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December 22, 2015

The Honorable Daniel R. Elliott III
Chairman
United States Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

The Honorable Ann D. Begeman
Vice Chairman
United States Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

The Honorable Debra Miller
Member
United States Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Dear Chairman Elliott and Surface Transportation Board Members:

We are writing in connection with the ongoing developments between Canadian Pacific (CP) and Norfolk Southern Corporation (NS). As Chairman of the House Judiciary Committee and Subcommittee Chairman of the Regulatory Reform, Commercial and Antitrust Law Subcommittee, which has oversight over our nation's antitrust laws, the antitrust enforcement agencies, and competition issues generally, we are watching these developments closely and with interest.

In 2001, the Surface Transportation Board (the Board) adopted new rules under which it reviews proposed mergers.¹ Under these rules, "merger applicants must clearly show that a merger is in the public interest by demonstrating that public benefits, such as improved service and enhanced competition, outweigh any negative effects, such as potential service disruptions

¹ Major Rail Consolidation Procedures, STB Ex Parte 582 (Sub-No. 1).

and harm that cannot be mitigated.”² Additionally, at the time, the Board “indicated that it will be looking for merger proposals to *add* competition”³ Finally, the Board stated that it would “take a more skeptical view of claims of merger benefits, that it will hold applicants more accountable for those claims if a merger is approved, and that applicants will be required to address whether claimed benefits can be achieved by means other than a merger.”⁴

CP’s purchase offers for NS include a voting trust structure that would allow the to-be merged company to be managed by a new Chief Executive Officer and would appoint CP’s existing Chief Executive Officer into this position after he severs ties with CP.⁵ This structure would exist during the pendency of the Board’s regulatory review of the proposed transaction.⁶

Additionally, it has been reported that this transaction may prompt additional consolidation in the railway industry.⁷

The Committee on the Judiciary historically has exercised vigilant oversight of issues related to competition. To assist us in better understanding the potential issues that may affect competition within the railway industry, please answer the following questions by January 11, 2015:

1. Does the Board anticipate any revisions to the existing rules on railway merger reviews?
 - a. Does the Board continue to consider whether proposed transactions add competition to the railway industry?
2. Does the Board consider as a factor whether a transaction is likely to prompt further consolidation within the railway industry? If so, how heavily does the Board weigh this factor in its overall review?
3. In the past, has the Board approved a proposed purchaser’s past CEO to manage the to-be acquired company during the Board’s regulatory review? If so, what factors did the Board consider when approving this arrangement?

² “*The Surface Transportation Board’s New Merger Rules*”: *Hearing Before the Subcomm. on Surface Transportation and Merchant Marine of the S. Comm. on Commerce, Science, and Transportation*, 107th Cong. (2001) (testimony of Linda J. Morgan, Chairman of the Surface Transportation Board).

³ *Id.* (emphasis added).

⁴ *Id.*

⁵ Jacquie McNish, *Canadian Pacific Adds Financial Incentive in Quest for Norfolk Southern*, WALL ST. J. (Dec. 16, 2015).

⁶ *Id.*

⁷ *Id.*

Thank you for your attention to this matter and we look forward to your response.

Sincerely,

Handwritten signature of Bob Goodlatte in blue ink.

Bob Goodlatte
Chairman
House Committee on the Judiciary

Handwritten signature of Tom Marino in blue ink.

Tom Marino
Chairman
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law
House Committee on the Judiciary