

acquisition by CN of control of DMIR, and, therefore, are contingent upon approval of the primary application.

CN/GLT Common Control: Purposes Served. CN contends that its acquisition of control of the GLT Railroads would serve three primary purposes.

First, acquisition of control of DMIR would give CN full ownership of the route over which all CN traffic between Winnipeg and Chicago now moves. CN notes that, at present, it must operate by means of trackage rights granted by DMIR over the 17-mile segment between Nopeming Junction and South Itasca.

Second, CN contends that acquisition of control of DMIR would increase CN's operational flexibility by allowing CN to institute "directional running" on the two parallel Shelton Junction-Nopeming Junction lines, which would reduce transit time and increase service reliability over CN's entire Winnipeg-Chicago corridor. CN adds that, because DMIR's Shelton Junction-Nopeming Junction line has newer ties and newer and heavier rail than DWP's Shelton Junction-Nopeming Junction line, the transfer to the DMIR line of some traffic that now uses the DWP line would allow CN to avoid the capital expenditures that would otherwise be required for centralized traffic control (CTC) and extensions of sidings on the DWP line.

Third, CN contends that acquisition of control of the four GLT Carriers (DMIR, B&LE, P&C Dock, and GLF), which provide an important supply line for the North American steel industry, would enable CN to develop closer and more extensive relationships with companies in and serving that industry.

CN/GLT Common Control: Public Interest Considerations. CN contends that the CN/GLT Transaction would benefit the public interest by connecting two transportation systems that do not compete with each other but, rather, complement each other. The CN/GLT Transaction, CN argues, would strengthen the GLT Railroads by making them part of the rail system operated by CN, a successful rail carrier that would have the commitment and ability to make long-term investments in plant, equipment, and systems as they become needed. CN contends that the CN/GLT Transaction would enable CN to lower its maintenance costs and to improve transit times and reliability for shippers by using the parallel DWP and DMIR lines between Shelton Junction and Nopeming Junction for freight moving between western Canada and Chicago. And, CN adds, the CN/GLT Transaction would eliminate the need for interchange between CN and DMIR, thus permitting some single-line rail

operations to and from shippers on CN and on DMIR, which should result in reduced handling and shortened car transit times.

CN contends that, in view of the limited scope of the CN/GLT Transaction, the record of CN and its constituent railroads over the past decade in successfully implementing rail consolidations, the good operating condition of both systems, and the absence of any need for a sweeping "Day One" change in systems, the CN/GLT Transaction would present a low risk of implementation-related service difficulties.

CN contends that the CN/GLT Transaction would have no anticompetitive effects.

(1) *Horizontal Effects.* CN contends that the CN/GLT Transaction would not have adverse "horizontal" effects on competition. CN explains that, except for Virginia, MN, and Duluth, MN/Superior, WI, which each receive rail service from three or more rail carriers, the CN and GLT lines serve no common metropolitan areas or cities. CN further explains that there would be no 2-to-1 shippers (*i.e.*, there is no shipper now capable of receiving rail service from more than one independent railroad who would be reduced to having only one independent railroad available to it), and that, although there would arguably be one 3-to-2 shipper (*i.e.*, a shipper now capable of receiving rail service from three independent railroads that, as a result of the Transaction, would only have two independent railroads available), that shipper (Koppers, Inc., at Ambridge, MN) would not be adversely affected by the nominal reduction in horizontal competition.⁴

(2) *Vertical Effects.* CN contends that the CN/GLT Transaction would not have adverse "vertical" effects on competition. CN explains that there would be no harm to shippers from a reduction in source or geographic competition, because CN and the GLT Railroads do not serve competing origins or destinations. CN further explains that, although vertical effects might conceivably arise when a railroad with market power in one geographic market merges with a connecting railroad and, as a result of the merger, extends its market power to the connecting railroad's territory, closing gateways and thus foreclosing other connecting railroads from participating in movements to or from the first railroad's service area, vertical effects of this nature are unlikely as a matter of economic theory. CN adds that, in any

event, applicants would not engage in such foreclosure by closing efficient gateways; rather, applicants would keep all existing active gateways affected by the CN/GLT Transaction open on commercially reasonable terms, and applicants would waive any defenses they might otherwise have as a result of the CN/GLT Transaction, under the Board's general policy that it does not separately regulate bottleneck rates, in circumstances where a shipper prior to the CN/GLT Transaction would have been entitled to regulation of a bottleneck rate under the Board's "contract exception" to the general rule.

Special Case: Eveleth Mines, LLC, d/b/a EVTAC Mining. CN advises that, until May 2003, Eveleth Mines, LLC, d/b/a EVTAC Mining (EVTAC), operated a facility at Fairlane, MN (11 miles south of Virginia, MN), that processed raw iron ore into taconite pellets; that, although only DMIR was physically capable of carrying iron ore to, or processed taconite pellets from, the loading and unloading tracks at EVTAC's Fairlane facility, both CN and DMIR were capable of carrying general freight (*i.e.*, commodities other than iron ore and taconite) to and from other tracks at that facility; and that, therefore, if EVTAC had not closed the Fairlane facility in May 2003, that facility would have been regarded, as respects the CN/GLT Transaction, as a "1-to-1" facility for iron ore and taconite and a "2-to-1" facility for general freight. CN also advises, however, that it might be argued that CN could have built in to the Fairlane facility to handle its iron ore and taconite freight, or that EVTAC could have built out to CN to obtain competitive service from CN as respects EVTAC's iron ore and taconite movements. CN further advises: That, if the EVTAC facility should reopen and require rail service, CN would be prepared to offer competitive access to another railroad for general freight, so as to restore two-railroad competition for that traffic; that, to this end, CN intends, should EVTAC reopen, to grant trackage rights access to EVTAC to another railroad, or, if traffic volumes are too low to justify trackage rights operations, to provide haulage service or switching at a rate that would not disadvantage the other railroad; and that, to replicate any build-in or build-out opportunity that now exists as respects iron ore and taconite traffic, CN would also be prepared to provide another railroad access to the build-in or build-out point via trackage rights over the DWP line. CN adds that, although it would expect to negotiate the terms of such access (either as respects general freight or as

⁴ See CN-2 at 53. See also CN-2 at 68 & n.3.