10-year low. A month later, Mr. Harrison stated that the railway could cut as many as 500 more jobs to “boost efficiency.” It is clear to us that, if a merger is approved, Norfolk Southern's 29,000 hardworking employees may well suffer the same fate.

Further consolidation of an already healthy industry is unwarranted. Decades ago, when the Interstate Commerce Commission (ICC), the predecessor of the STB, governed the railroad industry, the ICC rightfully encouraged railroad mergers to revitalize a rapidly failing industry that was on the brink of bankruptcy. The railroad industry today is nothing like the railroad industry of the past. The rail system is at peak performance; revenues are up; and reinvestment in capital which has, in turn, created good-paying American jobs, is at an all-time high. In 2015 alone, NS plans to invest a record \$2.4 billion to ensure their rail system is in top condition to serve customers and communities. There is no compelling need to shake up this thriving industry.

We are equally concerned with recent public statements by the CEO of CP, expressing his intent to immediately assume control of NS by taking over as the CEO of NS and making sweeping management decisions for NS that could have long-lasting, significant impacts for the railroad, before the STB has even finalized its evaluation of a “voting trust” and consideration of a merger application. This plan is in direct violation of current regulations which prohibit “unlawful control.” Any attempt to circumvent the role of the STB and Congress, which governs the actions of the Board, should be dealt with swiftly in order to protect the public interest and ensure any transaction moves through the proper channels and procedures set forth in statute and Federal regulations, and not through some back door deal.

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We urge the Board to carefully review these issues when considering any voting trust or merger application and to keep the best interest of the public in mind when evaluating costs and benefits.

Thank you for your careful review of this matter.

Sincerely,



PETER DeFAZIO
Ranking Member



MICHAEL E. CAPUANO
Ranking Member
Subcommittee on Railroads, Pipelines, and
Hazardous Materials