

owned directly by CSXT and NSR, respectively.

### Effects on CSX, NS, and Conrail

Petitioners contend that the proposed transaction, by effectuating a permanent legal division of the Allocated Assets between CSX and NS, will end certain undesirable features of the current corporate structure. Petitioners explain: That the present structure of the Conrail Transaction requires quarterly payments of an Operating Fee, analogous to rent, by CSXT to NYC and by NSR to PRR; that, because NYC and PRR are owned entirely by CRC, which in turn is owned by CSX and NS on a fixed 42%–58% basis, CSX and NS share (on a fixed percentage basis) the rental payments received by NYC and PRR; that the rents payable to NYC and PRR are to be redetermined every 6 years, the first redetermination to be made in respect of the 6-year period commencing June 1, 2005, on the basis of the then respective Fair Market Rental Values involved (which values are to be determined as if the lessor and the lessee were under no compulsion to rent to or from the other); that, although successful management of the NYC and/or PRR Allocated Assets is likely to increase their value, resulting in increased rental payments by CSXT and/or NSR, in differing amounts (to the extent one carrier system is more successful than the other in enhancing the value of its respective Allocated Assets), the benefit of the increased rental payments would not go entirely to the party responsible for the successful management, but would be divided on a fixed percentage basis between CSX and NS; and that, although both CSX and NS have attempted to manage and operate their respective Allocated Assets efficiently, it would be preferable to alter the current corporate structure to establish more appropriate incentives for efficient management, as well as to avoid the costly and time-consuming process of establishing, every 6 years, the Fair Market Rental Values.

Petitioners further contend that the current corporate structure also causes financial inefficiency and presents a now unnecessary degree of entanglement between CSX and NS. Petitioners add that such entanglement and inefficiencies include the need for involvement by both CSX and NS in certain management activities such as the disposition of property. Petitioners explain that, although all of the day-to-day activities of the two railroads in the operations of the two sets of Allocated Assets, and a number of other activities, including most disposals of property, can be performed by the operating

railroad (CSXT or NSR) itself, the Fair Market Value even of property that the operating railroad itself can properly dispose of must be placed in an account that ultimately is for the respective benefit of CSX and NS in accordance with their 42%–58% ownership interests. It would be preferable, petitioners believe, to avoid this unnecessary entanglement.

The proposed transaction, petitioners contend, will eliminate these concerns. *Petitioners maintain:* that there will be no adverse effect on the public interest; that, in fact, the removal of the concerns noted above, and the additional management freedom provided to the two railroads, will have a positive effect on their operations and on the public interest; and that, all things considered, the proposed transaction, by disentangling CSX and NS from unnecessary involvement in the operations and management of each other's Allocated Assets, will promote the procompetitive outcome of the Conrail Transaction. The proposed transaction, petitioners continue, will simply permit CSX and NS to acquire direct ownership and exclusive control of Conrail properties that they already own indirectly (through their joint ownership of Conrail) and that they are already authorized (pursuant to Decision No. 89) to operate and manage separately as part of their respective rail systems. The proposed transaction, petitioners argue, will do no more than extend and make more effective the division of the Conrail "Allocated Assets" between CSX and NS previously approved in Decision No. 89. Petitioners observe that, as a result of becoming the direct owners of NYC and PRR, CSX and NS will enjoy greater management control and independence over the assets of NYC and PRR, respectively (and, similarly, the proposed transaction will eliminate CSX's indirect involvement in major corporate actions affecting the PRR Allocated Assets and NS's equivalent role in major corporate actions affecting the NYC Allocated Assets).

### Effects on Shippers and Other Railroads

Petitioners contend that the proposed transaction will not affect rail operations or rail service, whether involving the NYC and PRR Allocated Assets or otherwise, and thus will have no adverse impact on shippers. Petitioners further contend that the proposed transaction will preserve the current competitive balance between CSX and NS, and enhance the efficiency and competitive independence of their rail operations; and, petitioners add,

although the proposed transaction will enhance rail competition generally, it will not affect the current competitive balance between or among CSX, NS, or any other rail carrier. The proposed transaction, petitioners explain, will merely bring petitioners' corporate structures more directly in line with the operational integration achieved under the authority conferred in Decision No. 89.

### Effects on Shared Assets Areas

Petitioners advise that the proposed transaction will not affect the ownership structure of or rail operations within the Shared Assets Areas in North Jersey, South Jersey/Philadelphia, and Detroit, and therefore will have no effect on the competitive rail service provided by CSXT and NSR in those areas. Petitioners advise that the involvement of both CSX and NS in the management of the SAAs, through their joint ownership and governance of Conrail and through the Shared Assets Areas Operating Agreements and other governing agreements, is an intrinsic and necessary element of the Shared Assets Areas. Petitioners add, however, that, although the proposed transaction will not impact the SAAs, the dynamic nature of the rail marketplace and the varying needs and demands of rail customers may require future adjustments in SAA rail operations and service. Petitioners observe that, as CSX and NS continue their efforts to provide competitive rail service more efficiently and effectively in the SAAs, opportunities to improve operational and managerial efficiency are likely to arise in a variety of contexts.

### Effects on Employees

Petitioners contend that the proposed transaction will have no adverse impact on their employees. None of their employees, petitioners explain, will be dismissed or displaced as a result of the proposed transaction, and no changes will be required to be made to existing labor agreements or to the compensation, benefits, or working conditions of their employees. Employees now working on the railroad assets owned by NYC and PRR, petitioners advise, will continue to work for the same employers,<sup>10</sup> and the labor agreements that now apply to these employees, and that will continue to apply, are and will be the CSXT and NSR labor agreements. Petitioners note that, pursuant to the *New York Dock*

<sup>10</sup> Petitioners indicate, however, that eight non-contract employees of NYC that now work on the NYC rail assets will become, after the proposed transaction, non-contract employees of a non-railroad affiliate of CSX.