



What the Union Pacific–Norfolk Southern Merger Reveals About Rail Merger Policy

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The proposed merger between the Union Pacific (UP) and Norfolk Southern (NS) railways would create the first truly transcontinental freight railroad in the United States. Unsurprisingly, the transaction has drawn scrutiny from the Surface Transportation Board (STB), a federal agency charged with ensuring that railroad mergers do not reduce competition, harm captive shippers that have no alternatives to the single railroad serving them, or degrade service and safety.

The central policy question raised by the UP–NS proposal is not simply whether the merger should be approved or rejected, but whether the existing framework for reviewing railroad mergers is suited to modern freight transportation markets. That framework remains heavily focused on preserving competition among railroads themselves, but rail increasingly competes most directly with other modes of transportation—especially trucking—and merger approvals rely on behavioral conditions that are costly and difficult to enforce over time. The role of intermodal competition is of particular importance.

The UP–NS case exposes two unresolved tensions in rail merger policy. First, consolidation that integrates complementary rail networks may strengthen rail’s ability to compete with trucking, potentially improving transportation efficiency and overall welfare. Second, preserving rail-to-rail competition through perpetual behavioral remedies requires a degree of regulatory monitoring and enforcement that may exceed the STB’s practical capacity. How policymakers resolve these tensions will shape not only this merger, but the future of rail merger policy more broadly.

This brief uses the UP–NS proposal to assess whether existing rail merger policy appropriately accounts for intermodal competition and institutional constraints. It explains why rail mergers are reviewed differently from mergers in other industries, examines the competitive constraints and efficiencies relevant to modern rail markets, evaluates the gateway problem and the limits of behavioral remedies, and briefly addresses labor and safety considerations. It concludes by

exploring a bigger role for the Department of Justice (DOJ) and drawing broader implications for how rail merger policy could better align competitive goals with realistic enforcement capacity.

Why Rail Mergers Are Reviewed Differently

Railroad mergers are reviewed under a legal and institutional framework that differs markedly from merger review in most other industries. Whereas most mergers are evaluated by the DOJ or the Federal Trade Commission under antitrust statutes focused on competition and consumer welfare, railroad mergers are reviewed exclusively by the STB under a broader “public interest” standard.¹

The broad approach is a legacy of an earlier era, when railroads were viewed as financially fragile and socially essential infrastructure. Policymakers prioritized system stability, service adequacy, and labor protection, often at the expense of competition. The result was a merger review process that explicitly weighed noncompetitive considerations and sought to protect existing carriers from competitive harm.

The Staggers Rail Act of 1980 fundamentally altered the industry. Deregulation introduced pricing flexibility, contractual freedom, and greater reliance on market forces, transforming railroads into consistently profitable and productivity-enhancing firms. Rail mergers, alongside deregulation, contributed to substantial cost savings and operational improvements beginning in the 1980s.²

Yet the institutional structure for merger review did not change significantly. Although the Staggers Rail Act added competition as an explicit factor in merger review, the STB continues to apply a public interest test that lacks the clear analytic benchmarks used in modern antitrust enforcement.³ Congress has repeatedly affirmed the STB’s exclusive authority over rail mergers, leaving review concentrated in an agency with broad discretion but limited resources.⁴

A congressionally mandated study completed in 2015 concluded that there is no longer a sound economic justification for treating rail mergers differently from mergers in other industries.⁵ It recommended replacing the public interest standard with a competition-based framework like that used by antitrust agencies. Such a framework would be more predictable, with lower administrative costs and better evidentiary standards. The study’s recommendation has not been implemented. As a result, the STB remains responsible for evaluating complex transactions while relying heavily on conditions that require long-term oversight.

Given its analytic tools and experience, the DOJ may be better positioned than the STB to assess the competitive and efficiency effects of large rail mergers—a possibility Congress may wish to reconsider. The STB has expressed the view that preserving competition “should be central to merger review” and that other concerns have become less important, if they matter at all.⁶

Competitive Constraints and Efficiencies

The UP–NS merger is best understood as an end-to-end integration of largely complementary networks rather than as a horizontal merger eliminating extensive head-to-head competition. The two railroads overlap on relatively few routes, and where overlap exists, the applicants have proposed commitments to preserve access for competing carriers.⁷

This distinction matters economically. Railroads exhibit strong economies of density—lower average costs as traffic volume increases on a given network—but limited economies of system size. In simple terms, busier railroads tend to be more efficient, while larger railroads are not necessarily so. Horizontal mergers that increase traffic density on existing lines are more likely to generate efficiency gains than mergers that merely expand geographic reach.

Most of the mergers the STB has approved since 1980 have been end-to-end.⁸ End-to-end integration can reduce transaction costs associated with interline service, including coordination failures, scheduling delays, administrative complexity, and congestion at interchange hubs. These frictions are especially significant for long-distance shipments, where rail competes most directly with trucking on reliability and transit time rather than price alone.

Since deregulation, rail merger review has focused heavily on competition among railroads: the number of carriers serving a route, the presence of parallel rail lines, and the risk that consolidation will create captive shippers.⁹ These considerations remain relevant, but they capture only part of the competitive environment facing railroads today.

For many shippers, the most important alternative to rail is not another railroad, but trucking. In some corridors, barge transportation also provides a viable option. Competition among producers across regions constrains the pricing power of any individual carrier. Evidence supports the assertion that rivalry rather than collusion predominates when rail competitors confront relatively high fixed costs and robust product, geographic, and intermodal competition.¹⁰

Intermodal competition has grown more important as trucking has gained market share, aided in part by public investment in highways and waterways that lowers costs for competing modes. Rail's share of freight transportation has stagnated in recent years, even as demand for long-distance freight has increased.¹¹

A fully integrated transcontinental rail network could improve rail's competitive position by offering shippers a single point of pricing, scheduling, and accountability for coast-to-coast service. By reducing uncertainty and administrative complexity, such integration could shift traffic from trucks to rail on routes where trucking currently has the advantage in reliability despite higher per-ton-mile costs.

From a welfare perspective, stronger intermodal competition can benefit shippers and consumers even if it modestly reduces rivalry among railroads on selected routes. It could also benefit the

broader public by substituting rail for truck transport of freight. Truck transportation generates substantial external costs, including highway congestion, pavement damage, accidents, and emissions, many of which are only partially internalized through fuel taxes and user fees.¹² A merger that intensifies competition between rail and truck transportation may therefore enhance overall welfare even if it reduces rail-to-rail competition on specific routes. Too much emphasis on rail-to-rail competition in merger review could reduce the number of welfare-improving mergers.

In past merger assessment, the STB and the Interstate Commerce Commission (ICC) as its predecessor have been more lenient in approving rail mergers than has the DOJ. The DOJ has disapproved of rail mergers that the ICC or STB approved, among them the merger between UP and Southern Pacific, which was approved in 1996. The DOJ warned of collusion if the number of competing railroads in the western US were to drop to two because of this merger.¹³ By contrast, the ICC/STB has argued that in many freight markets, traffic may not be sufficient to profitably support more than two competing rail carriers.

Beginning in 2001, the STB instituted new rules for major railroad mergers, stating that “future merger applicants will be required to bear a heavier burden” to show that the merger is consistent with the public interest.¹⁴ This new policy places more emphasis on showing that a merger will enhance competition. The STB’s approach to merger review also emphasizes preventing or redressing service disruptions that can arise following a merger. This emphasis has been influenced by declines in the reliability of rail service in the immediate aftermath of some mergers, such as the UP–Southern Pacific merger.

The Gateway Problem, Behavioral Remedies, and Enforcement Limits

The most significant competitive concern raised by the UP–NS merger involves former interchange points, or gateways, where shippers historically could choose among multiple railroads for portions of a route. Consolidation could, in principle, allow the merged firm to raise prices, degrade service, or foreclose routing options at these locations, rendering some shippers newly captive.

To address this risk, the applicants have proposed behavioral remedies, including permanent interline access and commitments to provide “commercially reasonable” pricing for shippers that continue to use competing carriers.¹⁵ Such conditions are common in rail merger approvals and are intended to preserve routing choice while allowing efficiency gains from integration.

In theory, these commitments can mitigate competitive harm. In practice, they raise persistent problems of enforceability.

The decisive issue for policymakers is not whether appropriate conditions can be articulated at the time of approval, but whether those conditions can be monitored and enforced effectively over time. Behavioral remedies require continuous oversight, detailed information, and credible

benchmarks—none of which are easy to sustain. Terms such as “commercially reasonable rates” and “preserved access” are inherently vague, effectively shifting core pricing and service decisions from markets to regulators.

Determining compliance requires detailed longitudinal data on pricing, service quality, and routing decisions, as well as credible counterfactuals against which to assess performance. Even with good data, enforcement often depends on complaints from shippers or rival carriers, who may face informational disadvantages or fear retaliation. Monitoring and enforcement also impose ongoing costs on regulators and taxpayers long after public attention has faded.

This challenge more generally is not unique to railroads. Behavioral remedies substitute continuous oversight for structural competition. Once the merger is approved, the regulated firm retains strong incentives to exploit ambiguities in its obligations, while enforcement incentives may weaken over time.

Recognizing these limits does not imply that consolidation should be prohibited. Rather, it underscores the need to align merger policy with institutional realities. The problem is not with the design or intentions of the remedies but with the mismatch between their complexity and STB enforcement capacity.

Labor, Safety, and Adjustment Costs

Labor opposition has featured prominently in the debate over the UP–NS merger. Unions have expressed concern that operational efficiencies will reduce employment or force workers into less desirable positions. The applicants argue that increased traffic volumes will generate net job growth over time, and they have offered commitments to protect workers from involuntary furloughs.¹⁶

Labor effects are important policy considerations, but they are analytically distinct from the competitive merits of the merger. Rail consolidation since deregulation has coincided with both productivity gains and workforce reductions, but also with expanded output and lower real shipping costs.¹⁷

Safety concerns similarly warrant careful attention, particularly given recent high-profile derailments involving Norfolk Southern. A merger does not fundamentally alter a railroad’s incentives to invest in safety, which are shaped by liability, regulation, and reputational risk. Including labor and safety obligations in STB merger review further strains the agency’s monitoring capacity.

The STB’s coordination with the Federal Railroad Administration on safety integration planning is therefore appropriate. The key is ensuring that operational changes resulting from mergers do not compromise safety or interfere with passenger rail operations.

Implications for Rail Merger Policy

The UP–NS proposal illustrates a broader challenge for rail merger policy. Preserving competition through perpetual behavioral remedies requires sustained regulatory oversight that may be costly, imperfect, and difficult to maintain. At the same time, categorically opposing consolidation risks entrenching a rail network that is less capable of competing with trucking.

If the STB lacks the institutional capacity to enforce gateway access and pricing commitments over the long run, the policy response need not be blanket opposition to mergers. Alternatives include strengthening enforcement mechanisms, increasing pricing transparency as a partial substitute for direct regulation, or reconsidering the reliance on behavioral remedies altogether. Policymakers should also weigh whether the benefits to captive shippers justify the ongoing costs of expanded regulatory monitoring.

How much weight the benefits to captive shippers receive in a decision about devoting additional resources to ongoing regulatory monitoring is ultimately a political question. If the STB has evidence on how well either of these railroads has complied with gateway access or pricing commitments in past mergers, that might provide useful information to consider in a decision about resources to devote to regulatory monitoring. But experience with STB rate cases suggests that procedures for protecting the interests of captive shippers are costly and have been ineffective except for cases involving large shippers.¹⁸ Devoting additional resources to ongoing regulatory monitoring involves a high price tag and limited incremental benefits for a government that is already spending far beyond its means.

It may be preferable to rely more heavily on intermodal competition and market contestability to discipline prices, rather than attempting to replicate competitive outcomes through regulation. Markets evolve in ways regulators cannot fully anticipate, and shippers that appear captive today may develop new options tomorrow.¹⁹

Conclusion

The proposed merger between Union Pacific and Norfolk Southern presents both risks and opportunities. If poorly executed or weakly enforced, it could reduce competition at key points in the rail network. Evaluated with appropriate attention to intermodal competition and the limits of regulatory oversight, however, the merger could enhance competition in freight transportation by making rail a more effective alternative to trucking.

Based on the 2015 study mentioned above, Congress should consider a statutory change that would give the DOJ a direct role in rail merger review. The DOJ is more likely than the STB to focus narrowly on preserving competition. But it has also been skeptical of the STB's assessment that two railroads competing on any given route is sufficient. If it took the lead in merger approval, the DOJ would likely deemphasize preventing or redressing service disruptions that can arise following

a merger. The STB could play a subordinate role and retain the authority to require merging railroads to take steps to prevent or correct such effects.

The task of merger policy is not to preserve idealized industry structures through indefinite oversight. It is instead to promote competitive outcomes that can be sustained within realistic institutional constraints. The UP–NS case suggests that doing so requires a more explicit recognition of intermodal rivalry and a candid assessment of what regulatory enforcement can—and cannot—achieve.

About the Author

Tracy Miller is an economist based in Washington, DC. He formerly served as senior research editor at the Mercatus Center. He writes and does research on various topics such as the economics of regulation, technology policy, fiscal policy, and transportation policy. He received his PhD from the University of Chicago.

Notes

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1. The DOJ can and often does advise the STB, but the STB does not always follow the DOJ's advice. For more about the public interest standard, see Robert E. Gallamore and John R. Meyer, *American Railroads* (Harvard University Press, 2014), 258.
2. E. R. Berndt, A. F. Friedlaender, J. S. W. Chiang, and C. A. Velluro, "Cost Effects of Mergers and Deregulation in the US Railroad Industry," *Journal of Productivity Analysis* 4, no. 1/2 (1993):127–44. See also John Bitzan and Wesley Wilson, "Industry Costs and Consolidations: Efficiency Gains and Mergers in the US Railroad Industry," *Review of Industrial Organization* 30, no. 2 (2007): 83.
3. Gallamore and Meyer, *American Railroads*, 258.
4. Frank Wilner, "Why STB—Not DOJ—Controls Railroad Merger Decisions," *Railway Age*, August 1996, 9.
5. Transportation Research Board, *Modernizing Freight Rail Regulation*, Special Report 318, 2015, 131.
6. Transportation Research Board, *Modernizing Freight Rail Regulation*, 107.
7. "Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company," Railroad Control Application, Docket No. FD 36873, December 19, 2025, <https://www.stb.gov/wp-content/uploads/UP-NS-Application-FD-36873.pdf>.
8. Gallamore and Meyer, *American Railroads*, 258.
9. Daniel Madar, "Rail Mergers, Trade and Federal Regulation in the United States and Canada," *Publius: The Journal of Federalism* 32 (Winter 2002): 143–59. A captive shipper is someone who has no alternative to transport freight other than via the incumbent railroad.
10. Wilner, "Why STB—Not DOJ—Controls Railroad Merger Decisions."

11. Rob Russell, "Rail Growth from Conversions: Projected vs. Realistic," *Railway Age*, January 15, 2026.
12. D. J. Forkenbrock, "Comparison of External Costs of Rail and Truck Freight Transportation," *Transportation Research Part A: Policy and Practice* 35, no. 4 (2001): 321–37. See also Michael F. Gorman, "The Economic Costs of Public Subsidies for Freight Transportation," *Information Technology and Innovation Foundation*, September 8, 2025.
13. Wilner, "Why STB—Not DOJ—Controls Railroad Merger Decisions."
14. STB, "Surface Transportation Board Issues New Rules Governing Major Railroad Mergers & Consolidations," news release no. 01-24, June 11, 2001, <https://www.stb.gov/wp-content/uploads/archived-press-release/htmls/72AC2E784AE07A3485256A680050E630.html.pdf>.
15. "Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company."
16. Kelly Cloonan, "Union Pacific, Norfolk Southern File for Merger Approval from Surface Transportation Board," *The Wall Street Journal*, December 19, 2025.
17. Frank Wilner, "The Ghost of Mergers Past," *Railway Age* 201 (2000): 35–44.
18. Tracy Miller, "The Case for Continued Light-Touch Regulation of Freight Railroads" (Mercatus Policy Research, Mercatus Center at George Mason University, December 2022).
19. For a recent discussion of the dynamic competition paradigm, see David Teece, "Understanding Dynamic Competition: New Perspectives on Potential Competition, 'Monopoly' and Market Power," *Antitrust Law Journal* 3 (2025): 735–804.