THE UP–NS MERGER: NEW PACKAGING. SAME PROBLEMS.

Their fourth filing adds more promises. The central question remains unchanged: How does reducing the number of Class I competitors while creating a railroad that would handle approximately half of U.S. freight rail traffic preserve and enhance competition?

The Filing Isn't Approval

UP and NS announced they have completed their fourth supplemental filing to the Surface Transportation Board (STB). But this filing does not move the merger automatically into the merits review phase, and it certainly does not mean approval is near. This latest filing also contained yet another lengthy list of corrections to previously submitted information, marking more than 20 times UP and NS have had to correct or revise parts of their application.

The STB must first review this latest supplement and decide whether more questions need answering or whether it is ready to set a schedule for a full review on the merits. The Board's substantive review of the merger's effects on competition, service and the public interest has not yet occurred.

Bottom line: More than a year after the merger was announced, and after multiple pauses resulting from deficiencies in the application, the regulatory review process remains in its preliminary stages. The filing is simply another step in the process – not a determination that the merger preserves or improves competition and serves the public interest.

More Promises. Fewer Real Protections.

UP's latest filing highlights a series of voluntary conditions, including expanded Committed Gateway Pricing (CGP), temporary switching remedies, service protections and additional dispute-resolution processes.

But these proposals share three common characteristics:

LIMITED AND INEFFECTIVE

Extremely narrow eligibility requirements restrict use to a small portion of rail traffic. Even after it was expanded, UP's gateway pricing proposal applies to only a fraction of shipments – **fewer than 1%** – moving by rail today. UP has stacked the deck in its favor – they acknowledge that of those few shippers who are even eligible, 60% will get higher rates under CGP.

TEMPORARY

Many expire after a limited period of time, as little as 3 years; others may not ever take effect, and none would protect customers over the long term.

REACTIVE

These conditions largely provide convoluted pathways to expensive, time-consuming and uncertain litigation and only **after** substantial service failures or competitive harm has already occurred. These conditions are not protections that prevent those impacts from happening in the first place. This leaves customers to navigate complex regulatory processes against a significantly larger railroad.

THE NEW CONDITIONS STILL HAVE SIGNIFICANT LIMITATIONS

- Expanded gateway pricing applies to less than **1% of U.S. rail traffic**
- Temporary access remedies apply only to certain customers and only after service deterioration occurs
- The proposals expire after fixed periods or require arbitration before relief is available
- Most traffic categories remain excluded, including portions of intermodal, unit train or contract traffic

The Competition Question Remains Unanswered

UP continues to argue that programs such as Committed Gateway Pricing create competition. That is not true. UP's proposals do not create any new competition. Even UP acknowledges the proposal applies to only a limited subset of traffic. Meanwhile, the merger would create a railroad handling approximately half of all U.S. freight rail volume.

The STB's test is whether competition is preserved and enhanced across the rail network. A UP/NS merger would do the opposite: eliminate a competitor and lead to higher pricing by a transcontinental railroad with 50% market share.

Customers should ask:

- Will I have more transportation options?
- Will I have more competitive alternatives?
- Will market concentration increase?
- Will these protections still exist in five years?

The latest filing does not change the underlying concentration created by the merger.

The CN Agreement Doesn't Change the Fundamentals

UP recently announced a settlement Memorandum of Understanding (MOU) with CN that includes certain access rights and operational arrangements if the merger is approved.

While UP points to the MOU as evidence of enhanced competition, it does not alter the merger's central outcome:

One railroad would still control roughly 50% of U.S. rail freight traffic.

Thousands of customers would still see rail competition reduced.

The underlying market concentration remains unchanged. In fact, the MOU underscores a question many customers have asked all along:

If commercial partnerships and access agreements can deliver benefits, why is a merger of this magnitude necessary?

For decades, railroads have expanded service through partnerships without eliminating head-to-head competition.

Opposition is Broad and Growing

Concerns about the merger are no longer limited to a handful of voices. A recent Senate letter adds 23 senators to a growing coalition of stakeholders – including shippers, trade associations, labor organizations, public-interest groups and elected officials – calling for careful scrutiny of the merger's potential impacts or for the proposal to be rejected.

SUPPORTING SHIPPERS

- Represent **less than 8% of all rail cargo**

SHIPPER ASSOCIATIONS OPPOSING OR EXPRESSING CONCERN

- Represent **nearly 50% of all rail cargo**

LABOR UNIONS OPPOSING THE MERGER

- Represent **more than 50% of all rail employees**

NOTICES OF INTENT TO PARTICIPATE FILED BY

- **300+ stakeholders**
- **50+ individual shippers**
- **30 State Attorneys General**

MAKE SURE YOUR VOICE IS HEARD

The STB's review is entering a critical phase.

If the proceeding advances, customers who file a **Notice of Intent to Participate** preserve their ability to engage later without committing to any future filing or position today. This is simply a placeholder to keep your options open and ensure your voice can be heard as the process unfolds.

The decisions made in this proceeding could shape freight rail competition for decades.

Learn more:
www.BNSF.com/PreserveRailCompetition

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