CPKC

The UP-NS Merger Is Not in the Public Interest

October 2025

A CALL TO ACTION

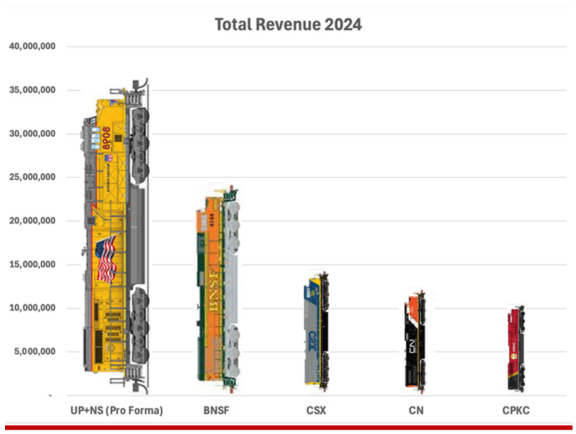
Right now, UP and Norfolk Southern are contacting businesses and other stakeholders everywhere, seeking support for their plan to merge and become the “Union Pacific Transcontinental Railroad” (UP Transcon). To understand the effects on your company, CPKC encourages you to ask:

- What is UP Transcon?
- How is the UP Transcon different from the CP-KCS combination approved by the U.S. Surface Transportation Board (STB)?
- Is UP Transcon necessary? Will UP Transcon help shippers?
- Should I be concerned how UP Transcon will treat customers?
- Is UP Transcon inevitable? What options do I have?

WHAT IS UP TRANSCON?

UP Transcon is a merger of unprecedented scale and scope.

- All large railroads are the result of historical mergers, but there has never been a railroad merger of the scale and scope of UP Transcon.
- UP and NS are two of the four largest U.S. railroads.
- Combining UP and NS would create a massive organization, with far greater revenues and almost two-thirds more main line track miles (and correspondingly more sole-served shippers) than the next largest railroad, BNSF.
- UP Transcon would control approximately 40% of U.S. freight rail traffic.
- UP Transcon would dwarf its competitors and most other businesses.



HOW IS UP TRANSCON DIFFERENT FROM CPKC?

The CP-KCS merger was necessary to unlock investments, create new routes and offer new optionality to shippers.

- In CP-KCS, the two smallest Class I railroads combined to create new competition against UP and BNSF.
- CPKC remains the smallest Class I railroad and it is investing heavily in a previously under-utilized U.S. rail corridor and providing customers with improved service and broader market reach.
- CPKC remains focused on delivering more of the benefits and unique value-creating opportunities of its North American network, which connects shippers in all parts of North America via effective interline service options.

UP Transcon Will Dominate Markets and Reduce Optionality

By contrast the proposed UP-NS merger:

- Will not unlock any new rail competition.
- Is not needed to support investment in under-utilized routes.
- Would combine two networks that already have sufficient volumes across Chicago and other gateways to support efficient interline services via deep blocking, run-through train services, and other service improvements, if only they devoted their attention to doing so.

IS UP TRANSCON NECESSARY? WILL THE UP TRANSCON BENEFIT RAIL CUSTOMERS?

UP Transcon will not enhance competition.

- UP's and NS' vast networks overlap in important ways. They both serve Chicago, Kansas City, St. Louis, Memphis, New Orleans and Des Moines, and they operate competing routes in the triangle between Chicago, Kansas City and St. Louis. At a minimum these competitive issues would require remedy.
- UP Transcon would have unrivaled leverage over customers and against competitors, inevitably spurring further consolidation as anticipated by UP itself in 2000 and cautioned by the STB in 2001.

The "downstream effects" of UP Transcon will further reduce competitive options.

- When the STB adopted its 2001 merger rules, it recognized that the next merger– such as UP-NS – would be the last chance the agency would have to determine whether a duopoly structure served the public interest.
- The "downstream effects" of UP Transcon would bring about a radical and permanent change to the structure of the rail industry — creating a nationwide duopoly of two giant East-West railroads across America. The effects will ripple throughout the entire supply chain.
- It creates unprecedented risk by concentrating virtually all of the decision-making for the national rail network. The duopolist mega railroads would have unchecked ability to decide where to invest and what services to offer, among other key decisions with broad implications on the entire supply chain. No merger conditions will be able to fully mitigate these risks. New and more intrusive regulations would be required to attempt to mimic lost competition.
- In a UP Transcon or Transcon Duopoly world, the sources of innovation and investment in service alternatives (like CSX-UP services and NS-BNSF services) will be squelched, effectively reducing the number of East-West pairings from four to two.
- Every rail customer should consider the bargaining leverage that a UP Transcon (or two transcon duopolists) would have when negotiating the terms of railroad transportation offerings.

UP Transcon is not needed to obtain truck-competitive interline rail service.

UP Transcon is not needed to create better East-West rail services. Experience has shown that when today's Class I railroads cooperate with one another and focus on providing high-quality service to their customers, they can attract a growing share of freight, and invest to make America's rail network stronger and more capable.

You don't have to look far to see examples:

- UP and CN announced premium intermodal service immediately following CPKC's merger in 2023. It competes against CPKC's premium intermodal service between Mexico and the U.S. Midwest.
- Last year, CPKC's collaboration with CSX created the Southeast Mexico Express service connecting customers in Mexico, Texas and the southeastern United States.

A U.S. Rail Network of Two Giant "Duopolists" Dominating Approximately 90% of Freight Rail Transportation Across the Continent Presents a Great Risk

- Just recently, BNSF and CSX announced coast-to-coast intermodal service connecting western and eastern U.S. markets.

The momentum to develop expanded market reach through cooperation between independent and competitive railroads has only just begun.

SHOULD I BE CONCERNED ABOUT HOW UP TRANSCON WILL TREAT CUSTOMERS?

UP Transcon will be run by present-day UP management. What has UP management said recently about how UP serves customers?

Union Pacific

> I don't care what level of rail cars we have coming…we're going to be **the best margined railroad in North America.** - *Jim Vena, UP CEO/UP Transcon CEO to-be, Nov. 14, 2023*

> We have consistently said and performed in terms of being able to **yield price dollars that exceed our inflation dollars.** - *Jennifer Hamann, UP CFO, Dec. 4, 2024*

> Core pricing was very strong and reached the **highest quarterly level in the past 10 years.** - *Jennifer Hamann, UP CFO, April 24, 2025*

> …we've always been very price disciplined, meaning **the last to lower, the first to increase.** - *Kenny Rocker, UP CMO, Sept. 19, 2024*

> In terms of how we use embargoes, it's evident … **we use it more than our peers do. I'm not sure why they don't.** - *Lance Fritz, then UP CEO, July 21, 2022*

Check the record: UP will do what's best for UP

UP, already one of the largest railroads, has historically placed UP's interests above those of customers and the public, preventing interline cooperation and frustrating competitive conditions imposed on prior UP mergers, including:

- While the STB was considering the CP-KCS combination, UP shut down interline cooperation by kicking CP out of the EMP container pool, killing a service that had been available to legacy CP customers for more than 20 years.
- UP ignored a condition on one of its prior mergers by refusing to honor KCS's haulage rights for grain moving to the Ports of Houston and Galveston. The STB intervened in CPKC's favor to enforce UP's obligations, but UP's legal posturing led to a nearly two-year delay during which CP grain shippers were deprived of this competitive option.
- The STB has also had to deal with numerous complaints against UP for its failure to comply with merger conditions imposed on UP's 1996 acquisition of Southern Pacific, including five months of delay in finding crews to handle two new weekly trains proposed by BNSF in the Central Corridor.

UP's service record is no better:

- UP's failed integration with Southern Pacific in the mid-1990s melted down the U.S. rail network, taking more than a year to recover. NS similarly had extraordinary problems assimilating its part of Conrail.
- More recently, UP's implementation of PSR put operation of long-trains ahead of the infrastructure investments needed to support them, with documented adverse consequences for service.
- UP's excessive use of embargoes attracted scrutiny by the STB. UP issued more than 1,000 embargoes in 2022, nearly 10 times as many as other railroads, and resisted STB oversight in a protracted proceeding caused by UP's delayed and unsatisfactory response to STB orders.

IS UP TRANSCON INEVITABLE? WHAT OPTIONS DO I HAVE?

- **The UP Transcon is not inevitable.** The STB will conduct a vigorous process to assess the service, competitive and environmental impacts of the proposed behemoth.
- Under the STB's merger review rules applicable to the UP Transcon proposal, the review process will give all interested shippers, receivers and other stakeholders multiple opportunities to review UP's and NS' application and submit their views.
- Input from customers and other concerned parties will determine whether or not the STB finds that UP Transcon is consistent with the public interest and should be approved.
- Shippers should critically consider UP's and NS' claims that their merger will enhance competition and serve the public interest. CPKC urges all stakeholders to ask the kinds of questions outlined above and to examine the application and other evidence carefully before making any judgment.
- Shippers and other stakeholders in the supply chain should also be skeptical that merger conditions will be able to fully offset the inherent risks associated with the proposed merger. And question if other regulatory tools would be available, such as gateway protections, reciprocal switch access, etc., to effectively rein in the behavior of the UP Transcon or transcon duopolists. In the past, shippers often have expressed skepticism about the accessibility and effectiveness of regulation. Realistically, even if regulation is enhanced, are those remedies accessible enough to protect your company?

OPPORTUNITIES FOR INPUT TO THE STB WILL INCLUDE

- **Sending letters to the STB right now,** to help the STB understand the concerns posed by the UP-NS proposal.
- **In the two to three weeks after the UP-NS Application is filed** (likely November-December 2025), commenting on whether the application provides enough information for the STB to judge the critical issues before it.
- If the STB accepts the application for consideration, participating in the fact-gathering process by posing questions to UP and NS in interrogatories and depositions.
- **Filing comments** informed by your past experiences with UP and NS. Expressing your view as to whether the creation of UP Transcon will affect your business, limit your shipping options, or put service to your business and others like it at risk. Asking whether increased regulations will effectively remedy your concerns.
- **Attending and testifying at any public hearing** the STB may schedule as the likely last step in the fact-gathering process, before it makes its decision.

Your voice, whether on your own, through your industry association, or through your elected representatives, will be important.

Remember, the STB's review in the UP-NS proceeding may be the only opportunity to prevent a transcon duopoly.

UP EXPLAINED IT BEST IN ITS OWN WORDS IN 2000:

> "The important public policy question in the next major Class I merger proceeding will focus on **whether a North American railroad duopoly is in the public interest.** The Board will choose between a future in which two huge transcontinental systems develop single-line services in isolation from each other, and a future in which all remaining railroads strive to develop more efficient services over remaining interline routes. **This is an important choice that can be made only once [sic], because mergers are likely to be permanent.** - *UP Reply Comments, EP 582 (Sub No. 1) – STB Major Rail Consolidation Procedures, December 18, 2000*