BEFORE THE

SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34342

KANSAS CITY SOUTHERN – CONTROL – THE
KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN
RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY.

COMMENTS OF THE

U.S. DEPARTMENT OF AGRICULTURE

Bill Hawks
Under Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture
Washington, D.C. 20250

Date: August 4, 2003

AUTHORITY AND INTEREST

The Secretary of Agriculture is charged with the responsibility under the Agricultural Adjustment Act of 1938 and the Agricultural Marketing Act of 1946 to represent the interests of agricultural producers and shippers in improving transportation services and facilities by, among other things, initiating and participating in Surface Transportation Board (Board) proceedings involving rates, charges, tariffs, practices, and services.

Kansas City Southern (KCS) seeks Board approval to acquire control of Texas Mexican Railway Company (Tex Mex). The Department of Agriculture (USDA) supports this control application and concludes that Board imposition of competitive conditions will not be necessary.

Despite historical skepticism regarding applicant claims of shipper benefits to be derived by rail mergers, and wariness of increased railroad industry concentration, USDA contends that this transaction will increase competition by allowing a third Class I railroad to better compete in the vital corridor between the lower Plains States and gateways to Mexico. Enhanced competition in this corridor could provide gains in trade to Mexico, especially since these potential trade gains largely depend upon competitive transportation options and gateway access into Mexico. This is consistent with prior USDA comments before the Board, which maintained that a third Class I railroad serving strategic gateways to Mexico would be beneficial for American agricultural producers, as well as for the Nation.[1] USDA also believes this transaction will provide significant efficiency benefits and shorten the transit time to Mexican markets.

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[1] Comments of the United States Department of Agriculture, Finance Docket No. 32760, March 29, 1996, pages 5 and 6.

KCS control of Tex Mex, concurrent with control of Transportacion Ferroviaria Mexicana (TFM), could enhance agricultural trade with Mexico. The importance of this transaction is increased by the significance of TFM's role in the U.S.-Mexico NAFTA corridor. Subsequent to NAFTA, Mexico has become one of our Nation's most important trade partners. During 2001, the United States exported 6.2 million tons of corn, 5.5 million tons of sorghum, 4.4 million tons of soybeans, and 2.3 million tons of wheat to Mexico (appendix table 1). During 2001, railroads transported 41 percent of all U.S.-grown grain exported to Mexico, and 31 percent of that passed through the Laredo, TX, gateway.

USDA concludes that competitive conditions need not be placed upon this transaction because to use market power requires one party to have significantly more market power than the other parties. Instead, because KCS is unlikely to have the ability to exercise any significant market power, USDA concludes this transaction is much more likely to increase competition in the U.S.-Mexico NAFTA corridor by allowing the third Class I railroad to better compete.

In this case, Tex Mex operates over 379 miles of Union Pacific Railroad (UP) lines between Robstown and Beaumont, TX, via trackage rights, to connect with KCS in Beaumont. Although these trackage rights were granted pursuant to a 1996 Board order, the two parties involved negotiate the price of these trackage rights without Board interference.

NAFTA Rail, as controlled by KCS and including TFM, would operate approximately 6,000 miles of road and would have operating revenues of $1.3 billion. In contrast, UP is the largest Class I in North America, operating 33,586 miles of road and having operating revenue exceeding $10.6 billion during 2001. The Burlington Northern Santa Fe Railway (BNSF) is a close second, operating 33,063 miles of road and having operating revenue exceeding $9.2

billion during 2001. BNSF and UP shares of U.S. grain exports to Mexico are considerably larger than that of Tex Mex, and are expected to remain larger (appendix table 2).

Thus, USDA contends that should KCS attempt to exercise market power at the Laredo, TX, crossing, UP is able to respond by shifting traffic to other gateways, increasing charges for trackage rights, and by favoring the movement of its own trains over this line. BNSF also appears to be able to shift its traffic to other gateways or respond in other ways to KCS attempts to exercise market power. Appendix tables 1, 2 and 3 indicate that there are ample alternative gateways to Mexican markets and that KCS is not likely to gain a controlling percentage of the traffic through Laredo.

CONCLUSION

USDA supports this control application and concludes that the imposition of competitive conditions will not be necessary.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 4, 2003, he caused a copy of the Department of Agriculture's intention to comment to be served first-class mail, postage paid, on the Secretary of the United States Department of Transportation, the Attorney General of the United States, William A. Mullins, Esq., Troutman Sanders LLP, and Richard H. Streeter, Esq., Barnes & Thornburg.

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United States Department of Agriculture

Commodity	Total 2001 U.S. exports (000 tons)	Total 2001 U.S. exports by railroad (000 tons)	Percent rail to total exports	Rail exports through Laredo (000 tons)	Percent Laredo rail to total rail exports
Corn	6,165	2,943	48%	715	24%
Sorghum	5,525	1,751	32%	780	45%
Soybeans	4,345	2,197	51%	235	11%
Wheat	2,346	670	29%	436	65%
Other grains	509	279	55%	229	82%
Total grains	18,889	7,792	41%	2,395	31%

Appendix Table 1–Railroad Share of Total U.S. Grain Exports to Mexico

Sources: Rail tonnages estimated from the 2001 STB Waybill Sample;
Export data from the Department of Commerce, U.S. Census Bureau.

Notes: Other grains include barley, oats, and rough rice only.
Canadian-grown grain traveling by rail to Mexico through the United States is excluded.
Some rail shipments to the U.S.-Mexico border region may have been used locally or exported by ocean vessel at Brownsville, TX, rather than exported across the U.S.-Mexico border by rail.
Quantities are rounded, thus the sum of individual grain tonnages may not equal the total grain tonnage.

Appendix Table 2–Terminating Railroad Share of 2001 U.S. Agricultural Exports to Mexico by Rail and Share of Rail Exports Through Laredo, Texas

Commodity	BNSF percent of total rail	Tex Mex percent of total rail	UP percent of total rail	Tex Mex percent of rail through Laredo	UP percent of rail through Laredo
Corn	37%	8%	56%	32%	68%
Sorghum	30%	23%	47%	51%	49%
Soybeans	20%	2%	78%	19%	81%
Wheat	13%	27%	61%	41%	59%
Other grains	3%	6%	90%	8%	92%

Source: Rail tonnages estimated from the 2001 STB Waybill Sample.

Notes: Other grains include barley, oats, and rough rice.
Canadian-grown grain traveling by rail to Mexico through the United States is excluded.

Appendix Table 3–Percentage by Port of U.S. Agricultural Exports to Mexico Shipped by Rail

Commodity	Brownsville, TX	Eagle Pass, TX	El Paso, TX	Laredo, TX	Calexico, CA	Nogales, AZ
Corn	15%	48%	8%	24%	1%	3%
Sorghum	3%	24%	21%	45%	0%	7%
Soybeans	25%	34%	18%	11%	n/a	11%
Wheat	6%	3%	19%	65%	n/a	8%
Other grains	3%	5%	10%	82%	0%	0%

Source: Rail tonnages estimated from the 2001 STB Waybill Sample.
Notes: Other grains include barley, oats, and rough rice.
Canadian-grown grain traveling by rail to Mexico through the United States is excluded.