Surface Transportation Board
395 E Street SW
Washington, DC 20423

June 10, 2022

Dear Chairman Oberman, Vice Chairman Primus, and Members Fuchs, Schultz, and Hedlund:

The American Economic Liberties Project writes to request that the Surface Transportation Board deny the proposed merger between the Canadian Pacific (CP) and Kansas City Southern (KCS) railroads (Docket No. FD 36500). By way of background, the American Economic Liberties Project is a non-profit think tank and advocacy organization committed to understanding and addressing the problem of concentrated economic power in the United States.

The railroad industry is already immensely concentrated and plagued by many of the problems of concentration and insufficient competition that are found elsewhere in the economy. Today, there are only seven Class I railroads nationally, contrasted with the 40 that existed when the railroad industry was deregulated in 1980, and the four largest control between 83 and 90 percent of the industry.[1] This is even an understatement of the problem, as railroad competition is regional in nature, so for a given region or route the problem is likely to be worse.

Class I railroads already exploit their existing market power by cutting jobs, paying out excess dividends, and providing inconsistent service with frequent delays, all while avoiding necessary investments and operating expenses. This is increasingly accomplished through precision scheduled railroading (PSR) schemes[2] aimed to slash costs at the expense of reliable service, which have been introduced to the industry primarily by executives from the financial industry. Chairman Oberman noted last year that the Class I railroads have spent more in the last decade on stock buybacks or dividends than they have spent on physical investments or operating expenses.[3] Railroads have only been able to implement such schemes, and deepen this sort of financially extractive business model, because of a lack of competition.[4] Furthermore, the industry has a history of alleged price-fixing in recent decades under its consolidated market structure.[5]

With this background in mind, this proposed merger, between the sixth and seventh largest Class I railroads in the country, would reduce the number Class I railroads to just six, and can thus only be anticipated to make these problems significantly worse.

[1] Matthew Jinoo Buck, "How America's Supply Chains Got Railroaded," The American Prospect, February 4, 2022, https://prospect.org/economy/how-americas-supply-chains-got-railroaded/.
[2] Ibid.
[3] Chairman Martin Oberman Speech, North American Rail Shippers Association Annual Meeting, September 8, 2021, https://www.stb.gov/wp-content/uploads/NARS-Speech-9-8-21.pdf.
[4] Edwin Lopez, "Tensions rise as CSX defends new model before frustrated shippers," Supply Chain Dive, October 12, 2017, https://www.supplychaindive.com/news/CSX-STB-listening-session-captive-shipper-rail-reform/507125/.
[5] Ellen Schneider, "Number Of Price-Fixing Lawsuits Filed Against CSX, Other Railroads Jumps To 266," Jacksonville Business Journal, March 2, 2020, https://www.bizjournals.com/jacksonville/news/2020/03/02/number-of-price-fixing-lawsuits-filed-against-csx.html; Josh Funk, "Talks between nation's 4 largest railroads can be included in price-fixing suit, court rules," The Virginian Pilot, May 19, 2022. https://www.pilotonline.com/business/vp-nw-rail-rates-price-fixing-suit-20220519-buu6xjpvs5f3nbvbaha7cppimi-story.html.

Kansas City Southern and Canadian Pacific argue that the merger presents no serious anticompetitive concern because it is an end-to-end merger, largely mirroring the presumptions of antitrust regulation where vertical mergers are often presumed to not threaten competition, a conventional wisdom that has been shown to be false more generally. In the context of this merger, the end-to-end combination would give the merged railroad significant leverage over longer routes, enables them to foreclose competition at the intersection between their routes, and gives them the bargaining power to deny service over broader geographic regions. Even though Canadian Pacific and Kansas City Southern do not compete directly on any routes, they do each connect with railroads that directly compete with the other. As such, this transaction would give the merged firm additional leverage over those competitors in an already concentrated market and industry.

This merger can likewise be expected to harm workers, particularly in concert with the business practices associated with railroad consolidation. While employment in Class I railroads has declined since deregulation in 1980, from 540,000 to 210,000 in 2015, as PSR schemes have been introduced into the industry in the time since, the number of jobs has been cut by an additional 66,000.[6]

The railroad industry is already deeply concentrated and is a source of constant supply-chain disruptions in the current economy. The proposed merger threatens workers, shippers who rely on the industry, and the communities which will experience dramatic increases in rail traffic. This deal should be denied.

Sincerely,

American Economic Liberties Project

[6] Ryan Ansell, "Employment In Rail Transportation Heads Downhill Between November 2018 And December 2020," U.S. Bureau of Labor Statistics Monthly Labor Review, October 2021, https://www.bls.gov/opub/mlr/2021/article/employment-in-rail-transportation-heads-downhill-between-november-2018-and-december-2020.htm.