MERGER OF CANADIAN PACIFIC AND KANSAS CITY SOUTHERN RAILWAYS INTERIM REPORT

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This paper provides an overview of the proposed merger of Canadian Pacific (CP) and Kansas City Southern (KCS) freight railways written in the summer of 2022, based upon the application on October 29, 2021 by CP and KCS to the Surface Transportation Board (STB) in the US for approval of control, and the responsive applications on February 28, 2022 of UP, BNSF, NS, CSX and CN with comments and requests for conditions. These public documents, despite occasional redactions, provide a vast trove of information which cannot be adequately covered here, but an outline is provided of key issues, and it is the author's intention to provide a second paper once the STB has finalized the proceedings, with a summary of the outcomes.

I GENERAL OVERVIEW

A merger of CP and KCS which requires no governmental financial assistance would have the following characteristics:

- It would create the first railway in North America to serve Canada, the US and Mexico;
- Since CP and KCS currently connect only at Kansas City, with CP operating to the north and KCS to the south, the merger would be end-to-end and such mergers are not generally expected to reduce competition – more on that later;
- A merged CP an KCS (to be renamed CPKC) would still be the smallest of the Class 1 freight railways by revenue in North America;
- CPKC would have approximately 20,000 miles of rail, employ close to 20,000 people, and generate revenues of some $8.7 billion. No rail lines would be discontinued or facilities rationalized;
- More than 960 stakeholders – shippers, smaller railways, ports, rail unions, rail industry suppliers – have written letters of support for the merger.

On November 29, 2021 the merger receive approval from the required Mexican authorities. On December 14, 2021 CP announced it had completed the acquisition of KCS under terms fair to the shareholders. Immediately upon the closing of the acquisition, the shares of KCS were placed into a voting trust, which ensures KCS will operate independently of CP, until the STB issues its decision on the joint railway control application.

For its part, in April 2021, the STB determined it would review a CP-KCS merger under the merger rules in existence prior to 2001 and in August 2021, the STB reaffirmed that the pre-2001 rules would govern its review of a CP-KCS merger, and therefore it need not "enhance" competition. On November 23, 2021 the STB announced that the CP-KCS merger application was complete, with the review anticipated to be completed by end of 2022 or early 2023.

On November 12, 2021, the STB Office of Environmental Assessment (OEA) issued a notice of intent to commence a scoping process to assess the potential environmental impacts of the merger – with the eventual preparation of a final Environmental Impact Statement (EIS) towards the end of 2022. The EIS under the auspices of the National Environmental Policy Act regulations would focus on how changes in rail

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operations and vehicular traffic on roadways and in intermodal facilities, as well as capital improvements could impact the environment if CP and KCS merge. Impacts may relate to noise, safety, air quality, wildlife or plant habitats, and water resources (such as streams and wetlands).

On December 28 2021, CP and KCS submitted their safety integration plan to the STB and the Federal Railroad Administration (FRA) for review, meeting the STB's procedural schedule deadline. The plan covers a host of items: corporate culture, training, operating practices, motive power and equipment, signals and train control, track safety standards and bridge structures, hazardous materials, dispatching operations, highway-rail grade crossings, personnel staffing, capital investments, and information system compatibility. In early 2022 the FRA said it was satisfied with the safety integration plan submitted.

Keeping in mind that the STB concerns are with the impact of **changes** that result from a merger of CP and KCS, the balance of this paper will focus on the STB transportation-related process that examines the competitive, transportation, and economic implications of the proposed acquisition on the national rail system. Specifically, the principal issues are related to traffic diversion and competition, but there are a number of collateral issues:

- Employment;
- Integration of Information Technology – including capital;
- Safety;
- Capital expenditures on Line capacity improvements;
- Passenger rail services;
- Trucking; and
- Environment.

These collateral issues are considered first in section II. Note that forthwith all currencies are in US dollars
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II COLLATERAL ISSUES

2.1 Employment

Annual personnel savings in General and Administration of $43.7 million will largely be achieved through consolidating CP's and KCS's headquarters for US operations in Kansas City, closing CP's US operating headquarters in Minneapolis, and through the course of normal attrition. The majority of the expected position reductions will come from IT, Finance, and Human Resources. Some $34 million of one-time separation costs for 92 non-union CP employees in Canada and 112 non-union KCS employees, and $13.5 million of one-time relocation costs for the relocation of 135 non-union KCS employees will be required over the three-year integration period to achieve these personnel savings. There are no anticipated separations in the 2,295 union positions at CP in the US or in the 2,248 union positions at KCS in the US. There are no anticipated separations in KCS in Mexico.

Upon consolidation of CP and KCS there is an expectation of the creation of over 1,000 jobs to accommodate traffic growth, with more than 750 of those jobs in the US. This is identified as serving the public interest, and while increased employment is such a public benefit, its extent should be offset to some degree by any job losses from traffic diversion from the other railways and trucking.

2.2 Integration of Information Technology – including associated Capital Expenditures

Following the merger of UP and SP in 1996, and the division of Conrail between NS and CSX in 1998, there were considerable problems with the integration of information technology. As a consequence, the

CP and KCS application provides some detail on how there is advanced IT planning and testing to ensure there are no disruptions following approval. Some of the systems integration – such as service design – will be implemented immediately, other IT system integrations will be implemented as they are required and available, and some IT systems – such as those in Mexico – will be left in place. Over the three years of IT integration, $138.6 million of capital expenditures will be spent to support integration, there will be $65.4 million of discretionary capital, and $61.6 million of capital savings. Post integration there will be annual capital savings of $21.6 million. These changes will serve the public interest by providing benefits to shippers through greater operational efficiency and the provision of more rail performance information.

2.3 Safety

CP has achieved the lowest FRA train accident frequency of all large railroads for 15 years straight, up to 2021. CP also has achieved steady improvement in the key FRA personal injury frequency metric. By both measures CP has outperformed KCS, and upon approval of the merger it is intended that the safety culture and acumen at CP will be transferred to operations on the KCS network – constant attention to safety precautions and flawless execution. CP achieved its superior safety performance through significant investment in technologies that are deployed "above-the-wheel" to reduce potential accidents, such as wheel life forecasting, cracked wheel detection technology, wheel impact load detectors, and predictive bearing failure using acoustic sensors. CP has also invested in numerous technologies to improve safety "below-the-wheel," such as broken rail detection in non-signaled territory, enhanced rail flaw detection, and autonomous track geometry measurement systems. These technologies will be rapidly deployed across the CPKC system.

Changes in KCS operations through the implementation of precision scheduling railroading (PSR), with a focus on planning and disciplined execution that comes with PSR, will also have a strong link to safety as well as efficiency. It is in the public interest to the general public and shippers that the CP and KCS merger will contribute to safer railway operations in the US.

2.4 Capital Expenditures on Line Capacity Improvements

CPKC will embark on a three-year program of capital expenditures to improve line capacity in the US. Exhibit 1 provides details of the $490.8 million program: $282.1 million will be spent at locations on the CP line between Chicago and Kansas City, as well as at Marquette just to the north of that line; and $208.7 million at locations on the KCS line between Kansas City and Houston. These changes resulting from the merger, to relieve bottlenecks and accommodate increases in traffic, involve new sidings, siding extensions, and centralized traffic control (CTC). These expenditures will serve the public interest by providing benefits to shippers through improved service.

EXHIBIT 1	Type of Projects	Capital - Millions			Total
Subdivisions		2023	2024	2025	
Chicago	New siding	$8.5	$0.8	$7.67	$16.94
Marquette	New siding, CTC	$56.2	$17.7	$25.52	$99.39
Davenport	Siding extensions, CTC	$14.6	$12.8	$1.77	$29.16
Ottumwa	New siding, siding extension, CTC	$24.2	$18.2	$6.00	$48.40
Larado	New siding, siding extension, CTC	$39.2	$12.9	$6.29	$58.38
Kansas City	New siding, siding extension	$14.9	$14.9		$29.82
CP Total		$157.6	$77.3	$47.3	$282.1
Pittsburg	Double track, siding extension	$42.9	$10.0	$15.00	$67.94
Heavener	New siding, siding extension	$40.9	$5.4	$24.40	$70.65
Shreveport	New siding, siding extension	$21.6	$2.0	$19.63	$43.27
Beaumont	Siding extension	$13.4	$8.8	$4.63	$26.84
KCS Total		$118.9	$26.2	$63.7	$208.7
Grand Total		$276.4	$103.5	$110.9	$490.8

2.5 Passenger Rail Services

CP hosts passenger rail services to commuters in Chicago and intercity passengers on Amtrak, and has received a grade A rating from Amtrak over 4-years straight to 2020. CPKC will not interfere with the continued operation of these services and will operate to avoid any impacts on passenger train performance from increased freight traffic. CPKC will also facilitate Amtrak's planned expansion in its ConnectUS plan. This will involve accommodating Amtrak in increasing passenger train frequency between Milwaukee and Chicago, and between Minneapolis and Chicago. CPKC will also facilitate Amtrak in establishing a new passenger service between Baton Rouge and New Orleans. This will serve the public interest by providing benefits to rail passengers through increased and new services.

2.6 Trucking

After an exhaustive analysis by a consultant, the CP and KCS application estimated that, from improved single-line service previously unavailable and the avoidance of interline costs and delays, there will be annual diversion from trucking of 64,018 trailers or containers per year to CPKC rail intermodal service, and estimated that the total revenue gain to the combined system will be $98.2 million per year. The diversion of trucks to intermodal is expected to reduce long-haul truck miles in the US by 86.2 million annually, while requiring an additional 3.4 million miles of local dray to the ramps, for a net reduction of 82.8 million annual truck miles. The reduction of long-haul truck miles in Canada is expected to be 1.8 million, and in Mexico 14.9 million, with a small increase in local dray miles in each country. The public interest in diverting traffic from truck to rail will be addressed in the next subsection.

2.7 Environment

There are specific environmental issues addressed in the CP and KCS application each of which serves the public interest: greenhouse gas emissions (GHG) reduction, reduced highway costs, reduced noise pollution and an acceleration of the shift of rail traffic from crude oil to a less hazardous alternative.

Within five years after commencing merged operations, the improved efficiency of CPKC will avoid in excess of 377,000 tons of **rail** GHG emissions annually. Consultants calculated that by diverting traffic from trucks to rail intermodal service, the merger will avoid 65,000 tons of **truck** GHGs emissions annually, and also reduce particulate emissions of sulfur dioxide (SO2) by more than 10.3 metric tons and fine particulate matter (PM2.5) emissions by almost 2 metric tons over the same period.

Reducing the number of trucks on US highways will also reduce the amount of congestion, the number of accidents on highways, and the costs of highway pavement maintenance. Consultants estimated this would have an economic value of nearly $40 million annually. Reducing the number of trucks on US highways also has the benefit of reducing noise pollution from those trucks. That benefit will be distributed throughout the communities where the combined CPKC network will take trucks off the roads.

The merger will also accelerate an ongoing shift away from transporting flammable crude oil toward the movement of a non-hazardous alternative where the flammable diluent has been removed, increasing public safety. The new single-line rail services provided by the merger are anticipated to encourage energy shippers to accelerate the shift by 30,000 shipments.

III TRAFFIC DIVERSION AND NEW TRAFFIC

3.1 Truck Traffic Diversion to CPKC

From the exhaustive analysis referred to earlier, Exhibit 2 provides the units and revenues from truck traffic diverted to CPKC intermodal by the principal lanes with in excess of $1 million in 2019. These lanes represent two thirds of the total revenue. Details of the commodities are not available but there are only 4 US origins for southbound traffic – Chicago, Columbus, Detroit, Minneapolis – and the same US destinations for northbound traffic. The application suggests that northbound commodities from Mexico would include auto parts, perishable goods such as hearty fruits and vegetables and processed foods.

EXHIBIT 2: Truck Traffic Diversions to CPKC. Lanes with in excess of $1 million in 2019

SOUTHBOUND				NORTHBOUND			
ORIGIN	DESTINATION	UNITS	REVENUES	ORIGIN	DESTINATION	UNITS	REVENUES
Chicago	Federal District	1,419	$2,597,838	Coahuila de	Chicago	1,405	$2,265,115
Chicago	Nuevo Leon	4,401	$5,341,211	Coahuila de	Detroit	1,054	$2,084,311
Chicago	Queretaro	719	$1,875,232	Dallas	Detroit	2,348	$2,642,447
Columbus	Nuevo Leon	1,568	$2,546,908	Dallas	Minneapolis	6,586	$5,532,974
Columbus	State of Mexico	951	$1,865,083	Dallas	Toronto	1,339	$1,923,425
Detroit	Guanajuato	722	$1,449,939	Federal District	Chicago	1,353	$2,478,570
Detroit	Queretaro	1,113	$3,254,770	Federal District	Detroit	598	$1,390,174
Edmonton	Dallas	520	$1,070,961	Guanajuato	Detroit	870	$1,753,318
Minneapolis	Dallas	6,586	$5,571,294	Nuevo Leon	Columbus	579	$1,017,676
Minneapolis	San Antonio Tx	2,105	$2,501,884	Nuevo Leon	Detroit	1,307	$2,171,856
Toronto	San Antonio Tx	583	$1,066,438	Nuevo Leon	Minneapolis	1,646	$2,719,302
				Queretaro	Detroit	1,003	$2,966,364
				San Antonio Tx	Minneapolis	856	$1,191,865
				San Antonio Tx	Toronto	856	$1,589,921
				State of Mexico	Columbus	728	$1,429,355
				State of Mexico	Detroit	1,462	$2,681,743
	Sub Total	**20,687**	**$29,141,558**			**23,990**	**$35,838,416**
	Sub Total S&N					**44,677**	**$64,979,974**
	Grand Total S&N					**64,018**	**$98,155,376**

3.2 Rail Traffic Diversion to CPKC

Exhibit 3 provides details by commodity of rail traffic diversions to CPKC by providing single line service, by extending existing hauls or by diverting a whole haul from a competing railway.

EXHIBIT 3: Rail Traffic Diversions to CPKC	Year 1	Year 2	Year 3
		($ millions 2019)	
DIVERTED CARLOADS/UNITS			
Automotive	11,188	22,038	32,218
Energy, Chemicals and Plastics	16,343	19,207	21,143
Forest Products	2,100	3,961	4,616
Grain	4,984	10,365	15,768
Domestic Intermodal	45,336	90,708	137,416
Metal, Minerals and Consumer Products	0	2,257	4,514
TOTAL	79,951	148,536	215,675
INCREMENTAL REVENUES			
Automotive	$42.3	$84.2	$127.3
Energy, Chemicals and Plastics	$63.0	$80.0	$89.8
Forest Products	$15.8	$35.6	$43.3
Grain	$25.4	$52.5	$79.8
Domestic Intermodal	$49.0	$98.1	$148.6
Metal, Minerals and Consumer Products	$0.0	$12.1	$24.3
TOTAL	$195.5	$362.5	$513.1

Some specifics by commodity may be noted:

- **Automotive**: Automotive parts are generally handled on rail by intermodal, and the commodity here refers to movements of **finished vehicles** from assembly plants in southern Ontario and Mexico to auto distribution compounds across Canada, the US and Mexico. CPKC will enable single line service from Mexico to the upper mid-west in the US and to Canada, replacing current KCS interline service, to Chicago for local distribution and furtherance to the east, and to

Minneapolis for local distribution and furtherance to western Canada. CPKC will also attract traffic by replacing competing Ferromex (FXE) interline rail services into the US, and by replacing Toyota's traffic from central Mexico to Mexican ports for furtherance north with all rail movement by CPKC. In the reverse direction, CPKC will enable single line service to replace interline service from southern Ontario into the southern US;

- **Energy, Chemicals and Plastics**: Added volumes of **LPG** will move from CP origins in Alberta, Saskatchewan and North Dakota to consumption destinations in Mexico and Texas as a result of investment and single line service. Some destinations only served by FXE may now be served by CPKC to nearby destinations in Mexico with furtherance by local trucks. Improved service by CPKC may divert shipments from other LPG production sources in Kansas and Texas to destinations served by KCS in Mexico. While overall **Crude Oil** volumes by rail will be unaffected by the merger, there will be opportunities for CPKC single line service to extend its hauls to refineries in east Texas, Louisiana and Alabama. With single line service, CPKC will divert **Chemical** shipments:
    - Butadiene and isopropanol from the Gulf coast to western Canada
    - Glycol from western Canada to Mexico
    - Caustic soda from Manitoba to Texas
    - Shipments of chemicals northbound from smaller shippers in the Gulf to companies in western Canada who specialize in value-added services like packaging and labeling

  Plastics will move more efficiently and divert traffic from Fort Saskatchewan, Alberta to auto manufacturers in Mexico, and divert traffic from Gulf producers to eastern Canada;

- **Forest Products**: CPKC single-line routes will better connect CP-served **Lumber** mills and lumber transloads across Canada and Maine with KCS-served facilities serving the home-building industry in Texas, Louisiana and Mississippi, and particularly in the Dallas region. CPKC single-line routes will also extend to shipments of **southern yellow pine** flowing the opposite direction, from KCS-served and switch-accessible mills as well as transload facilities in the southeast, north into the mid-west. The integrated CPKC network will also better connect the eight CP-served Canadian **Pulp** mills with the 19 **Paper** mills that are served or switch-accessible by the KCS across the south-central US. CPKC will also benefit shippers of **paperboard** from the 19 paper mills served or switch-accessible to KCS moving northbound to box plants served or switch-accessible to CP in the mid-west and Canada;

- **Grain and Bulk**: Single-line service by CPKC will increase traffic by some 13,000 carloads from grain growing regions in the US mid-west and Plains states and from the Canadian prairies to consuming regions and export terminals in the US south central states and Mexico:
    - Single-line access to **Feed Markets** in the South-Central states such as Arkansas and Mississippi, to export markets reached via New Orleans and other ports in the Gulf States, and Mexican feed markets
    - Some 3,600 carloads of **Soybeans** from the US soybean belt into Mexico for processing into oil
    - Single-line access for **Specialty Products** – organic grains and non-GMO grains – into Mexico

- Some 3,000 carloads of **Dried Distillers Grain** – a by-product of ethanol production – for the production of animal feed in Mexico
- **Ethanol** production facilities on CP lines in Minnesota and Iowa into consumption destinations in the US Gulf and Mexico
- Single line access for **Potash** to growers in the south-central states

Shippers of **Phosphate Fertilizers** from the Gulf to the grain-growing regions will similarly benefit from the same new single-line routes, but in the reverse direction;

- **Intermodal**: The intermodal networks of CP and KCS do not connect today, but CPKC will have a more robust continent-wide intermodal network and will stimulate more intense competition with the existing intermodal services offered by other Class I railways. CPKC will offer new single line service from Mexico to the upper mid-west (Minneapolis and Chicago) and eastern Canada (Toronto and Montreal). CPKC will be able to divert automotive parts from existing rail intermodal not just trucking. In the reverse direction meat processors in the upper mid-west will have single line service for refrigerated containers to Mexico. CPKC will also offer new single line service from Dallas to the upper mid-west (Minneapolis and Chicago) and eastern Canada (Toronto and Montreal);

- **Metals**: The new single line service of CPKC will enable **Finished Steel** transload CP origins in Ontario and the Chicago area to be able to serve more efficiently destinations in Texas, the Gulf, and the transload network of KCS in Mexico. Similarly, finished steel producers in Iowa and Quebec will be more efficiently connected to destinations in Texas, Oklahoma, and Mississippi. Finished steel requires specialized covered coil cars, which are not part of CP's existing fleet, but are part of KCS's fleet. Similarly, CPKC will provide better service to **Aluminum** producers in Canada to auto producers in Mexico;

- **Consumer Products**: CPKC will be able to extend the hauls of **White Goods** or appliances from KCS producer origins in Mexico to consumer markets in the US and Canada, particularly Chicago, other parts of the upper mid-west, and into Toronto and Calgary.

3.3 New Traffic Markets

In one consultant report it is stated in a footnote "Our confidential workpapers reflect the incremental revenues we anticipate from this and other new business. We provided these estimates to other witnesses in support of the Application". It is presumed here that growth traffic revenues were redacted from the public documents.

However, from the texts the following specifics by commodity may be noted:

- **Automotive**: New markets will be created for CPKC by investments in auto compounds on the KCS lines to serve eastern and central Texas from the north and the south;
- **Energy, Chemicals and Plastics**: The merger will also accelerate an ongoing shift away from transporting flammable crude oil toward the movement of a non-hazardous alternative where the flammable diluent has been removed;

- **Grain**: CP lines in Iowa traverse fertile corn-growing regions, but the limited reach of CP's network to the south has constrained investment. CPKC will participate in new investment to enable corn to be shipped further to the south;
- **Intermodal:** A new opportunity for international intermodal is for CPKC to move containers from the port of Lazaro Cardenas in western Mexico to destinations in Texas, Chicago, Toronto and Montreal. While the distances are somewhat longer than from alternative west coast ports, they face port congestion as well as land-bridge rail congestion, while this new route could act as a relief valve and could attract 130,000 containers. For domestic intermodal, a new opportunity will arise with investment in a new intermodal terminal near Beaumont or Port Arthur to serve Houston from the east. The existing terminal at Kendleton to the west is restricted by a trackage rights agreement with UP;
- **Metals**: CPKC will provide new markets for recycled scrap metal by providing access to additional export locations in the Gulf;
- **Consumer Products**: CPKC will operate a powerful new network of combined transload centres with a broad reach, able to connect shippers of all sizes, from Mexico to Canada, for a wide array of commodities.

While all diversions of traffic are anticipated to be completed by year 3, the rate of conversion varies by commodity. Since the application does not appear to indicate the rate of conversion of truck traffic, in Exhibit 4 the rates of conversion are assumed 50% in year 1, 75% in year 2 – see shaded areas. With that assumption, and the total revenue taken from the application, it is possible to infer the new traffic revenues in years 1 and 2 – see shaded areas. Lastly, by adding estimated costs from the application, the net new revenue can be calculated and converted to the assumed Normal Year 2025 by applying an index factor of 1.1262 based on the Railroad Cost Adjustment Factor all inclusive less fuel with error adjustment forecast between 2019 and 2025. This indicates a net revenue gain of $805.9 million in 2035.

EXHIBIT 4: Operating Revenue Gains

	Year1	Year 2	Year 3	Normal Year 2025
Truck Traffic Diversions	$49.1	$73.6	$98.2	
Rail Traffic Diversions	$195.5	$362.5	$513.1	
New Traffic	$173.4	$290.6	$410.6	
Total revenues	**$418.0**	**$726.7**	**$1,021.9**	**$1,150.86**
Costs	**$129.2**	**$217.8**	**$306.3**	**$344.96**
Net Revenues	**$288.8**	**$508.9**	**$715.6**	**$805.9**

IV OPERATING SAVINGS AND COSTS

Details of the operating savings and one-time savings and costs taken from the application are presented in Exhibit 5 for total operating savings in Normal Year 2025 of $194.5 million. When combined with net revenue gains from Exhibit 4 this indicates total Normal Year 2025 benefits from the merger of $1,000.4 million.

Note that the one-time savings in equipment is presumed in part due to using 2,850 fewer railcars from the increased train speed and reduced dwell times of CPKC. The one-time costs of Engineering arise from appropriate adjustment of immediate maintenance. Some of the immediate changes will include: an increase in Signals & Communications maintenance staff on subdivisions on which CTC is installed in Year 1 through 3; accelerated capital replacement of timber bridge structures on the Marquette, Davenport, Ottumwa, Laredo, and Kansas City subdivisions.

EXHIBIT 5 : Operating Savings and One Time Savings and Costs						
	2019 - $ millions		Year 1	Year 2	Year 3	Normal Year 2025
OPERATING SAVINGS						
Train-miles	$21.82	**Mechanical**				
Locomotive miles	$29.80	- Locomotives	$19.58			
Switching	$0.98	- Switching	$0.31			
Sub total	$52.60	Sub Total	**$19.89**	**$19.89**	**$19.89**	**$22.40**
		Transportation				
Fuel	$26.57	- Trains	$21.82	$21.82	$21.82	
		- Locomotives	$10.22	$10.22	$10.22	
Equipment- Locomotives	$10.15	- Switching	$0.67	$0.67	$0.67	
Equipment - Cars	$0.00	- Fuel	$26.57	28.19	29.79	
Subtotal	$10.15	Sub Total	**$59.28**	**$60.90**	**$62.50**	**$70.39**
Purchasing	$4.18	**Equipment**				
		- Locomotives	$10.15	$10.15	$10.15	
		- Cars	$0.00	$1.79	$2.60	
		Subtotal	**$10.15**	**$11.94**	**$12.75**	**$14.36**
		Purchasing	**$4.18**	**$12.05**	**$20.54**	**$23.13**
Sub Total	**$93.50**		**$93.50**	**$104.78**	**$115.68**	**$130.28**
		Support Functions (G&A)				
		- Personnel	$33.40	$39.40	$43.70	
		- Information Technology	$1.30	$8.10	$8.10	
		- Other	$1.30	$3.50	$5.20	
		Sub Total	**$36.00**	**$51.00**	**$57.00**	**$64.19**
Total Operating Savings			**$129.50**	**$155.78**	**$172.68**	**$194.47**
ONE TIME SAVINGS		Equipment	$45.00	$45.00		
ONE TIME COSTS		Employee Separation	$31.70	$1.30	$0.90	
		Employee Relocation	$6.30	$2.00	$5.20	
		Sub Total	$38.00	**$3.30**	**$6.10**	
		G&A	**$7.70**	**$3.80**		
		Engineering - MOW	**$53.60**	**$60.90**	**$12.00**	

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V COMPETITION

The analysis of competition by CP and KCS, after several exhaustive studies (but heavily redacted in some places) may best be summarized in their own words:

"The Transaction will generate competitive benefits and cause no competitive harm. The CP/KCS combination is purely "end-to-end" and will strengthen competition among rail carriers and with trucks in every market served by the integrated CPKC network. Shippers will gain new single-line routing options, and benefit from new competition into North-South lanes dominated today by UP, BNSF, and CN.

Because the CP and KCS networks do not overlap anywhere, and connect only at Kansas City, no shippers will face any reduction in competition. There are no shippers, stations, or corridors that will suffer any diminished competition: whether 5-to-4, 4-to-3, 3-to-2, or 2-to-1. There likewise will be no reduction in geographic or product competition.

Nor will shippers face any reduction in routing options or confront any new "bottlenecks." CPKC will have strong incentives to maintain all of the efficient interline routes in which they participate today. CPKC will continue to support, both operationally and commercially, KCS's existing interline routes with other railroads, such as:

- *KCS-UP routes via Laredo, Kansas City, and Shreveport, LA;*
- *KCS-BNSF routes via Robstown, TX, Kansas City, and Shreveport;*
- *KCS-CN routes via Jackson, MS;*
  KCS-NS routes via Meridian, MS; and
- *KCS- CSX routes via New Orleans, LA.*

Likewise, CPKC will continue to support CP's existing interline routes, such as:

- *CP-UP routes via Chicago, St. Paul, MN, and Kansas City; and*
- *CP- BNSF routes via Chicago, Coutts, BC, and Noyes, MN.*

CPKC will not hesitate to compete aggressively against these interline routes where its new single-line routes offer advantages for customers in terms of better service or economic terms, or both. But CPKC will not prevail in this competition by closing off efficient interline routes that shippers may prefer in certain cases. Applicants' commitments to keep these and other affected gateways open both physically and commercially will assure that Applicants' incentives are backed up by the potential for enforcement under the auspices of Board oversight."

An evaluation of this is perhaps best assessed through the responsive applications of the other railways.

VI COMMENTS AND CONDITIONS FROM CLASS 1 RAILWAYS

Overall, the responsive applications from the five Class 1 railways do not appear to suggest an outright rejection of the merger. However, they each also suggest that if their conditions are not met then the merger should be rejected. Note that merger rejection from other stakeholders is also still possible, and could be sufficiently significant for the STB to be concerned, but this eventuality is not considered here.

The responsive applications from the five Class 1s, which total over 1,500 pages, are too extensive to be adequately covered here, but the conditions requested are instructive and will be summarized.

6.1 Conditions requested by NS

The Meridian Speedway is the line from Meridian, Mississippi to Shreveport, Louisiana that is very important as the most direct route for intermodal and other shippers moving between the south-east and the south-west of the US. It is jointly owned by KCS (70%) and NS (30%), operated by KCS, and there is an interchange with NS at Meridian.

In addition, KCS owns and operates the line from Shreveport to Metro Junction Texas and the Wylie Intermodal Terminal is located on this line near Dallas. KCS granted NS the unilateral right to exercise the Wylie Option as an integral element of the Meridian Speedway formation in the Meridian Speedway Agreements in 2006. These Agreements involved NS making significant investments to upgrade the Meridian Speedway, and the Wylie Option is the option for NS to purchase the terminal.

NS conditions are as follows:

- CPKC make explicit commitments to keep the Meridian Gateway at Meridian with NS open, with efficient service over the Meridian Speedway;
- CPKC continue to provide efficient and reliable service to NS intermodal shippers from Shreveport to the Wylie Intermodal Terminal, and contingent trackage rights, to replace current haulage rights, be granted to NS as a necessary complement to NS's potential ownership of the Wylie Intermodal Terminal – these trackage rights would only be triggered in the event of a sustained service failure by CPKC.

6.2 Conditions requested by CSX

One CSX condition is that the exclusive right for NS to interchange intermodal traffic with KCS at Meridian, as part of the Meridian Speedway Agreements, forecloses competition and should be abrogated to provide CSX access to the Meridian Gateway on commercially reasonable terms, and further that the NS conditions seeking to expand its rights under the Meridian Speedway Agreements be denied. In addition, CSX conditions are as follows:

- KCS and CSX have an interchange at New Orleans that is an important gateway between the south-east and the south-west and Mexico. Abandonment of certain trackage by KCS in 2006 resulted in a less efficient interchange, and as a consequence KCS agreed to absorbed the costs of an alternative interchange route over the New Orleans Public Belt, with an option to terminate the agreement. CSX requests a condition requiring CPKC to continue to absorb those costs and to continue interchange with CSX, by modifying the agreement to be terminable only on mutual consent by the parties;
- Assure effective competition is preserved over the KCS route between Kansas City, and the KCS-CSX interchange at E. St. Louis, for traffic moving to, from, or through Kansas City to and from points in the eastern US served by CSX through E. St. Louis. CSX wants a condition that requires CPKC – or CN, if it acquires the line, see below – to maintain commercially reasonable rates and provide service at or above current service levels commensurate with shipper demand;
- CSX requests conditions to protect shippers from the risk that CPKC will abuse market power in Mexico to hurt competition or the efficient movement of traffic to, from, or through Mexico and the US, by requiring CPKC to provide shippers with sufficient information about CPKC's pricing and service plans for movements to and from points in Mexico served directly or indirectly by KCS.

6.3 Conditions Requested by CN

CN comments negatively on the merger – the application is riddled with errors and inconsistency, benefits are vastly overstated, serious public interest risks are downplayed – and requests necessary conditions to protect the public interest. CN conditions are as follows:

- CN currently accesses Kansas City through an interchange at E. St Louis with KCS and subsequently over the KCS Springfield line to Kansas City. It is a condition of CN that the Springfield line be divested to CN to ensure that this important asset will be efficiently utilized;
- Conditions should be imposed to prevent CPKC engaging in foreclosure;
- Conditions should be imposed to require CPKC to provide a service assurance plan or its equivalent with an oversight period of at least five years.

6.4 Conditions Requested by UP

It is the contention of UP that the merger would likely cause a substantial lessening of competition for traffic moving via the Laredo gateway at the US-Mexico border, and that CPKC would have the ability to deprive shippers of the price and service benefits of UP routings. In this regard, UP conditions are as follows:

- CPKC should be required to offer shippers commercially reasonable Rule 11[1] rates based on a prorate of CPKC single line rates;
- CPKC should be required to comply with promises regarding Laredo gateway operations and the Laredo bridge made by KCS in the KCS/Tex-Mex decision of 2003 made at the time of the merger of UP and SP

In addition, UP contends that the operations of CPKC would increase traffic over lines they share with other railways. Specifically: UP lines in the Houston terminal area, and in the corridor between Laredo and

Beaumont, Texas; CPKC lines between Kansas City and Polo, Missouri, in St Paul, Minnesota, and the Neche River bridge in Beaumont. UP conditions are as follows:

- CPKC must work with owners and users of rail lines and other facilities that would be used jointly to identify investments in new capacity necessary to accommodate CPKC's traffic growth
- CPKC must commit to fund necessary investments in new capacity, with other railroads paying their fair share to the extent they use the new capacity in the future
- CPKC must commit not to increase CPKC operations on affected lines above pre-merger CP or KCS levels until the owners and users of the lines agree sufficient capacity has been added to accommodate the traffic growth – with the STB to resolve disputes at any stage of the process.

6.5 Conditions Requested by BNSF

In broad terms, the concerns expressed by UP are mirrored by BNSF – with different locations of concern with capacity: Ottumwa, Iowa, the CP line between Davenport and Clinton, Iowa and shared lines with BNSF on the Texas Gulf route. BNSF conditions are as follows:

- CPKC be subject to and must fulfill the conditions imposed by the STB in the KCS/Tex-Mex decision as well as the terms of the NITL Agreement.
- CPKC to keep the Laredo and Robstown gateways open on commercially reasonable rate and service terms.
- Ensure that the open gateway commitment will function as intended by requiring CPKC to adopt a rate-setting mechanism, such as a proportional rate mechanism, that will ensure that BNSF will have access to Mexico through Laredo at market-based rates, as well as service commitments to equal treatment of BNSF's traffic into and out of Mexico through Laredo.
- CPKC to fully fund any capital improvements that would not be required due to increased CPKC traffic on lines owned by BNSF or other railroads.
- In the absence of a plan to address how increased CPKC traffic will be handled on shared lines in Texas – and until necessary capital improvements are identified, fully funded by CPKC, and implemented – require CPKC not to increase existing traffic levels on those lines if such increases would displace existing traffic or compromise fluidity on those lines.
- Require CPKC to shift their crew change location near Ottumwa, Iowa to eliminate the potential for blockage by CPKC trains of at-grade intersections in Ottumwa with BNSF and a public road.

In addition, BNSF requests a 5-year oversight period, with full disclosure of all relevant data, and that the STB reserve the right to impose further conditions, including trackage rights, if the open gateway commitment does not function as intended, or if congestion or service issues arise.

VII NEXT STEPS

As indicated at the outset, the author intends to write a companion final report, once the Environment and Safety reviews are available, the STB has held its public hearings September 28-30, final briefs are filed by October 14 and the STB publishes its decision on the merger probably early in 2023. On August 12 the merger received regulatory clearance from the Committee on Foreign Investment in the US.

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1 According to the American Association of Railroads "Freight Mandatory Rule 11 is intended for use by the rail industry to protect confidential prices and/or meet customer requirements by providing multiple freight bills on shipments covered by a through Bill of Lading.". First, it's important to understand the key differences between Rule 11 railroad rates and Through Rates. A Through Rate is one rate that covers all railroads in a multi-railroad shipment. For example, moving from the west coast to the east, you'd pay one rate to the origin carrier, who is then responsible for paying any other railroad(s) in the movement. Through Rates tend to reduce administrative burdens. Rule 11 rates, on the other hand, involve the independent negotiating and billing with each railroad in a joint movement. The shipper works directly with each carrier in setting up, billing, and paying that railroad's portion.