

SERVICE DATE – OCTOBER 1, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 27590 (Sub-No. 4)

TTX COMPANY, ET AL.—APPLICATION FOR APPROVAL OF POOLING  
OF CAR SERVICE WITH RESPECT TO FLATCARS

Digest:<sup>1</sup> The Board grants a 15-year reauthorization of TTX Company's (TTX) flatcar pooling authority, and directs TTX to file a report no later than October 1, 2015, regarding the status of its ongoing discussions with the U.S. Army's Military Surface Deployment and Distribution Command about the military's need for an adequate and efficient supply of certain flatcars.

Decided: September 30, 2014

TTX Company<sup>2</sup> and the participating railroads<sup>3</sup> (collectively referred to as TTX) seek a 15-year extension of their authority to enter into a pooling agreement for railroad flatcars pursuant to 49 U.S.C. § 11322.<sup>4</sup> TTX's flatcar pooling arrangement was approved for an initial term of 15 years by the Board's predecessor, the Interstate Commerce Commission (ICC), in American Rail Box Car Co. & Trailer Train Co. et al.—For Approval of the Pooling of Car Service with Respect to Box Cars (Railbox), 347 I.C.C. 862 (1974). The agency has subsequently approved several applications to extend TTX's pooling authority,<sup>5</sup> which is

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> Formerly Trailer Train Company, which changed its name to TTX on July 1, 1991.

<sup>3</sup> BNSF Railway Company; Canadian National Railway Company, through its U.S. affiliates Illinois Central Railroad Company and Grand Trunk Western Railroad Company; Canadian Pacific Railway Company, through its U.S. affiliate Soo Line Railroad Company; CSX Transportation, Inc.; Ferromex; The Kansas City Southern Railway Company; Norfolk Southern Railway Company; Pan Am Railways; and Union Pacific Railroad Company.

<sup>4</sup> A pooling agreement for railcars is an agreement between or among railroads that, in its basic form, allows the participating railroad members to use cars in the pool as they become available.

<sup>5</sup> TTX's pooling authority was extended for five years in Trailer Train Co., et al.—Pooling of Car Service with Respect to Flatcars (Trailer Train), 5 I.C.C.2d 552 (1989); for an additional 10 years in TTX Company, et al.—Application for Approval of the Pooling of Car

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effective through September 30, 2014. For the reasons set forth below, we will extend TTX's pooling authorization for 15 years, beginning October 1, 2014.

## BACKGROUND

TTX owns and manages, on behalf of the nine participating Class I and Class II railroads, an extensive fleet of specialized flatcars that are used in rail transportation of containers, truck trailers, automobiles, lumber, extra-dimensional loads, and other commodities. TTX was formed in 1955, but it was not until 1974 that its functions were found to be subject to the ICC's jurisdiction. In 1974, the ICC approved TTX's pooling arrangement for a period of 15 years. See Railbox. After that decision, the ICC granted TTX authority to assign<sup>6</sup> or allocate<sup>7</sup> up to 10% of its intermodal cars to participating railroads for periods of up to three years. Trailer Train Co., et al.—For Approval of the Pooling of Car Service with Respect to Flatcars, FD 27590 (ICC served Mar. 27, 1984). The permitted assignment or allocation percentage was later increased to 20% of TTX's fleet, and the maximum period for assignment or allocation was extended to five years for certain car types.<sup>8</sup>

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Service with Respect to Flat Cars (TTX-1), FD 27590 (Sub-No. 2) (ICC served Aug. 31, 1994); and for another 10 years in TTX Company, et al.—Application for Approval of Pooling of Car Service with Respect to Flatcars (TTX-2), FD 27590 (Sub-No. 3) (STB served Aug. 31, 2004).

<sup>6</sup> Assignment is a financing device similar to leasing, under which a railroad guarantees rental payments to TTX for an agreed-upon minimum period of time in order to secure specific cars from TTX. See Trailer Train, 5 I.C.C.2d at 557.

<sup>7</sup> Allocation is another financing device similar to assignment, except that, while the participating railroad secures a particular number of cars guaranteed for that railroad's use by TTX, the railroad does not secure specific cars from TTX's fleet. See id.

<sup>8</sup> In 1987, TTX applied for a 15-year extension of its flatcar pooling authority, to begin at the conclusion of its initial term in 1989. Although it found that pooling would be in the interest of better service to the public or of economy of operation and would not unreasonably restrain competition, the ICC, in response to concerns expressed by opponents, approved only a five-year extension of TTX's pooling authority. Furthermore, the ICC rescinded TTX's authority to assign and allocate flatcars. Trailer Train, 5 I.C.C.2d at 608-09.

In 1994, pursuant to another (this time unopposed) request by TTX for a 15-year extension of its pooling authority, the ICC granted TTX a 10-year extension. In so doing, the ICC granted TTX limited assignment authority to promote the testing and evaluation of new and innovative flatcar types. TTX-1, slip op. at 5. Pursuant to TTX's request, the ICC also confirmed that specially-equipped TTX flatcars could continue to be placed in shipper-controlled pools, commonly referred to as "Rule 16(c) shipper pools," provided that TTX cars placed in such pools remained subject to the five-day turnback provisions that apply to all TTX-owned flatcars. Id., slip op. at 6-10. The five-day turnback provision refers to a form of notification that may be issued to TTX by a railroad currently in control of TTX equipment. The turnback notice advises TTX that the equipment is not needed for service on the notifying railroad and

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In 2004, TTX applied for a 15-year extension of its pooling authority, and also sought clarification of that authority's scope.<sup>9</sup> This extension request was opposed by a number of parties, primarily car leasing companies and entities associated with them. Several additional parties—including the U.S. Army's Military Surface Deployment and Distribution Command (SDDC)—supported TTX's application subject to relatively modest modifications or conditions.<sup>10</sup> The Board found that the application for pooling met the statutory requirements for approval; specifically, that it would be in the interest of better service to the public or of economy of operation and would not unreasonably restrain competition. However, in response to concerns expressed by opponents, the Board approved only a 10-year extension of the pooling authority. Furthermore, the Board directed its Office of Compliance and Enforcement—later renamed the Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC)—to prepare a monitoring report at the end of year five of the 10-year extension period. TTX-2, slip op. at 18.

In accordance with its order in TTX-2, and so that OPAGAC could prepare its monitoring report, the Board solicited public comments in 2009 as to whether any of the activities conducted pursuant to the TTX pooling agreement required any particular oversight or other Board action. TTX Company, et al.—Application for Approval of Pooling of Car Service with Respect to Flatcars, FD 27590 (Sub-No. 3), slip op. at 1-2 (STB served Sept. 23, 2009). In response to this solicitation, the Board received one comment from the Greenbrier Companies in support of TTX and one comment from GATX Corporation, CIT Rail, and First Union Rail Corporation (GATX Lessors) objecting to the exclusion of private lessors from the pool. TTX Company, et al.—Application for Approval of the Pooling of Car Service with Respect to Flat Cars (TTX-3), FD 27590 (Sub-No. 3), slip op. at 2-3 (TTX-3) (STB served Aug. 10, 2010). After reviewing these comments (as well as information submitted by TTX during the

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allows TTX to order the equipment to be repositioned for use on another railroad or to be placed in storage.

<sup>9</sup> The Board ultimately clarified that, while any amendment or modification of the Pooling Agreement would require the Board's prior approval, changes to TTX's car contracts and policies that are consistent with the terms of the Pooling Agreement need not be approved in advance. TTX-2, slip op. at 11, 18.

<sup>10</sup> Id. at 4. Specifically, SDDC, citing the benefits to national defense that flow from the efficient use of TTX's pool of chain tie-down flatcars, particularly in times of armed conflict, urged the Board to direct TTX's owner railroads to find ways to be more flexible and efficient in responding to the Department of Defense's (DOD) need for this equipment. Id. at 5. While mindful of the SDDC's concerns, the Board concluded that so conditioning its approval of TTX's application was neither necessary nor appropriate. Id. at 15. The Board expressed confidence that the parties would find ways to improve chain tie-down flatcar utilization during periods of peak military mobility, and noted that it remained available to facilitate any such discussions (should the parties request it) and remedy any service emergency that might threaten the nation's ability to provide for its defense. Id.

monitoring process), OPAGAC did not recommend, and the Board did not order, any modifications to TTX's pooling authority.<sup>11</sup> Id. at 4.

The TTX Application. On January 16, 2014, TTX filed an application for a 15-year extension of its flatcar pooling authority, which otherwise would expire on October 1, 2014.<sup>12</sup> TTX seeks approval to continue its flatcar pooling activities under the terms and conditions set forth in TTX-2.<sup>13</sup>

In the application, TTX states that its flatcar pool is a success, noting that, among other things, it has produced substantial railroad operating efficiencies that have resulted in cost savings to railroads and shippers alike without any corresponding negative consequences. As examples of the benefits of its flatcar pool, TTX points to its critical role in the development of intermodal railroad equipment and in meeting the future growth demands of the rail intermodal market. TTX describes how its pooling of both intermodal flatcars and non-intermodal flatcars<sup>14</sup> produces public benefits with respect to: (1) equipment research and development; (2) fleet repair and maintenance; (3) TTX's ability to spread the risk of investment in equipment better than each individual member railroad could do; and (4) TTX's ability to achieve substantial capital savings by maximizing the efficient use of pooled equipment. TTX argues that the benefits achieved through flatcar pooling could not be achieved through any other means, and that an extension of its pooling authority would not unreasonably restrain competition. Moreover, TTX stresses that the pool imposes no restrictions on the participating railroads' ability to procure cars from other sources.

As evidence that a 15-year extension would be in the public interest, TTX has introduced into the record over 70 supporting letters from railroad shippers, containership operators, ports, railroad equipment manufacturers, and others. Many of these letters discuss how TTX enhances competition for intermodal movements, fosters new and growing opportunities for intermodal shippers, and ensures that shippers of lumber, steel, and heavier or oversize shipments have

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<sup>11</sup> With respect to the GATX Lessors' comment objecting to the exclusion of private lessors from TTX's flatcar pool, the Board found that the objection was outside the scope of the proceeding. TTX-3, slip op. at 3.

<sup>12</sup> Under TTX-2, the Pooling Agreement will continue in effect beyond this date (given that TTX's application is currently pending before the Board) until 180 days after the Board has issued a final decision on the request and all appeals of that decision have been exhausted or the time to appeal has expired. TTX-2, slip op. at 18.

<sup>13</sup> TTX also seeks approval of a variety of technical changes to the language of the Pooling Agreement. These changes are non-substantive in nature and will be approved as part of this decision.

<sup>14</sup> These include autorack cars (which have enclosed superstructures and are used in the transport of new automobiles), centerbeam flatcars (which are specially designed to transport lumber), and chain tie-down flatcars (which are designed to transport military, farming, and heavy industrial equipment).

access to a larger, lower cost, and higher quality supply of specialized flatcars than would likely be available in the absence of the TTX pool.

Formal Responses to the TTX Application. Fourteen parties (including SDDC) filed formal replies to TTX's application,<sup>15</sup> all of which support the application. SDDC, while again citing the benefits to national defense that flow from TTX's pool of chain tie-down flatcars, reiterates the concern it raised in 2004 about the availability of such flatcars in the pool. In particular, SDDC states that the pool's current management process includes the provision of certain chain tie-down flatcars to particular railroads for their preferential use, which inhibits the overall fluidity of the chain tie-down flatcar pool and thus hinders military responsiveness during wartime or other periods of highly elevated military demand. However, SDDC does not propose, as it did in 2004, that any specific conditions be imposed on our approval of TTX's pooling authority. Rather, SDDC simply requests that any such approval convey the importance of establishing more responsive management of chain tie-down flatcars to better facilitate execution of DOD's transportation mission.

TTX's Rebuttal. In its rebuttal, TTX points out that there is overwhelming support for continued flatcar pooling, as evidenced by the numerous letters and statements of support engendered by its application. In specific response to SDDC, TTX asserts that no Board action is required because TTX and the participating railroads are aware of and attentive to SDDC's concerns, and that TTX has made efforts to address SDDC's interest in an adequate and efficient chain tie-down flatcar supply in many ways over the past 10 years. These efforts include meeting periodically with DOD representatives to address their forecasted equipment needs. TTX also pledges to continue to work with SDDC to help meet the military's need for an adequate and efficient supply of chain tie-down flatcars going forward.

## DISCUSSION AND CONCLUSIONS

Criteria for Approving a Pooling Application. Under 49 U.S.C. § 11322(a), rail carriers may not pool traffic or services, or divide earnings derived therefrom, without Board approval. The Board may approve a pooling agreement if it finds that the proposal (1) will be in the interest of better service to the public or of economy of operation and (2) will not unreasonably restrain competition. In deciding whether to approve a proposed pooling agreement, we assess whether any anticompetitive effects flowing from the arrangement are outweighed by the efficiencies or other public benefits flowing therefrom. Trailer Train, 5 I.C.C.2d at 559-60. Our authorization of a pooling agreement enables the participants to operate free from the antitrust laws. 49 U.S.C. § 11321(a). Thus, we look at whether a proposed pooling agreement is as beneficial as alternative mechanisms for achieving the purposes of the pool and whether those purposes could be achieved with less restraint on competition. Trailer Train, 5 I.C.C.2d at 559.

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<sup>15</sup> In addition to SDDC, the following parties submitted formal replies in support of TTX's application: American Short Line and Regional Railroad Association, California Cartage Company, COSCO Container Lines Americas, First Union Rail, Hanjin Shipping America, Honda, Holland, National Industrial Transportation League, National Steel Car Limited, Subaru, United Arab Agencies, UPS, and Yang Ming (America).

Application of Criteria for Approval. For many years, TTX has served an important role in satisfying the growing demand for railroad cars. Since TTX's flatcar pooling activities were first authorized by the ICC in 1974, the rail industry has undergone substantial change. Through that time, TTX has adapted and consistently produced significant benefits to railroads and shippers that could not have been achieved as easily, if at all, in the absence of the TTX flatcar pool. In this proceeding, over 80 interested parties—DOD (through SDDC), shippers, ports, car parts suppliers, car manufacturers, and others—have written in support of continuing the TTX flatcar pool for another 15 years.

On the record before us, TTX has shown that the pooling of flatcars promotes research and development of new and innovative equipment, permits standardized fleet repair and maintenance to reduce costs for the participating railroads, allows the participating railroads to spread the risk of investment in equipment, enables the participating railroads collectively to respond effectively and efficiently to the dynamics of the North American railroad network, and produces substantial capital savings by maximizing the efficient use and distribution of pooled equipment. That record reflects and the industry's many years of experience with the pool confirms that the full array of benefits achieved through flatcar pooling cannot readily be achieved through any other means. The benefits of pooling also clearly outweigh any anticompetitive effects that may flow from the arrangement. Based on the record, the Board believes that such anticompetitive effects (to the extent they exist) are likely to be minimal. We are aware of no alternative mechanism that would entail less restraint on competition while achieving benefits similar to those generated by the Pooling Agreement.

In light of the benefits of flatcar pooling and the overwhelming support from interested parties, we find that a 15-year extension of TTX's flatcar pooling authority will be in the interest of better service to the public or of economy of operation. Furthermore, we find that an extension of TTX's flatcar pooling authority, as encompassed in the Pooling Agreement described in this decision, will not unreasonably restrain competition. Consequently, we conclude that TTX's pooling authority should be renewed for the full 15-year period requested by TTX.

Chain Tie-Down Flatcar Fleet. We are mindful of SDDC's lingering concern about the availability of chain tie-down flatcars and the military's ability to access an adequate supply of such flatcars in times of national defense need. While we do not specifically condition the Board's approval on TTX's implementation of any particular mitigation measures, we direct TTX and the participating railroads to continue discussions with SDDC regarding mechanisms that might alleviate the issues it has identified. Furthermore, we instruct TTX to file a report with the Board no later than October 1, 2015, on the status of these discussions, and invite SDDC to file its own status report at that time.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. TTX's pooling of railroad car service and the division of revenues derived therefrom with respect to flatcars—under the Pooling Agreement described in this decision—is approved and authorized for an additional 15-year term beginning October 1, 2014.

2. We direct TTX and the participating railroads to continue discussions with the U.S. Army's Military Surface Deployment and Distribution Command about mechanisms that might address the military's need for an adequate and efficient supply of chain tie-down flatcars. No later than October 1, 2015, TTX shall submit to the Board a report on the status of these discussions.

3. This decision will be effective on October 1, 2014.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.