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POLICY BRIEF
NOVEMBER 2026

Consider the Source When Rival Railroads Object

Railroads that would compete with a merged Union Pacific–Norfolk Southern gain most by blocking an efficient merger, and regulators should weigh their comments accordingly.

4
RIVAL CLASS I RAILROADS FILING JOINTLY IN THE DOCKET [1]

2
RIVAL RAILROADS SEEKING SUMMARY DENIAL OF THE MERGER [1]

395
DAYS OF REVIEW BNSF AND CSX SOUGHT, THE LEGAL MAXIMUM [1]

THE ISSUE

Comments on the Union Pacific–Norfolk Southern merger are due at the Surface Transportation Board on November 18, 2026. The transaction would create the nation's first transcontinental railroad.[1] Among the most active parties are the four Class I railroads that would compete with it. BNSF and CSX have moved for summary denial, and both asked for the longest schedule the statute allows.[1]

A new paper by Donald J. Kochan of Antonin Scalia Law School explains why their objections need a careful reading. A merger that raises prices lets rivals raise theirs too. A merger that cuts costs and improves service forces rivals to match it or lose traffic. A rival therefore has little reason to oppose an anticompetitive merger[2] and every reason to oppose an efficient one. Economists Joseph Farrell and Carl Shapiro drew the same inference: rival opposition suggests a merger probably benefits consumers.[3]

Four former antitrust enforcers told the Board in August that rivals' warnings of higher prices describe an outcome that would benefit the rivals.[4] The *AT&T* court warned that competitor testimony may reflect self-interest rather than harm to competition.[5] Kochan extends to agency comments what economists showed for lawsuits by rivals: both raise a competitor's costs,[6] and delay is one such cost.

Opposition can also be traded: Canadian National settled, contingent on approval, for Norfolk Southern's interests in the St. Louis and Kansas City terminal railroads and half of the Peoria and Pekin Union.[1] Table 1 sets out where each rival stands.

The argument is strongest for mergers of direct competitors; this one is largely end-to-end. A vertical combination can harm rivals and shippers at once, and the Board has declined to presume that such combinations are harmless.[1] That is a reason to test rivals' claims against data, not to accept them as data. Shippers, who pay the rates, stand in a different position from the railroads that compete for their freight.

WHAT WE RECOMMEND

1. **Weigh rival railroads' comments as advocacy.** In applying the public interest standard of 49 U.S.C. § 11324,[7] the Board should credit a competing carrier's claims only to the extent they rest on verifiable data, as the *AT&T* court did with competitor testimony.
2. **Ask rivals to reconcile their claims with their interests.** When a competing railroad warns of higher rates or degraded service, the Board should ask why it would not gain from that outcome; a rival that cannot answer is describing a stronger competitor.
3. **Assess shipper and competitor filings separately.** The Board should report comments from shippers and shipper associations apart from those of competing railroads, so a rival's position is not read as a customer's.
4. **Treat settlements as evidence.** When a rival changes its position in exchange for assets or access, as Canadian National did, the Board should ask whether the condition cures a harm to shippers or compensates a competitor.

TABLE 1 What each rival Class I railroad has asked of the Board in Docket No. FD 36873

Railroad	What it has asked of the Board	Position
BNSF	Summary denial; the 395-day maximum schedule; a round of sur-replies	Opposed
CSX Transportation	Summary denial; the 395-day maximum schedule	Opposed
Canadian Pacific Kansas City	Review of whether the application makes a prima facie case; about three more months of evidence; sur-replies	Contesting
Canadian National	Settlement acquiring NS's stakes in TRRA and KCT and half of PPU	Settled, contingent on approval

From Surface Transportation Board, Decision No. 30 (Aug. 18, 2026). TRRA = Terminal Railroad Association of St. Louis; KCT = Kansas City Terminal Railway; PPU = Peoria and Pekin Union Railway.

SOURCES

1. *Surface Transportation Board (2026).* Union Pacific Corp.—Control—Norfolk Southern Corp., Decision No. 30, *Docket No. FD 36873 (served Aug. 18, 2026), 91 Fed. Reg. 53927.*
2. *Kochan, Donald J. (2026).* Merger Review and the Anti-Competitive Self Interest of Competitors in the Commenting Process. *George Mason University Law & Economics Research Paper Series No. 26-21.*
3. *Farrell, Joseph, and Carl Shapiro (1990).* Horizontal Mergers: An Equilibrium Analysis. *American Economic Review 80 (1): 107–126.*
4. *Abbott, Alden F., Abbott B. Lipsky Jr., Gregory J. Werden, and Mark Whitener (2026).* Comments of Former Senior Antitrust Enforcers, *Docket No. FD 36873 (filed Aug. 12, 2026).*
5. *United States v. AT&T Inc., 310 F. Supp. 3d 161, 211–12 (D.D.C. 2018).*
6. *Baumol, William J., and Janusz A. Ordover (1985).* Use of Antitrust to Subvert Competition. *Journal of Law and Economics 28 (2): 247–265.*
7. *49 U.S.C. § 11324 (consolidation, merger, and acquisition of control).*

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