Frequently Asked Questions: Major Railroad Mergers

1. What is the Surface Transportation Board's role in a railroad merger?

Any proposed merger or acquisition of control of a railroad by another railroad may be carried out only with the approval of the Board, under 49 U.S.C. § 11323.

2. What different kinds of mergers are there?

Transactions proposed under 49 U.S.C. § 11323 may be one of four types: *Major*, *significant*, *minor,* or *exempt*.

A *major* transaction involves the control or merger of two or more Class I railroads.

A *significant* transaction is one that does not involve the control or merger of two or more Class I railroads but is of "regional or national transportation significance," as that phrase is used in 49 U.S.C. § 11325(a)(2) and (c). Under the Board's regulations, a transaction not involving the control or merger of two or more Class I railroads is *not* significant if a determination can be made either:

(1) That the transaction clearly will not have any anticompetitive effects, or
(2) That any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs.

Under the Board's regulations, a transaction not involving the control or merger of two or more Class I railroads is *significant* if neither such determination can clearly be made.

A *minor* transaction is one which involves more than one railroad and which is not a *major*, *significant*, or *exempt* transaction.

An *exempt* transaction is one falling within one of nine categories described in the Board's regulations at 49 C.F.R. § 1180.2(d). The Board has found that prior review and approval of these transactions is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 and is of limited scope or unnecessary to protect shippers from market power abuse.

3. What are some examples of recent major mergers the STB has decided?

Below are examples of past major merger transactions the STB has decided. All were decided under the Board's regulations in effect before the Board changed its major merger regulations in 2001.

- Canadian Pacific Railway—Control—Kansas City Southern, FD 36500 et al. (STB served March 15, 2023).

- Canadian National Railway—Control—Illinois Central Corporation, 4 S.T.B. 122 (1999) (May 21, 1999).
- CSX Corporation—Control & Operating Leases/Agreements—Conrail Inc., 3 S.T.B. 196 (1998) (July 20, 1998).
- Union Pacific Corporation—Control & Merger—Southern Pacific Rail Corporation, 1 S.T.B. 233 (1996) (August 6, 1996).
- Burlington Northern Inc.—Control & Merger—Santa Fe Pacific Corporation, 10 I.C.C.2d 661 (1995) (August 16, 1995).

4. What is the first step in the review process for a major merger?

In a proposed major merger, applicants are required to file a prefiling notification (also known as a notice of intent) with the Board. This must be filed between three and six months before the actual merger application is filed. The prefiling notification must indicate the approximate anticipated filing date of the full application.

The prefiling notification also must briefly describe the proposed transaction, indicate the year to be used for the impact analysis, indicate the approximate filing date of the application, and explain why the transaction is "major." With the prefiling notification, applicants also must file a proposed procedural schedule, a proposed draft protective order, and a statement of waybill availability.

The Board will then publish a notice in the Federal Register within 30 days of receipt of the notice, briefly describing the proposed transaction, making a determination that the transaction is "major," stating the year to be used for the impact analysis, providing the approximate filing date, and identifying any additional information that must be filed with the application for the application to be considered complete.

5. What's the difference between the prefiling notification and the application?

The prefiling notification is the first filing from the applicants that lets the STB know of their intent to file an application for merger. The prefiling notification includes a brief description of the transaction and some additional information but does not include the same level of detail required by the application itself.

6. What is a merger voting trust and does it require Board approval?

A merger voting trust is a legal arrangement where shareholders of a railroad elect to temporarily transfer their shares and associated voting rights to a trustee, so as to avoid premature control by an acquiring railroad of their company during the pendency of regulatory review of the proposed transaction. During this time, the railroad proposed to be acquired continues to operate independently with its own management and board of directors, with trustee oversight.

The Board's "Guidelines for the Proper Use of Voting Trusts" are found at 49 C.F.R. Part 1013. The guidelines explain that (1) the trustee should maintain complete independence from the creator of the trust; (2) the trust should be irrevocable and remain in effect until certain events, specified in the trust, occur; and (3) a carrier choosing to utilize a voting trust may voluntarily submit a copy of the voting trust to the Board for review.

The Board's regulations at 49 C.F.R. § 1180.4(b)(4)(iv) require that, if applicants to a proposed major merger seek to use a voting trust, they must submit it to the Board for approval. Following a brief comment period and replies from applicants, the Board decides whether the use of a voting trust in the transaction would avoid premature control and be consistent with the public interest.

7. What must be included in a major merger application?

A major merger application must include significant supporting information.

The Board's regulations at 49 C.F.R. § 1180.1 discuss the general policies the Board takes into account in reviewing major merger applications. These include:

- Public interest considerations: the potential benefits of the transaction and the potential harms arising from the transaction, including reduction of competition; harm to essential services; transitional service problems; and, to offset harms that would not otherwise be mitigated, how the transaction and proposed conditions would enhance competition.
- Conditions that can be imposed to mitigate or offset harm to the public interest.
- Employee protection for railroad employees affected by a consolidation.
- Environmental considerations under the National Environmental Policy Act (NEPA).
- Negotiated agreements between the applicants and affected communities.
- A Safety Integration Plan (SIP) the applicant formulates by working with the Federal Railroad Administration to ensure that safe operations are maintained throughout the merger implementation process.
- Evidence about potentially blocked grade crossings as a result of merger-related traffic increases or operational changes.
- Formal oversight conducted by the Board for at least five years following approval of the transaction.
- Service assurances from the applicant, in the form of a Service Assurance Plan (SAP) that identifies steps the applicants will take to ensure projected service levels are attainable.
- The cumulative impacts and crossover effects likely to occur as rival carriers react to the proposed combination.
- Whether the inclusion of another carrier in the transaction as a condition to approval is necessary and feasible.
- Any issues related to the transnational operations of the applicants.
- The national defense ramifications of the proposed merger.
- Public participation in the merger review process.

The Board's regulations at 49 C.F.R. §§ 1180.6-1180.11 list supporting information that must be included with an application. This includes:

- A description of the proposed transaction.
- A detailed discussion of the public interest justifications in support of the application.

- Geographic information about the transaction, including maps.
- An explanation of the transaction, including significant terms and conditions, and consideration to be paid.
- Environmental data.
- Financial and corporate information from the applicants.
- A description of the effect of the proposed transaction on the applicants' employees.
- Proposed conditions to mitigate and offset merger-related harms, including competitive enhancements to offset merger-related harms that cannot be directly or effectively mitigated.
- A calculation of public benefits.
- Discussion of potential downstream merger applications that could result from the proposed transaction.
- An analysis of the impacts of the proposed transaction on inter-and intramodal competition.
- Operational data and plans.
- A Service Assurance Plan (SAP), as discussed above.
- Information about the applicants' transnational operations and cooperation with the Federal Railroad Administration.

A complete list of application requirements can be reviewed at 49 C.F.R. §§ 1180.6-1180.11. Additionally, under 49 C.F.R. § 1180.4(c)(6)(iii), the Board's Office of Proceedings can provide informal non-binding opinions and interpretations regarding the format of the application or information to be included in the application.

8. What is a responsive application?

A responsive application is one that is filed in response to a primary application and seeks affirmative relief either as a condition to, or in lieu of, approval of the primary application. Responsive applications include inconsistent applications (that is, an application for a transaction sought to be approved as a substitute for the primary transaction), applications by entities seeking to be included as part of the primary transaction, and any other affirmative relief that requires a filing to be submitted to the Board (e.g., requests for trackage rights, purchases, constructions, operation, pooling, terminal operations, abandonments, and other types of proceedings).

9. What does the Board consider when reviewing a major merger application?

The Board's consideration of a major merger is governed by the public interest criteria prescribed in 49 U.S.C. § 11324 and the rail transportation policy set forth in 49 U.S.C. § 10101. In determining the public interest, the Board must consider the various goals of effective competition, carrier safety and efficiency, adequate service for shippers, environmental safeguards, and fair working conditions for employees. The Board must ensure that any approved transaction would promote a competitive, efficient, and reliable national rail system. 49 C.F.R. § 1180.1(b).

In accordance with 49 U.S.C. § 11324(b), the Board's assessment of a major merger must consider at least five nonexclusive factors:

1. (1) the effect of the proposed transaction on the adequacy of transportation to the public;
2. (2) the effect on the public interest of including, or failing to include, other railroads in the area involved in the proposed transaction;
3. (3) the total fixed charges that result from the proposed transaction;
4. (4) the interest of railroad employees affected by the proposed transaction; and
5. (5) whether the proposed transaction would have an adverse effect on competition among railroads in the affected region or in the national rail system.

FAQ 7 includes more details about the information required and considered by the Board.

10. What are the "new rules" for mergers as compared to the "old rules"?

In 2001, the Board adopted final regulations (often referred to as the "new rules") governing proposals for major rail consolidations in the United States. Major Rail Consolidation Procedures, EP 582 (Sub-No. 1) (STB served June 11, 2001); 49 C.F.R. § 1180. The term "old rules" refers to the pre-2001 regulations governing major mergers.

In adopting the new rules, the Board stated that "to assure a balance in favor of the public interest, merger applications should include provisions for enhanced competition" and "the Board is prepared to use its conditioning authority as necessary under 49 U.S.C. 11324(c) to preserve and/or enhance competition." 49 C.F.R. § 1180.1(c).

The new rules included a waiver for any merger transaction involving the Kansas City Southern Railway and another Class I railroad because KCS was by far the smallest Class I railroad at the time and the Board found that "a potential transaction involving KCS and another Class I carrier would not necessarily raise the same concerns and risks as other potential mergers between Class I railroads." Major Rail Consolidation Procedures, EP 582 (Sub-No. 1), slip op. at 15-16. This waiver was applied to the Canadian Pacific/Kansas City Southern merger that the Board approved in 2023. Thus, since their adoption in 2001, the new rules have not been applied to any major merger applications.

11. How long does it take to review a major merger application?

Please see the Sample Timeline on the Board's website for a general sense of timing as laid out in statute and regulation. Note that this sample timeline is illustrative only; it does not reflect a vote of the Board and is subject to change in any particular transaction.

12. Can the public participate in a merger proceeding?

Yes, the public would have an opportunity to participate in a major merger proceeding. To ensure a fully developed record on the effects of a proposed railroad consolidation, the Board encourages public participation from interested persons. This includes affected shippers, carriers, and rail labor; federal, state, and local government departments and agencies; and other interested persons, including members of the public. As part of a merger proceeding, the Board may hold a public hearing, and there will also be an opportunity for the public to file comments.

13. Do the DOJ, DOT, or the FTC play a role in the STB's review of a major merger?

The Attorney General of the United States and the Secretary of Transportation may decide to intervene as a party in a merger proceeding, and by statute both must be served with all written comments. 49 U.S.C. § 11325(b)(1). The Board's regulations also require that the applicants to a merger proceeding serve their application on several entities including the Secretary of Transportation, the Attorney General of the United States, and the Federal Trade Commission. 49 C.F.R. § 1180.4(c)(5). These entities can then submit comments on the proposed transaction, which the Board reviews in making its decision. In addition, applicants are required to work with the Federal Railroad Administration to develop a Safety Integration Plan (SIP) to ensure that safe operations are maintained throughout the merger implementation process. 49 C.F.R. § 1180.1(f)(3), 49 C.F.R. § 1180.8(a)(1).

14. Are major mergers subject to environmental and historic review processes?

Yes. The National Environmental Policy Act, 42 U.S.C. § 4321-4370m-11 (NEPA), requires the Board to take environmental considerations into account in railroad consolidation cases. To meet its responsibilities under NEPA and related environmental laws, the Board must consider the potential environmental impacts resulting from the proposed transaction in deciding whether the proposed transaction should be authorized and if so, what conditions, including environmental mitigation conditions, to impose.

15. What does the environmental review process for a major merger look like?

The Board's Office of Environmental Analysis (OEA) ensures that the agency meets its responsibilities under NEPA and the Board's implementing regulations at 49 C.F.R. Part 1105 by providing the Board with an independent environmental review of merger proposals. In preparing the necessary environmental documentation, OEA focuses on the potential environmental impacts resulting from merger-related changes in traffic levels on existing rail lines and rail facilities. The Board generally will mitigate only those impacts that would result directly from an approved transaction and will not require mitigation for existing conditions and existing railroad operations.

Throughout the environmental review process, OEA consults directly with Federal, state, and local agencies, and the public has an opportunity to participate. Railroad applicants often negotiate agreements with affected communities, including groups of communities and other entities such as state and local agencies, to address environmental concerns. The Board encourages voluntary agreements of this nature because they can be highly effective in addressing specific local and regional environmental and safety concerns, including the sharing of costs associated with mitigating merger-related environmental impacts.

In the case of a major merger with the potential to result in significant environmental impacts, OEA will normally prepare an Environmental Impact Statement (EIS). OEA will conduct a detailed analysis of the potential environmental impacts associated with the proposed transaction and develop a comprehensive record on a broad range of environmental issues. Generally, an EIS will describe the affected environment, evaluate potential impacts resulting from the proposed transaction, and identify reasonable and appropriate mitigation measures. Those measures may include voluntary agreements an applicant reaches with potentially affected communities and other voluntary mitigation that could lessen expected environmental impacts and address local concerns. The Board then considers the entire environmental record in reaching its decision on the merits of the case and deciding on appropriate environmental conditions to impose.

16. What remedies can the Board impose on railroad mergers?

The Board has broad authority under 49 U.S.C. § 11324(c) to impose conditions on railroad mergers, including requiring divestiture of parallel tracks, granting of trackage rights and access to other facilities, reciprocal switching arrangements, gateway requirements, and preserving the potential for shippers to build out or in to another railroad, among other things. Under the regulations, the Board will condition the approval of Class I combinations to mitigate or offset harm to the public interest. To offset potential harms, such as potential anticompetitive effects that would be difficult to mitigate and transitional service disruptions that might temporarily negate any shipper benefits, applicants should propose conditions that would not simply preserve but also enhance competition. 49 C.F.R. § 1180.1(d). During an oversight period, the Board will closely monitor compliance with conditions and retains the authority to impose additional conditions, if necessary.

17. How many Board members does the Board have?

By statute, the Board is authorized to have five members. Presently, the Board has three members.

18. Does the Board have a quorum requirement?

No. While the Board would need at least one member to decide a case, the Board does not have a quorum requirement to consider a merger or any other case before it.

19. What happens if the Board has a tie vote?

When the Board votes on a decision to take an action and the vote results in a tie, the action cannot be taken.

20. If a merger is approved, is there an oversight period afterward?

As a condition to its approval of any major transaction, the Board establishes a formal oversight period. Under 49 C.F.R. § 1180.1(g), for at least five years following approval, the applicants are required to present evidence to the Board to show that the merger conditions imposed by the Board are working as intended, that the applicants are adhering to the various representations they made on the record during the course of the merger proceeding, that no unforeseen harms have arisen that would require the Board to alter existing merger conditions or impose new ones, and that the merger benefit projections accepted by the Board are being realized in a timely fashion.

During the oversight period, the Board retains jurisdiction to impose any additional conditions it determines are necessary to remedy or offset any adverse consequences of the underlying transaction.

21. How can I get more information about mergers and receive merger updates?

For more information, please contact the Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) at 202-245-0245 or rcpa@stb.gov.

Members of the media should email us at media@stb.gov.

The Board has a page on its website with resources about major mergers, available here.

Updates on the Board's activities are also available on X and LinkedIn:
Surface Transportation Board (@STB_Newsroom) | X
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