***By** Chris Jahn, President and CEO, American Chemistry Council; Chet Thompson, President and CEO, American Fuel & Petrochemical Manufacturers; **and** Eric Byer, President and CEO, Alliance for Chemical Distribution*

When it comes to its proposed merger with Norfolk Southern, Union Pacific seems increasingly intent on monopolizing not only the nation's freight rail system, but the debate over whether the deal is good for America.

UP executives have attacked trade associations for speaking out against the merger, arguing that because the railroad does not directly serve our organizations, we should not have a voice in the debate.

They have it backwards.

We don't serve Union Pacific. We serve our members. And our members, companies that manufacture essential products, employ Americans and depend on reliable freight rail service every day, have directed us to oppose this merger.

That's our job.

And recent rhetoric from Union Pacific leadership demonstrates exactly why companies need organizations like ours to speak on their behalf. UP CEO Jim Vena reportedly suggested at a rail shipper conference that customers who oppose the merger could see their rates go up.

Think about that for a moment. A company seeking to control nearly half of all rail traffic in the U.S. is threatening to use its market power to punish any customers who oppose the deal.

As **Eric Byer of the Alliance for Chemical Distribution** has put it:

> *“The fear of retaliation is real, and many customers cannot afford to risk their business relationships by speaking out against the merger. That’s why trade associations like ACD have a responsibility to represent their members’ interests and ensure their concerns are heard. No business should have to choose between protecting its livelihood and speaking up about a merger that could impact its future.”*

The role of a trade association is particularly important when individual companies fear that speaking publicly could damage an important commercial relationship. Attempting to intimidate critics does not answer the serious questions surrounding this merger. It reinforces them.

Chris Jahn of the American Chemistry Council put it this way:

> *“Union Pacific may want to monopolize the debate on the airwaves, but we're focused on making sure President Trump, the STB, and the American voters know face-to-face this is a bad deal for America. The consequences of less competition, higher costs, and worsening service*

are going to impact not only our industry, but the American people who rely on our products."

It is not surprising that opposition extends well beyond our three associations. Manufacturers, farmers, energy producers, labor organizations, transportation groups, state officials and members of Congress have all raised concerns.

There are good reasons why. There is plenty not to like about the proposed merger.

First, decades of rail consolidation have already reduced competition and raised costs. Four major railroads control roughly 90 percent of U.S. freight rail traffic, while inflation-adjusted freight rail rates have increased 44 percent over the past two decades. This merger would concentrate even more power in even fewer hands.

Second, the proposed deal harms competition and fails to protect shippers. The merger would reduce transportation options across the combined network. But many of UP and NS's proposed concessions apply to only a narrow group of customers and eventually expire. Temporary promises are no substitute for permanent competition.

Third, history gives customers reason to be skeptical of those promises. Nearly 30 years after the UP-Southern Pacific merger, shippers are still fighting for competitive access promised as part of that deal. That merger also produced massive network disruption. Customers have seen this movie before. They have little interest in a sequel.

Finally, customers shouldn't have to accept the risks of a massive merger to get better rail service. Many of the efficiencies UP and NS tout can be pursued through partnerships, better interchange and closer coordination between the railroads without eliminating an independent competitor.

As **Chet Thompson of American Fuel & Petrochemical Manufacturers** put it:

> *“America's refiners and petrochemical manufacturers need more rail competition, not less. As some of the biggest customers of Class 1 freight railroads in the country, our members have seen service decline and costs rise substantially as rail competition has eroded. Union Pacific can disagree with our position on their proposed merger, but making sure these concerns are heard is precisely our job. And the record makes it clear that this merger will harm competition and is not in the public interest. The stakes are too great to dismiss legitimate concerns of key rail shipper groups.”*

The Surface Transportation Board's rules require a major rail merger to enhance competition and serve the public interest. That should be the test, not whether regulators can find enough conditions to make a bad deal slightly less harmful.

The fundamental question is simple: Does merging two railroads into one enhance competition?

Our members don’t believe it does. And this merger will have ramifications far beyond the railroad

industry.

America is working to rebuild manufacturing, strengthen domestic supply chains and compete with China. Those goals require access to reliable and competitive freight rail service, not more consolidation.

Union Pacific can criticize trade associations. It can dismiss its critics. It can make new promises about what this merger might deliver.

What it cannot do is make the legitimate concerns of its customers disappear.

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Media Contact:

Rachel Farbman

media@afpm.org

202.457.0480

About AFPM Editorial:

The American Fuel & Petrochemical Manufacturers (AFPM) is the leading trade association representing the makers of the fuels that keep us moving, the petrochemicals that are the essential building blocks for modern life, and the midstream companies that get our feedstocks and products where they need to go. We make the products that make life better, safer and more sustainable — we make progress.

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