

## APPEALS COURT UPHOLDS DECISION APPROVING BURLINGTON NORTHERN-SANTA FE RAILROAD MERGER

FOR RELEASE  
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### APPEALS COURT UPHOLDS DECISION APPROVING BURLINGTON NORTHERN-SANTA FE RAILROAD MERGER

Surface Transportation Board (Board) Chairman Linda J. Morgan today announced two important decisions by the United States Court of Appeals for the D.C. Circuit denying appeals to the former Interstate Commerce Commission's (agency) decision approving the merger of the Burlington Northern (BN) and The Atchison, Topeka and Santa Fe (Santa Fe) railroad companies In the proceeding entitled Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549 (issued by the agency on August 23, 1995).. The court addressed a number of significant competitive issues in resolving these appeals Competition is one of the issues the agency was required to consider in deciding whether or not to grant the rail merger, and whether or not to impose protective conditions. In the first case, the court denied an appeal by various coal shipping interests. The court dealt first with the arguments of the one petitioner, the Western Coal Traffic League (League), that raised arguments relative to horizontal competition. The League argued generally that its members would be harmed by a reduction in the number of Class I rail carriers capable of serving the eight principal geographic basins that originate western coal. The court affirmed the agency's conclusion that the League's market definition was flawed because the quality and types of coal differ among the various basins. In the only instance where BN and Santa Fe competed to provide service from a particular coal mine, that mine was also served by the Southern Pacific railroad (now Union Pacific).

The remaining five petitioners raised arguments concerning vertical integration. Those petitioners claimed that Santa Fe, the sole carrier serving several destination electric utilities, would be increasing its market power over coal shippers by combining with one of the origin carriers serving a coal source. The agency rejected that argument based largely on what is known as the "one-lump" theory. The court described that theory as follows:

"Because a monopolist at the end stage of production is in

a position to capture that entire profit, integration backwards upstream, even when accompanied by monopolization of the earlier stages (which hasn't happened here) normally does not enable it to raise the profit-maximizing price and thus inflicts no harm on the ultimate consumer."

The court concluded that the one-lump theory is "a broadly accepted economic proposition, whose internal logic and predictive power petitioners did not, as a general matter, contest." The court held that the petitioners failed to present any theory or any persuasive evidence to show that they would be harmed, and that the agency was justified in not imposing the special protective conditions that petitioners sought.

In the second case, the court denied an appeal by two shortline rail carriers. Those carriers claimed that the two protective conditions imposed for them by the agency were insufficient and that the agency should have imposed additional conditions modifying their contractual relationships with BN and giving them more convenient access to other Class I rail carriers. The court held that the agency's refusal to impose such additional conditions was reasonable because petitioners were not really harmed by the merger (as conditioned) but rather were merely seeking to improve their situation.

The court's decisions were issued in Western Resources, Inc. v. STB, No. 95-1435, decided March 28, 1997, and in Grainbelt Corporation, et al. v. STB, No. 96-1006, decided April 4, 1997.

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