

CSX/NS/CONRAIL VOTING CONFERENCE

Closing Statement and Vote

June 8, 1998

Our job in assessing mergers is to balance a variety of factors and issue a decision that advances the public interest. The recommendation before us today will advance the public interest in many important ways. The application before us promotes competition, and the recommendation before us applies the authority of the Board to enhance competition even further.

The Strength of the Merger Application. First, the recommendation will preserve the strength and integrity of the transaction that the parties brought to us. This carefully crafted, privately negotiated deal injects competition into the entire East like no merger before has ever done. It creates two strong competitors in the East that will provide improved rail service opportunities throughout the Northeast and South. More specifically, through the development of shared assets and joint access areas, it will bring competition back to many areas that had lost options through the creation of Conrail. Even for localities that are not shared assets areas, it enhances competition. In Buffalo, for example, although not every shipper will have direct service by two carriers under the proposal, the transaction itself provides a two-carrier presence; and the availability of a shared assets area in neighboring New Jersey will discipline CSX's activities in the New York City area. In short, shippers throughout the East will have more options than they have had in decades, and more competitive service, at reasonable rates, than they have ever had before.

Additionally, the deal will produce over time an impressive \$1 billion annually in quantifiable public benefits and numerous other benefits. The capital that will be invested in

rail infrastructure will benefit all shippers, not just those that are served by CSX, or NS, or both, and it will create new jobs both on and off of the rail system. The support of more than 2,200 shippers from a broad spectrum of commodity groups, 350 public officials, 80 railroads, many state and local government interests throughout the East, and various rail labor employees attests to the overall strength of the proposal. This merger will promote competitive balance throughout an entire region of the country, and will create a strong rail network in the East that can handle the transportation needs of an expanding economy and advance important economic growth and development in the region. These benefits are clearly in the public interest.

The Preservation of the Fundamental Integrity of the Transaction. The recommendation, while imposing important additional procompetitive conditions, recognizes the operational and competitive integrity of the proposal and the importance of preserving and promoting privately negotiated agreements. Government should not be in the business of fundamentally restructuring private-sector initiatives that are inherently sound, and the conditions that we would impose add value, but not in a way that undermines the value of the transaction itself. They reflect a respect for the numerous settlement agreements that we encouraged and that the applicants and the other parties have worked hard to reach — agreements like the National Industrial Transportation League settlement, the United Transportation Union settlement, the Cleveland environmental settlement, and so many more. These private-sector agreements have clearly added value to the proposed transaction, from a competitive perspective and in other ways, and the parties are to be commended for furthering the public interest in this way. There is a strong public interest in encouraging private parties to negotiate procompetitive transactions such as this one, and government action that discourages such private-sector initiative is not in the public interest.

The Procompetitive Use of the Board's Authority. While the recommendation preserves the strength and integrity of the proposal, it also applies the Board's authority fully and reasonably to further promote competition to the benefit of many geographic regions. Its recommended additional conditions, which go beyond the already regionally procompetitive effect of the original transaction and the further procompetitive effect of the many settlements, enhance the competitive service for areas in New York State and New England that had lost carrier options through the creation of Conrail.

The recommendation also applies the Board's authority to further enhance the positions of many users. The recommendation would impose the NITL settlement and expand in a logical way the procompetitive aspects of that settlement. And, by giving shippers the opportunity to be released from their contracts after six months, the recommendation would preserve the operational integrity of the deal, but would still give many shippers, such as chemicals shippers, a chance to take advantage of their new competitive options sooner rather than later. And by preserving the settlements of many railroads and shippers, such as coal and utility shippers, while imposing conditions to assist others such as aggregates shippers and the Port of Wilmington, and smaller railroads that provide important service, the recommendation ensures that, overall, shippers will be better off after the merger than they were before, and that none will have less service than they had before.

In this regard, the recommendation recognizes the important role of smaller railroads in providing essential and competitive services in various regions affected by this transaction. By assuring that smaller railroads that provide essential services in such areas as the Ohio region will be viable and will continue to be able to compete, the recommended conditions promote important competitive options and further regional economic development.

Operational and Implementation Success. The recommendation, with its operational reporting and monitoring, recognizes the operational challenge that the proposal represents. Its monitoring elements will provide the Board with the tools to further a smooth implementation of the merger in a way that utilizes the Conrail Transaction Council and the Labor Councils and does not unduly burden the parties. And it appropriately focuses on specific areas of concern such as the shared assets areas and the Chicago gateway. Having been given the personal commitment of both Mr. Snow and Mr. Goode to make the merger work, I am confident that this merger will be implemented smoothly and will result in overall service improvements in relatively short order. The recommended conditions, however, will make sure that we are on top of the situation in case it does not.

Protection of the Environment. The recommendation appropriately protects the environment. The deal has many environmental benefits, including the significant truck diversion that is anticipated. At the same time, the proposal raises environmental concerns. For the first time ever in a merger, the Board issued a full environmental impact statement. We also encouraged the railroads and the local communities to meet and resolve issues privately, and several did. In Cleveland, for example, a key traffic center for this merger, Mayor White and both applicant railroads, after months of discussion, were able to reach mutually acceptable agreements that preserved the operational integrity of the transaction while addressing important community life concerns. I am happy we are able to give effect to win-win settlements such as this one, and others in the Cleveland area and in so many other places. At the same time, for the communities that could not reach agreement with the carriers, the recommendation provides necessary and appropriate conditions pertaining to grade-crossing safety, hazardous materials, traffic delay and noise, among others.

The Promotion of Safety. The recommendation clearly promotes safety. More than half of the environmental conditions involve safety. For the first time ever in a merger, the applicants were required to submit safety integration plans, which under the recommendation will be monitored through a memorandum of understanding between the Board and the Department of Transportation.

Recognition of Employee Interests. As previously discussed, the proposal before us will mean more jobs. And by mandating the creation of Labor Councils to focus on issues such as safety and operations, this recommendation will help promote the safety of the employees. And finally, the recommendation provides the protections of New York Dock, and it reaffirms the negotiation and arbitration process as the proper way to resolve important issues relating to employee rights.

Overall Benefits. The package before us today should clearly promote the public interest, and its extensive oversight is intended to ensure that it does. The original transaction, with its subsequent negotiated agreements, and with the conditions recommended by staff, will provide many benefits to many people. The recommended oversight will help us to ensure that these benefits will materialize, and the private mechanisms in place for oversight will provide a vehicle by which the private-sector dialogue can continue. The recommendation represents good government and promotes private-sector initiatives that are in the public interest. It promotes a resolution that is best for the national interest as a whole, and for the East in particular. For all of those reasons, I wholeheartedly support the staff recommendation, and I enthusiastically vote to adopt it.