



Freight Rail Customer Alliance

Railroad Antitrust Exemption

FRCA Position

FRCA continues to support legislation that would remove antitrust exemptions shielding freight railroads from the rules of fair competition that govern almost all other U.S. industries, including all other modes of transportation.

Issue Background

The *Staggers Rail Act of 1980*, which de-regulated the railroad industry, has resulted in improved financial health of the railroads, in part, because carriers have become more efficient, eliminating excess capacity and redundancy, and streamlining operations.

However, the opposite of competition has occurred.

In 1980 there were over 40 railroads. Today there are only seven Class I railroads. Four of those have essentially divided the country into four regional monopolies. At best, in some regions, there is a duopoly. Moreover, four of these Class I railroads are responsible for transporting 90% of our nation's traffic.

More than 78% of our nation's rail stations are served by only one major railroad. Moreover, due in large part geography, rail-dependent shippers have only a 22% chance of having access to just two major rail systems.

During the 114th Congress, and similar to actions taken during previous years, the *Railroad Antitrust Enforcement Act of 2015* was introduced by Senator Amy Klobuchar (D-MN). It would have amended Federal antitrust laws to provide expanded coverage to several industries, including the railroads, and eliminate exemptions from such laws that are contrary to the public interest with respect to railroads.

CN Proposal for KCS

On April 30, FRCA submitted comments to the Surface Transportation Board (STB or Board) in: Application of the "New" Merger Rules and Procedural Schedule in FD 36514, *Canadian National Railway Company, et. al. –Control – Kansas City Southern, et. ("CN-KCS")*.

This joint filing [with the National Coal Transportation Association (NCTA) and the Private Railcar Food and Beverage Association (PRFBA)]:

- States that the Board should review this proposed merger under the "new or current" merger rules rather than the "old" merger rules. Under the "old" merger rules, the Board is to review the proposed merger as to whether it will adversely affect current competition. By comparison under the "new or current" merger rules, the STB is to review the proposed merger as to whether it will enhance competition.

- Emphasizes that CN itself acknowledged and represented that application of the “new or current” merger rules is appropriate when filing its April 20 Notice to the Board that it would be submitting an application.

[Note: On April 26, CN submitted a Motion before the Board requesting that its proposed voting trust be considered under the “old” merger rules which followed the Board’s April 20 Decision allowing the proposed CP-KCS transaction to be considered under the “old” merger rules.]

- Does not take any position on the actual proposed CN acquisition of KCS.

The complete joint FRCA submittal can be read here: http://railvoices.org/wp-content/uploads/Joint_FRCA_NCTA_PRFB Comments_CN_KCS_MergerRules_SUBMITTED.pdf

CP Proposal for KCS

On April 20, the Board issued its Decision in Application of the “New” Merger Rules and Procedural Schedule in FD 36500, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. (“CP-KCS”)* stating that the “old” merger rules apply to this proposed transaction.

The STB Decision and accompanying press release can be read here: <https://prod.stb.gov/news-communications/latest-news/pr-21-20/>

This STB Decision was contrary to what FRCA requested when, on April 1, FRCA submitted comments to the STB in: Application of the “New” Merger Rules and Procedural Schedule in FD 36500, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. (“CP-KCS”)*.

This joint filing (with NCTA and PRFBA):

- States that the Board should review this proposed merger under the “new or current” merger rules rather than the “old” merger rules. Under the “old” merger rules, the Board is to review the proposed merger as to whether it will adversely affect current competition. By comparison under the “new or current” merger rules, the STB is to review the proposed merger as to whether it will enhance competition.

The Board determined that KCS is exempt from the “old” rules based on the small size of KCS (even though a Class I carrier) when the “new” rules were put in place in 2001. Overall market conditions and are much different than 20 years ago – including the current size of KCS and use of Precision Scheduled Railroading (PSR).

- Does not take any position on the actual proposed CP acquisition of KCS.

The complete joint FRCA submittal can be read here: http://railvoices.org/wp-content/uploads/FRCA_NCTA_PRFB Response_FD36500_SHAS_1_Submitted.pdf

On March 22, CP-KCS announced the proposed transaction and subsequently submitted various petitions before the STB including a Petition to Establish Procedural Schedule.

CP Proposal for NS

In 2016, Canadian Pacific Railway Limited (CP) attempted to acquire Norfolk Southern Corporation (NS). To win support from U.S. shippers for the merger, CP proposed to improve operations by addressing paper

barriers and competitive switching. FRCA has long supported addressing those two issues to help provide reliable access and fair pricing.

While there were positive components of CP's policy proposals, FRCA remained concerned about railroad consolidation. With history as a guide, further industry consolidation more than likely would lead to less competition, increased costs, and service glitches that can reverberate throughout the entire rail system.

On March 23, 2016, FRCA stated its concerns to the STB when submitting a brief reply to CP's Petition for an Expedited Declaratory Order (STB Docket No. FD 36004) regarding some aspects of CP's structure of a hypothetical voting trust. On April 11, 2016 CP withdrew its request for an Expedited Declaratory Order.

Status

No legislation has been introduced to date in the 117th Congress that would remove the railroad's anti-trust exemptions.