

20650  
EB

Service Date- November 7, 1996

**SURFACE TRANSPORTATION BOARD<sup>1</sup>  
DECISION**

**S.B. Finance Docket No. 32892**

**CSX CORPORATION AND CSX TRANSPORTATION, INC.--CONTROL--THE  
INDIANA RAIL ROAD COMPANY**

Decided: November 7, 1996

On July 3, 1996, CSX Corporation (CSX), CSX Transportation, Inc. (CSXT), and The Indiana Rail Road Company (INRD) (collectively, applicants) filed an application for Board approval and authorization under 49 U.S.C. 11323-25 for CSX and CSXT to acquire control of INRD by acquiring a controlling interest in its noncarrier holding company parent, Midland United Corporation (Midland).

A notice served accepted the August 2, 1996, application as a minor transaction as described in 49 CFR 1180.2<sup>(2)</sup> and invited comments from interested parties, including the Secretary of Transportation and the Attorney General of the United States. Rail Services Update (RSU), a transportation newsletter, filed a comment, and the United Transportation Union filed a request seeking imposition of employee protective conditions. Applicants replied. We are approving the application, subject to standard employee protective conditions.

**BACKGROUND**

CSXT, a Class I rail carrier subsidiary of CSX, operates approximately 19,000 miles of track in 20 States, the District of Columbia, and Ontario, Canada. INRD, a Class III rail carrier, operates approximately 155 miles of track between Newton, IL, and Indianapolis, IN. The two carriers interchange traffic at Sullivan and Bloomington, IN, where they have direct connections, and at Indianapolis, IN, where they connect via an intermediate

---

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This decision relates to an acquisition of control of a rail carrier, which is subject to Board jurisdiction pursuant to 49 U.S.C. 11323-25.

<sup>2</sup> This transaction is subject to the standards of 49 U.S.C. 11324(d), because it involves only one Class I railroad. While subject to the procedures set out in 49 U.S.C. 11325(d), it is also governed by 49 CFR part 1180, the regulations that implemented former 49 U.S.C. 11343-45, because section 204(a) of the ICCTA provides that all rules of the ICC in effect on the date of its enactment "shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board . . . or operation of law.., While the standards and procedures of former sections 11343-45 and current sections 11323-25 are substantially-similar, insofar as minor transactions are concerned, the procedures of current section 11325(d) differ slightly from those at 49 CFR 1180.4 and shall govern. With this exception, the regulations at 49 CFR part 1180 apply.

STE Finance Docket No. 32892

switching carrier. In addition, INRD performs overhead haulage services for CSXT between Bloomington and Sullivan.

The principal commodity handled by INRD is Indiana coal.<sup>3</sup> The coal originates from a number of mine sources served by INRD, Soo Line Railroad Company (Soo), and Indiana Southern Railroad Company (ISRR). Applicants assert that enough coal is available from mine sources in neighboring states and from western coal mines to ensure adequate competition for coal transportation services and to preclude any significant competitive harm from the proposed transaction.

Approximately two-thirds of INRD's coal traffic consists of unit-train movements that it delivers directly to electric power generating utilities. Nearly one-half of that traffic moves directly in local service from two INRD-served mines at Switz City, IN. The remainder of INRD-delivered coal traffic consists of interline movements from mines served by Soo and/or ISRR. with only one exception, accounting for fewer than 1,000 cars in 1995, those mines are not served by CSXT. All of the interline coal received by INRD is destined to utilities that are served either exclusively by INRD or by two rail carriers other than CSXT. Currently, only one coal receiver located on INRD's line can be served directly by CSXT via trackage rights. The remaining one-third of INRD's coal traffic (approximately 12,000 carloads in 1995) moves in joint-line service to utilities and industrial users in Indiana, Wisconsin, and Iowa that are not served by CSXT.

The largest share of INRD's non-coal traffic in 1995 (6,200 carloads) originated or terminated at local industries at Robinson, IL, a point served only by INRD. The originating Robinson traffic, which consisted primarily of hazardous materials and coke, moved to destinations in 16 states and Canada via 25 different interline combinations. only two of these destinations received more than 500 carloads in 1995, and, while one of them is served by CSXT, the rail routing options to this destination will not diminish because CSXT currently is the only active carrier serving it.<sup>4</sup>

---

<sup>3</sup>In 1995, INRD transported approximately 34,000 carloads of Indiana coal, which constituted more than 60% of INRD's traffic volume for that year.

<sup>4</sup> INRD traffic terminating at Robinson totaled fewer than 1,700 carloads in 1995 and moved from approximately 30 different origins in 10 states and 4 Canadian provinces via 8 different interline routing.

Approximately 5% (2,500 carloads) of INRD's 1995 traffic moved to or from Indianapolis. The originating shipments primarily consisted of waste and scrap materials moving to 12 destinations in seven states, and the terminating shipments primarily consisted of forest products moving from diverse points over more than 30 interline routes. Indianapolis currently is served by two Class I and four Class III rail carriers and a terminal switching carrier.

Farm products, primarily grain originating at one of three elevators on INRD's main line between Newton and Sullivan, accounted for less than 10% of INRD's 1995 traffic. Nearly all of the grain was interchanged with Illinois Central Railroad Company at Newton. Approximately 75 carloads of grain were interchanged with CSXT at Sullivan.

S.B. Finance Docket No. 32892

#### **THE PROPOSED TRANSACTION**

CSXT owns 40k (537 shares) of Midland's issued and outstanding voting common stock, options to acquire the remaining 60k (806 shares), and 1,099 nonvoting shares of preferred Midland stock that may be converted to an equal number of shares of Midland's common stock. CSXT will either convert its nonvoting preferred stock, which would give it a majority 67% interest in Midland, or exercise its options to purchase the remainder of Midland's outstanding common stock<sup>5</sup>

Applicants state that the acquisition of control provides a financially attractive investment opportunity for CSXT. They view INRD's rail operations as a natural complement to those of CSXT, strengthening their existing operating relationship and facilitating the joint marketing of their rail services and tighter coordination of their operations. Thus, they assert that the transaction will preserve and, in a number of ways, enhance the quality of INRD's transportation services through better coordination of operations, greater access to CSXT's supply of freight cars, and expanded marketing through common ownership and operation. For example, applicants submit that by enhancing rail service between INRD-served origins and long-haul destinations on the CSXT system, the proposed

---

<sup>5</sup>In a decision served May 3, 1996, we granted applicants a waiver to permit them to file this application without disclosing the consideration to be paid.

transaction will strengthen grain competition and improve access to potential markets for Indiana and Illinois grain producers.

For the foreseeable future, applicants' operating plan calls for INRD to be maintained as a separate subsidiary operating and performing services essentially in the same manner as it does today. Applicants state that existing services and schedules will be maintained and that there are no present plans to close any existing interline routes or to alter or cancel any existing divisions with connecting carriers. Thus, only modest operating efficiencies, marketing coordinations, and service improvements are contemplated.

Specifically, applicants state that they will take advantage of opportunities to enhance current joint-line services by streamlining interchange operations. In addition, they will reduce costs through the consolidation of certain administrative functions, such as customer billing, payroll accounting, insurance, employee benefit programs, and purchasing. Later, if CSXT acquires the balance of midlands common stock under the terms of its Option Agreement, applicants state that CSXT may seek to coordinate more closely the carriers, operations.

Applicants submit that the proposed transaction will have no adverse impact on employees because all CSXT and INRD employees will retain their existing positions and responsibilities. They acknowledge that approval of the transaction will be subject to the conditions set forth in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

#### **DISCUSSION AND CONCLUSIONS**

Under 49 U.S.C. 11323(a)(3) and (5), the acquisition of control of a rail carrier by another rail carrier or by a noncarrier that controls another rail carrier requires prior Board approval. The criteria for approval are set forth in 49 U.S.C. 11324. Because this transaction does not involve the

S.B. Finance Docket No. 32892

merger or control of at least two Class I railroads, section 11324(d) governs and requires our approval of the application unless we find that:

(1) as a result of the transaction, there is likely to be a substantial lessening of competition, creation of a monopoly,

or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

In transactions subject to 49 U.S.C. 11324(d), the primary focus is on the probable competitive effects. We consider the public interest factors only if significant anticompetitive effects are found. Any adverse competitive impact must be both "likely" and "substantial." Even then, the transaction may not be disapproved unless the anticompetitive impacts outweigh the public interest factors and cannot be mitigated through conditions<sup>6</sup>. See Wilmington Terminal RR, Inc.--Pur. & Lease-CSX Transr., Inc., 6 I.C.C.2d 799, 803 (1990), and cases cited therein, 7 I.C.C.2d 60 (1990), affld sub no.m. Railway Labor Executives Ass'n v. I.C.C., 930 F.2d 511 (6th Cir. 1991).

Although not a party directly affected by the transaction, RSU seeks to be assured that local service on the affected line will not be downgraded under the control of a Class I railroad. In particular, it is concerned about maintaining frequent switching, low costs, and customer-oriented service that it associates with shortline operations. RSU requests assurances that INRD will be operated for the good of the local customers and that current service levels will be maintained. These concerns do not relate to the issue of competitive impact.

Applicants have demonstrated to our satisfaction that the potential competitive impact of the proposed transaction, particularly with respect to coal and grain traffic, should not be significant. We are satisfied that the transaction's actual competitive impact will be minimal. Accordingly, we find that the proposed transaction will not result in harm to competition under 49 U.S.C. 11324(d)(1).

While we need not make public interest findings under 49 U.S.C. 11324(d)(2) when we find that competition will not be harmed, we note that the proposed transaction should not lead to any diminution in the level of service to local shippers. RSU has not explained what motivation CSXT might have to downgrade service on a profitable line that it views as both a financially attractive investment and a natural complement to its system. In our view, the assurances RSU seeks are incorporated within the rationale for the transaction; there is no need for explicit

---

<sup>6</sup>language of 49 U.S.C. 11324(d) and former 49 U.S.C. 11344(d) are identical. Therefore, in interpreting section 11324(d) we are guided by the prior case law.

assurances. Should allegations of unjustified service reductions subsequently arise, existing regulatory remedies are available to shippers that might be affected.

With certain exceptions that are not pertinent here, when approval is sought for a transaction under 49 U.S.C. 11324 and 11325, the imposition of labor protective conditions is mandatory under 49 U.S.C. 11326(a). In the absence of a need for greater protection, the conditions in New York Dock Ry.--Control--

S.B. Finance Docket No. 32892

Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock), are appropriate for this type of transaction.

Because no need for greater protection has been shown, the New York Dock conditions will be imposed here.

This proceeding is exempt from the environmental reporting requirement under 49 CFR 1105.6(c)(2)(I) and from historic reporting requirements under 49 CFR 1105.8(b)(3), because the transaction does not involve a significant change in carrier operations and will not substantially change the level of maintenance of railroad property.

Based on the record, we find:

1. The proposed transaction will not substantially lessen competition, create a monopoly, or restrain trade in freight surface transportation.
- 2 This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application, under 49 U.S.C. 11323-25, for CSX and CSXT to acquire control of INRD, is approved, subject to the employee protective conditions described in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).
2. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Simmons, and  
Commissioner Owen.

Vernon A. Williams

Secretary







