Transportation Update

March 2021

Canadian Pacific and Kansas City Southern to Merge

On March 21, Canadian Pacific Railway (CP) and Kansas City Southern (KCS) announced a merger that, if approved by the Surface Transportation Board (STB), would combine their rail networks, linking the United States, Canada and Mexico by a single railroad for the first time. The merger could position the combined railroad to benefit from trade flows under the USMCA trade agreement. Shippers and other interested parties will have an opportunity to provide comments on the merger to the STB and seek approval conditions to prevent competitive harm.

CP and KCS are the sixth- and seventh-largest freight railroads in the United States, respectively. CP operates a 13,000-mile rail network linking eastern and western Canada, serving 11 ports on the east and west coasts, and covering portions of the midwestern and northeastern United States. KCS operates a 6,700-mile network, running from points in the midwestern and southeastern United States to the Mexican border and into central Mexico and serving Pacific and Gulf Coast ports. The combined railroad will still be only the sixth-largest U.S. railroad.

The railroads connect at just one point, Kansas City, Missouri, making this an end-to-end merger, with nearly the entire CP network lying to the north and the KCS network to the south. There are no overlapping routes or locations that both railroads serve.

A press release from the railroads touts the merger as expanding options and efficiencies for their customers. The railroads claim that the merger will enhance competition and result in better service, stating that grain, automotive, auto parts, energy and intermodal shippers will benefit. The merger may reduce the need to interchange cars between the two rail networks at Kansas City. It also would enable some traffic moving between KCS points and the Upper Midwest and western Canada to bypass Chicago, which is a congested rail hub.

By law, the STB must approve the merger if it is consistent with the public interest. Although its rules state that the public interest requires a major merger between Class I railroads to provide enhanced competition, the STB waived this requirement in 2001 for mergers involving KCS. However, interested parties may object to the waiver within 10 days of the railroads notifying the STB of their intent to file a merger application. Assuming that the waiver is not challenged, the STB will consider at least the following in its public-interest analysis:

- The effect on the adequacy of transportation to the public.
- The impact of including or not including other rail carriers in the area involved in the transaction.
- The total fixed charges that would result from the transaction.
- The interest of affected carrier employees.
- The impact on competition in the affected region.
- The impact of the transaction on the environment and energy conservation.

The STB will also consider whether the benefits of the merger could be achieved through other means that would cause less potential public harm.

The STB has broad authority to condition its approval to ameliorate negative impacts on the public interest. In past mergers, it has imposed conditions to preserve shipper access to rail competition, including by requiring the merged railroad to switch traffic with competing railroads or providing competing railroads with rights to access shippers by operating over the merged railroad's line. The STB also could require the applicants to divest some lines to other railroads.

The approval process begins when CP and KCS notify the STB of their intent to apply for approval between three and six months before filing their formal application. If the STB accepts the application, interested parties will have 45 days to submit comments to the STB supporting or opposing the application and seeking any protective conditions. The STB may order a public hearing regarding the application but must conclude its evidentiary proceeding within one year after accepting the railroads' application for approval and must issue its final decision within 90 days after the evidentiary proceeding ends.

FOR MORE INFORMATION

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