Hon. Martin J. Oberman, Chairman
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Chairman Oberman and members of the Surface Transportation Board:

We are deeply concerned about the proposed merger between Canadian Pacific and Kansas City Southern currently being evaluated by the board. The social and economic costs of further concentrating market power in this already highly monopolized sector are high while the promised benefits are slight and speculative at best.

Canadian Pacific and Kansas City Southern promise that their merger will result in more efficient, higher quality service and divert more than 64,000 trucks off highways annually. But creating a single railroad with 18,000 route miles – which connects industrial centers in three countries, runs directly through the industrial heartland of the United States, and touches more than a dozen strategically important container ports on the Atlantic, Pacific, and Gulf of Mexico – will inherently lead to unhealthy market concentration and anti-competitive outcomes. The rapid consolidation of the railroad industry over the past several decades provides abundant evidence that large rail mergers rarely, if ever, produce improved service or real economies of scale and often produce the opposite.

Notorious historical examples include the economic disaster created by the consolidation of the Pennsylvania Railroad and the New York Central into the Penn Central in the late 1960 and the service meltdowns that occurred as a result of the Union Pacific/Southern Pacific merger in the late 1990. Similarly, when CSX Transportation and Norfolk Southern sought regulatory approval to absorb Conrail a quarter century ago, they promised that the deal would take nearly a million trucks off the road annually. Instead, deteriorating service led to an almost immediate loss of market share to trucks and more recently to outright elimination of intermodal service between hundreds of city pairs.

Today, the consolidation of the industry into just a few giant carriers has caused a severe loss of critical rail capacity, through stripped out infrastructure and laid off workers. At a time when we desperately need to be diverting more freight and passenger traffic to railroads in order to reduce carbon emissions and alleviate truck and auto congestion, we are threatened by modern-day Wall Street robber barons who abuse the market power of today's consolidated railroads to boost short-term profits through downsizing and degraded services.
In July 2021 for example, the Union Pacific suspended all container freight service between West Coast ports and its Global IV terminal in Chicago, a hub clogged with stacked containers that the rail operator lacked the capacity to sort and redirect. The embargo immediately meant that still more boxes coming from Asia, with everything from auto parts to transistors, piled up on docks as West Coast ports waited for canceled trains. The cause of this inflationary chokepoint: Union Pacific had previously closed a major handling facility in Chicago, known as Global III,

that is desperately needed to keep the supply chain moving. At a time of soaring food prices, UP's continuing service failures have jeopardized shipments of corn that thousands of dairy cattle and millions of chickens depend on, while also driving up the cost of automobiles through disruption of supply chains or diversion to more expensive trucks. As in other concentrated industries, monopoly leads to the hollowing out of capacity and to the spread of price gouging and inflation.

As the hearings by Congress and the STB attest, today's rail giants abuse their monopoly power by flouting their public responsibilities as common carriers. Layoffs of marketing and customer service staffs leave captive shippers with literally no one to call, while furloughed operating crews leave railroads unable to maintain even minimum service standards, let alone win new business from trucks. Today major railroads purposely engage in "demarketing" or turning away even existing business from all but their highest volume, highest margin customers. Thanks to their status as barely regulated monopolies they have the market power to earn maximum profits by charging more for less.

The newly combined Canadian Pacific-Kansas City Southern would exacerbate these trends. In addition to further concentrating the industry, the combined system could easily start to limit interchanges with other Class I carriers and would also have incentive to undermine competition at the international junction in Laredo, TX, which is the gateway to 54% of all U.S.-Mexico rail traffic. In contrast, short-line railroads are generally far more entrepreneurial, customer-focused and good at winning traffic back from the trucks crowding our highways and polluting our atmosphere.

Nothing inherent in railroading makes large systems better able to provide quality, cost-effective service than smaller systems. Recall the success of the so-called "Alphabet Route," a consortium of eight regional railroads known by their respective acronyms (such as the W&LE and the P&WV) that between the 1930s and the 1980s coordinated in offering seamless fast freight rail service between major mid-Atlantic cities like New York and Baltimore and midwestern industrial centers like St. Louis and Chicago. Even in an age before computers and digital communications, these eight independent lines competed effectively with the major consolidated systems controlled by the Vanderbilts and the House of Morgan, proving you don't need to be a monopoly to run a network efficiently.

To facilitate this kind of coordination and cooperation among independent railroads, Congress long ago made intra-line rate agreements exempt from antitrust prosecution [49 U.S.C. 10706]. Thus, there is no legal or technological reason why the U.S. needs another giant rail monopoly. To accommodate greater trade flows with Mexico and Canada, or to onshore more production from China, for example, all we need is better run, better regulated independent railroads operated on the model of the Alphabet Route.

President Biden's 2021 executive order on promoting competition explicitly called on your Board to initiate rulemaking that would protect against anti-competitive practices by railroads. The

Board should heed this directive in evaluating this anti-competitive merger. Far from approving more consolidation based on wishful thinking and unlikely benefits, the board should focus on requiring existing railroads to live up to their obligations to the public as common carriers, including by insisting on non-discriminatory freight service to smaller shippers and communities as well as open access to Amtrak and other passenger rail providers.

We urge you to decline approval for this merger and find it not in the public's interest in order to ensure a healthy, balanced, and competitive rail sector.

Thank you for your attention to this important matter.

Sincerely,

Open Markets Institute
Solutionary Rail
American Family Voices
Campaign for Family Farms and the Environment
Demand Progress
American Economic Liberties Project
Farm Action
Food & Water Watch
Institute for Local Self-Reliance (ILSR)
Public Citizen
Revolving Door Project