NEWS

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# CP Files Reply to CN-KCS Urging STB to Reject CN-KCS' Voting Trust Proposal

*STB approval of a CN-KCS voting trust would instantly reduce competition, create immediate pressure for downstream consolidation*

*A CN-KCS combination is not in public interest, while CP-KCS remains only viable, pro-competition Class 1 combination*

CALGARY - June 29, 2021 – Canadian Pacific Railway Limited (TSX: CP) (NYSE: CP) ("CP") has filed a reply to Canadian National ("CN") and Kansas City Southern's ("KCS") joint motion for voting trust approval with the Surface Transportation Board ("STB"). In urging the STB to reject CN and KCS' voting trust application, CP detailed the significant public interest harm associated with a voting trust and potential CN-KCS combination.

"Hundreds of shippers, governments and other stakeholders across North America have written the Surface Transportation Board to warn about the potential public interest harms that would come from allowing CN to close into a trust," said Keith Creel, CP President and Chief Executive Officer. "Only by rejecting the CN voting trust can the board preserve its ability to fully review the public consequences of CN's proposed acquisition of KCS, without the risk of any anti-competitive harms that a voting trust would set in motion."

This harm, which would remain regardless of whether the STB ultimately permits CN to merge with KCS, includes:

- **A CN-KCS combination would reduce freight transportation service options for over 340 shippers across the United States**. Contrary to the claims of CN executives, CN and KCS compete directly for significant rail traffic, including in cities such as Omaha/Council Bluffs, Neb./Ia.; St. Louis, Mo.; and Mobile, Al. Given the substantial overlap of the CN and KCS networks, the resulting reduction in competition from a CN-KCS merger would have major implications for shippers and the industry. Importantly, approval of a voting trust for a CN-KCS merger would dramatically reduce the two companies' incentives to compete, even if KCS' management stayed scrupulously independent. Even if CN ultimately accepts conditions designed to remediate some of these competitive harms, those "remedies" would only become effective in 2023 or later, *long after* KCS will have been sold to CN.

- **If CN and KCS enter into trust, CN would immediately take on over $19 billion of additional debt, creating significant risks to its business, employees and the future of North American rail infrastructure**. The 45 percent premium CN is offering to acquire KCS would require CN to find ways to recoup this substantial investment. CN is unlikely to achieve its optimistic forecasts about how quickly it will pay down this debt, leading to potential underinvestment in its rail infrastructure and/or price hikes for shippers and a precarious financial position for CN. These concerns prompted TCI Fund Management, a major CN shareholder, to urge CN to abandon its "ill-advised misadventure" to acquire KCS.

If CN can use a voting trust, the STB would have no meaningful opportunity to assess the public interest costs associated with this indebtedness or the risks to CN and the public.

- **Allowing CN to use a voting trust to acquire KCS would create immediate pressure for further downstream consolidation in the railroad industry**. As this case is the first-ever test of the STB's 2001 merger rules, the STB's decision carries significant implications for the industry. The STB's approval of a voting trust would set a precedent for the routine use of voting trusts in subsequent rail merger proposals upon the demand of target shareholders.

  Equally important, CN's ability to acquire KCS shares – and hold them in trust until the end of 2024 as CN plans – would force CP and other railroads to reassess future strategic options, likely leading to further attempts at consolidation among Class 1 railroads.

- **Approval of a CN voting trust eliminates the potential for the CP-KCS combination to create a new north-south rail artery that will bring new competitive options to shippers in America's Heartland, between Canada and the U.S. Gulf Coast.** A CN-KCS combination prevents CP from making the investments that will transform its CP-KCS route via Kansas City, permanently squandering a once-in-a-lifetime opportunity to inject new competition into America's rail network, and making KCS's mainline south of Kansas City a mere "redundancy" line in CN's system.

- **Against this harm, CN has *not put forward any public benefits associated with its use of a voting trust***. CN and its supporters urge approval of a voting trust to "allow KCS to choose the bid it judges to be best for its shareholders." This "shareholder-first" argument would elevate private benefits to shareholders over the public interest. The desire to maximize returns to KCS' shareholders is **not** a public benefit. Approving a trust on this basis would make voting trusts routine, contrary to the STB's 2001 major merger rules.

These concerns echo those of hundreds of stakeholders – including railroad labor unions, shippers and community leaders – who have written letters to the STB opposing a CN-KCS voting trust or merger. More than 300 letters have been filed opposing the CN voting trust. Approximately 1,200 letters from across North America have been filed in support of CP's proposed combination with KCS or in opposition to the CN proposal because it is not in the public interest.

**CP-KCS: The Only Viable Class 1 Combination**
As previously announced, CP is continuing to pursue its application process for a potential acquisition of KCS so that the STB can review the pro-competitive CP-KCS combination without undue delay in the event CN is unable to acquire control of KCS.

Importantly, the STB has already approved CP's use of a voting trust and affirmed KCS' waiver from the new rail merger rules it adopted in 2001 because a CP-KCS combination is truly end-to-end, pro-competitive, and the only viable Class 1 combination.

A CP-KCS transaction would raise none of the anti-competitive concerns cited by hundreds of shippers and other stakeholders. Instead, CP-KCS would enhance competition, create new and stronger competitive single-line options against existing single-line routes, as well as taking trucks off the highway. CP-KCS would maintain all existing freight rail gateways and maintains competition in the Baton Rouge to New Orleans corridor, while creating completion a new north-south lanes between Western Canada, the Upper Midwest and the Gulf Coast and Mexico.

Additionally, CP is willing to host intercity passenger rail service between New Orleans and Baton Rouge, an outcome with far more operational flexibility and less risk to Louisiana taxpayers.

Similarly, a CP-KCS transaction would *diminish the pressure* for downstream consolidation by preserving the basic six-railroad structure of the North American rail network: two in the west, two in the east and two in Canada, each with access to the U.S. Gulf Coast. By contrast, a CN-KCS transaction would fundamentally disrupt this balance.

For more information on the benefits of a CP-KCS combination and the risks that a CN-KCS transaction would pose to the railway industry and North America, visit FutureForFreight.com.

FORWARD-LOOKING STATEMENTS AND INFORMATION

This news release includes certain forward-looking statements and forward looking information (collectively, FLI). FLI is typically identified by words such as "anticipate", "expect", "project", "estimate", "forecast", "plan", "intend", "target", "believe", "likely" and similar words suggesting future outcomes or statements regarding an outlook. All statements other than statements of historical fact may be FLI.

Although we believe that the FLI is reasonable based on the information available today and processes used to prepare it, such statements are not guarantees of future performance and you are cautioned against placing undue reliance on FLI. By its nature, FLI involves a variety of assumptions, which are based upon factors that may be difficult to predict and that may involve known and unknown risks and uncertainties and other factors which may cause actual results, levels of activity and achievements to differ materially from those expressed or implied by these FLI, including, but not limited to, the following: changes in business strategies and strategic opportunities; estimated future dividends; financial strength and flexibility; debt and equity market conditions, including the ability to access capital markets on favourable terms or at all; cost of debt and equity capital; potential changes in the CP share price; the ability of management of CP, its subsidiaries and affiliates to execute key priorities; general North American and global social, economic, political, credit and business conditions; risks associated with agricultural production such as weather conditions and insect populations; the availability and price of energy commodities; the effects of competition and pricing pressures, including competition from other rail carriers, trucking companies and maritime shippers in Canada and the U.S.; North American and global economic growth; industry capacity; shifts in market demand; changes in commodity prices and commodity demand; uncertainty surrounding timing and volumes of commodities being shipped via CP; inflation; geopolitical instability; changes in laws, regulations and government policies, including regulation of rates; changes in taxes and tax rates; potential increases in maintenance and operating costs; changes in fuel prices; disruption in fuel supplies; uncertainties of investigations, proceedings or other types of claims and litigation; compliance with environmental regulations; labour disputes; changes in labour costs and labour difficulties; risks and liabilities arising from derailments; transportation of dangerous goods; timing of completion of capital and maintenance projects; sufficiency of CP's budgeted capital expenditures in carrying out CP's business plan; services and infrastructure; the satisfaction by third parties of their obligations to CP; currency and interest rate fluctuations; exchange rates; effects of changes in market conditions and discount rates on the financial position of pension plans and investments; trade restrictions or other changes to international trade arrangements; the effects of current and future multinational trade agreements on the level of trade among Canada and the U.S.; climate change and the market and regulatory responses to climate change; anticipated in-service dates; success of hedging activities; operational performance and reliability; regulatory and legislative decisions and actions; public opinion; various events that could disrupt operations, including severe weather, such as droughts, floods, avalanches and earthquakes, and cybersecurity attacks, as well as security threats and governmental response to them, and technological changes; acts of terrorism, war or other acts of violence or crime or risk of such activities; insurance coverage limitations; and the pandemic created by the outbreak of COVID-19 and resulting effects on CP's business, operating results, cash flows and/or financial condition, as well as resulting effects on economic conditions, the demand environment for logistics requirements and energy prices, restrictions imposed by public health authorities or governments, fiscal and monetary policy responses by governments and financial institutions, and disruptions to global supply chains.

We caution that the foregoing list of factors is not exhaustive and is made as of the date hereof. Additional information about these and other assumptions, risks and uncertainties can be found in reports and filings by CP with Canadian and U.S. securities regulators. Reference should be made to "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations - Forward-Looking Statements" in CP's annual and interim reports on Form 10-K and 10-Q. Due to the interdependencies and correlation of these factors, as well as other factors, the impact of any one assumption, risk or uncertainty on FLI cannot be determined with certainty.

Except to the extent required by law, we assume no obligation to publicly update or revise any FLI, whether as a result of new information, future events or otherwise. All FLI in this news release is expressly qualified in its entirety by these cautionary statements.

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