



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

Peter A. DeFazio
Chairman

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Paul J. Sass
Republican Staff Director

July 26, 2021

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: Finance Docket No. 36514, *Canadian National Railway Company, et al. – Control – Kansas City Southern Railway Company, et al.*

Dear Ms. Brown:

I am writing to express opposition to the voting trust proposed by Canadian National Railway Company (CN) in its proposed merger with Kansas City Southern Railway Company (KCS). I am concerned that this proposed trust is not in the public interest. The trust would reduce competition and prejudice the outcome of the Surface Transportation Board's merger proceeding.

In its May 14, 2021, submission to this docket, the Antitrust Division of the U.S. Department of Justice explained how voting trusts reduce competition both in general for railroad mergers and in particular to the consideration of a voting trust for CN and KCS. In general, putting two formerly competitive businesses under a single holding company immediately reduces the parties' incentives to engage in competition. While the Surface Transportation Board regularly allowed railroad trusts throughout the many railroad consolidations of the 1980s and 1990s, the Board has made the requirements to approve a voting trust more stringent since 2001 as part of an overall reform of merger rules. Now, according to 49 CFR 1180.4(b)(4)(iv), applicants must demonstrate that trusts would be in the public interest. Approving a CN-KCS trust would signal to the rest of the rail industry that the STB is engaging in business as usual, despite the requirement to consider the public interest, and could launch a new round of mergers.

Specifically with regard to the potential for a CN-KCS trust, I am concerned that approximately 300 current customers overlap on the CN and KCS networks. A single holding company responsible for this traffic would likely change rail traffic patterns in the significant areas of parallel service overlap and that would reduce the rail service options these 300 customers currently enjoy. I am also troubled that this combination of Class I railroads serving all three nations in North

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America will exacerbate U.S. job losses from cross-border trade agreements that prioritize profits over people and inflict harm on worker's rights, consumer safety, and the environment.

I trust that the Surface Transportation Board will look at the specific facts of this action and conclude that approving a trust is too much, too soon. Too much authority in one company to somehow keep two companies competing against each other that have significant service overlap and too soon because allowing the trust creates a new floor purchase price for any other potential competitive bidders for KCS railroad.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter A. DeFAZIO". The signature is stylized and cursive.

PETER A. DeFAZIO
Chair