RAILROAD WEEK IN REVIEW

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“Canadian Pacific has a legal, contractual obligation to return the information that KCS provided it for the purposes of the application and to no longer use that information. That should be the end of the matter.” — STB reply to CP Petition for Expedited Declaratory Relief

“CP wants to compel KCS to provide this information notwithstanding that KCS has terminated its merger agreement with CP, has withdrawn as a co-applicant in the FD 36500 proceeding, and under the terminated CP Merger Agreement, CP no longer has a legal or contractual right to the information sought.” — Canadian Pacific Petition for Expedited Declaratory Relief

The STB (and its predecessor, the Interstate Commerce Commission) used to impose rigid gateway protection in order to protect a shipper from losing alternative service in a rail merger. For more than three decades the ICC imposed so-called DT&I conditions, which required the merged railroad to preserve the gateway(s).” — William Hunekey, former STB Chief Economist

“The ag part of ag and food can be volatile, and we saw that last week with an 8.9% YoY decline in US and Canadian grain shipments (food was down 0.8% YoY). This pushed our ag and food category 10% below our historical benchmark and the worst week since the third week of February.” Rick Paterson, Loop Capital Markets,, June 23

Canadian Pacific seeks a declaratory order from the STB forcing KCS to provide information CP wants in order to continue its KCS acquisition proceedings. The board declines to do so. KCS already has terminated its merger agreement with CP so the latter “no longer has a legal or contractual right to the information sought.”

The STB further notes that “at no point in any of the cases cited by CP has the ICC or the board ordered a target Railroad to provide further information to another railroad so that Railroad can prepare and file a hostile takeover application [and] KCS has no obligation to provide CP with any further information… no precedent supports CP‘s audacious request.“

Continuing the thread of the STB‘s “do no harm“ theme, I compared the CN and CP short line lists looking for so-called 2:1 cases where a short line connects with both KCS and CN. Excluded were any properties connecting with KCS over haulage rights or what KCS calls “marketing agreements.” If KCS iron doesn’t touch the shortline iron, it doesn’t count. I found only six and two of them are terminal railroads.

The STB concludes, “ KCS has terminated its merger agreement with CP. Consistent with that agreement, CP now has a liberal legal obligation to return any KCS information it has that KCS provided it. “Moreover, If CP wishes to continue the matter further, it can prepare and file this application based upon readily available information… that should be the end of the matter.”

Maybe. Tony Hatch reminds us the Voting Trust question still needs resolution. He writes,

> [Perhaps] the STB is looking to reject the VT as a way to kill the deal without rejecting the deal itself. That's the central dark theory discussed by the short liners and their cohorts and it brings to mind the thought that the STB wants to reject the CN+KCS merger, but without a formal rejection. Why? Because a rejection could provide as much of a blueprint, or roadmap, for future new-rules deals as an acceptance.

I think what we're seeing here is general apprehension about this transaction triggering further mergers, and with much institutional memory of the Conrail transaction and its perceived uneven results still about in the land, further transactions are best avoided.

Meanwhile, former STB economist William Huneke tells *Railway Age* that "CN's open gateways offer is a big deal." He argues that CN's offer to keep gateways open is a key part of its KCS merger plans and is yet another reason this that this transaction "significantly enhances competition." Why? The Gateway commitment gives shippers the option to switch to another carrier if CN service is not up to scratch. Moreover, shippers will have the option to use existing railroad routings involving more than just the merged CN/KCS.

This is only fair. If Walmart doesn't meet your needs, you can walk across the street to Target and strike a deal there. Hunter Harrison proposed something like this when he was pitching the CP plus NS combination, with the stipulation that the competing carrier interchange be within 50 miles of the customer. The provision addresses customer concerns that going 2:1 might limit their routing choices involving other railroads in lieu of the KCS-CN single line service offering.

Though Huneke doesn't say as much, it looks like shortline customers will have the same option if CN isn't working the short line interchange in an acceptable manner. This in turn gives short lines an additional bargaining chip for making the railroad that much more attractive to the customers paying the bills.

A week's good news does not mean much by itself, but if it's better than what went before, it could be a trend. Take the CSX carload report to the AAR for the week ending June 12. Merchandise carloads (no coal, coke, auto, or intermodal boxes) increased 4.3 percent year-to-date over last year. Yes, last year was hammered by COVID so the comps are relatively easy, but the fact that ten out of the 17 AAR merch carload commodities showed gains tells one the cars are starting to move again.

The double-digit gainers are food products, primary metals, waste/scrap, iron/steel scrap, stone/clay/glass (STCC 32, no aggregates). Metals was the big gainer at 37 percent, so it follows that coke increased ten percent and ferrous scrap increased 21 percent. A contact at CSX writes, "We have full conductor classes in progress which will continue for at least the next several months." That will undoubtedly improve customer visibility and carloads.

Last week the WSJ ran a story about the difficulty Amtrak is having getting Class I railroad cooperation as the passenger operator seeks to expand its regional network. The Class I argument is their networks as presently configured don't have room and that massive capital programs are required to accommodate Amtrak. Not so fast.

The way I see it, the freight railroads on the one hand are telling Wall Street that they have excess capacity and can bring on more trains without adding assets. They are also selling scheduled railroading, which means running the same trains the same way every day.

So if there is excess capacity, they should be able to add more trains to the infrastructure they have. Moreover, if they are going to run a scheduled railroad, they should be able to fit scheduled passenger trains in between the scheduled freight trains.

The reality of the situation is, as I think Rod Case has pointed out, that the freight railroads can't run on a scheduled railroad because there are too many "unplanned events." Moreover, since they are holding trains for tonnage rather than running on a schedule, any train that IS running on a schedule will interfere with the extras held for tonnage.

Amtrak is not entirely without blame, either. Trains run late because of equipment failure, crew shortages, excessive station dwell, and so on ad infinitum. If I were a freight railroad, I would not want trains that are likely to break down interfering with any schedule that I was trying to keep. That's my story and I'm sticking to it.

A dear friend of nearly 30 years who spent most of his Class I time as the Shortline Guy writes, "I often think what it would be like if railroads ran other businesses or other businesses ran railroads. Suppose Amazon ran railroads. We have seen how successful Amazon has been because they really focus on the customer. Their model is on having the items the customer wants and delivering them without undue delay.

"Class Is should run shorter and faster trains and also do more transloading, including acquiring the property and equipment to do this. They should focus on the customer and not the operating ratio. Customers don't know or care about the operating ratio. They just want to ship or receive their goods."