



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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February 10, 2016

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

The Honorable Deb Miller
Vice Chair
United States Surface Transportation Board
395 E Street SW
Washington, DC 20423

The Honorable Ann D. Begerman
Member
United States Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Chairman Elliott, Vice Chair Miller and Member Begerman:

As the Attorney General of the Commonwealth of Kentucky, I write to you with concern regarding a potential transaction involving Canadian Pacific Railway and Norfolk Southern. Numerous public sources report that Canadian Pacific ["CP"] is contemplating a takeover of Norfolk Southern ["NS"] that would include the installation of CP management prior to a rigorous review of this potential transaction by the U.S. Surface Transportation Board ["Board"]. Federal law clearly prohibits premature exercise of common control of NS "...regardless of how that result is reached." 49 U.S.C. §11323. Whether through the guise of a trust or any other mechanism, those promoting the transaction should be prohibited from taking control so as to prevent any intentional or incidental circumvention of the Board's complete review.



Members, U.S. Surface Transportation Board

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The recent unanimous passage of the Surface Transportation Board Reauthorization Act of 2015 reaffirms Congressional intent that this Board act to protect the public interest through independent economic review. In 2001, this Board altered the rules regarding voting trusts in a way that prevents premature control in order to protect the public interest. With only a limited number of major railroads remaining, the Board promised to take a much more cautious approach to future voting trusts, and noted its concern for the effect upon shares held in trust if the Board did not approve the control application or if the parties chose not to consummate the transaction. Moreover, use of a trust in other transactions is not precedential because, given that there have been no proposed mergers of Class I railroads since 2001, these rules have not been applied. The foregoing factors should lead to great skepticism toward a voting trust in which the goal of premature control has been so clearly articulated.

In addition, I fail to see how the proposed transaction would be in the public interest. The railroads are generally in relatively sound financial shape – unlike decades past, where mergers were common. The rail system is working efficiently; it helps alleviate congestion on our roadways and is investing in infrastructure in America. Accordingly, I urge the Board to prohibit premature control and to ensure the public interest is served and protected prior to approving a trust or any transaction.

Sincerely,

A handwritten signature in black ink, appearing to read "Andy Beshear". The signature is fluid and cursive, with a large initial "A" and "B".

Andy Beshear