

NACD KEY ISSUE: RAIL COMPETITION

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Addressing the problem of captive shippers being subject to unreasonable prices and conditions from railroads that have monopolies in key areas.

BACKGROUND

Over the past 30 years, there has been major consolidation throughout the railroad industry. Today, there are only 7 major freight railroads operating in the United States, down from 40 in 1980, when the Staggers Rail Act was enacted into law. The purpose of the Staggers Act was to deregulate the rail industry in order to strengthen it and make it more financially viable. At the time, the Interstate Commerce Commission (ICC) was charged with protecting customers served by only one railroad, known as captive customers. In 1995, Congress abolished the ICC and established the Surface Transportation Board (STB) as an agency within the Department of Transportation to review all railroad mergers, rates, and service issues.

Over the years, both the ICC and the STB have made several rulings in favor of railroads that have resulted in very little to no competition throughout the rail industry. During the 1980s, the ICC adopted an extremely expensive and unworkable rate challenge process for shippers and also allowed rail consolidation and the abandonment of tracks. Throughout the 1980s and 1990s, both the ICC and the STB approved the creation of short line railroads that were allowed to lease track from major railroads under the condition that they delivered and received traffic only from that railroad. In 1996, the STB ruled that railroads have the right to deny their captive customers access to a competing railroad, a ruling now known as the “bottleneck” decision.

Today, with only seven major freight railroads and a situation where these railroads have monopolies in their areas, freight rail customers in a variety of industries, including the chemical industry, are subject to exorbitant prices, unfavorable terms, and poor service. **To address this problem, legislation is pending in Congress to eliminate the antitrust exemption** that the railroads currently enjoy. Additional legislation is pending to reform the STB so that competition in the industry is promoted and rail customers are protected from monopoly power.

LEGISLATIVE UPDATE

On March 3, 2011, the Senate Judiciary Committee approved S. 49, the Railroad Antitrust Enforcement Act, sponsored by Senator Herb Kohl (D-WI). This legislation would bring railroad mergers and acquisitions under the purview of the Clayton Act, which would allow the federal government, state attorneys general, and private parties to file suit to enjoin anti-competitive mergers and acquisitions. It would also restore the review of these mergers to the Justice Department and the Federal Trade Commission (FTC). It would also eliminate the exemption that prevents FTC scrutiny of railroad common carriers and the antitrust exemption for railroad collective ratemaking. It would allow state attorneys general and other private parties to sue railroads for treble damages and injunctive relief for violations of the antitrust laws, including collusion that leads to excessive and unreasonable rates. The legislation has not yet been reintroduced in the House.

On January 25, 2011, Senate Commerce, Science, and Transportation Committee Chairman John Rockefeller (D-WV) introduced S. 158, the Surface Transportation Board Reauthorization Act. S. 158 would strengthen STB oversight of the railroad industry by updating rail transportation policy, giving the Board independent investigative authority, and creating a strong rail customer advocate to help resolve shippers' concerns. It would further improve shippers' access to regulatory relief by reforming the processes through which rate complaints are resolved, requiring railroads to provide service standards to shippers, requiring the STB to review current class exemptions for unregulated railroad traffic, and by setting lower fees for filing complaints at the STB. In addition, the bill would help to increase rail competition by requiring major railroads to quote "bottleneck rates." Finally, it would increase STB scrutiny of future railroad mergers for competitive, service, and environmental effects. A companion House bill to S. 158 has not yet been introduced.

NACD POSITION

Chemical distributors depend on rail service to send and receive shipments. For years, these companies have been subject to large and frequent price hikes and undependable service. The increased costs and shipment delays caused by the current rail situation are ultimately passed down the supply chain, raising prices to the consumer level.

Many chemical distributors need rail service to safely and effectively transport large quantities of hazardous materials and have no choice but to accept the terms demanded by the railroads. Because many areas are served by only a single railroad, companies do not have the option of choosing another rail carrier. In many cases, switching to trucks would not be a viable option. Rail tank cars hold significantly more material than cargo trucks, so use of rail is more efficient and reduces the amount of product handling such as loading and unloading, which is when many incidents occur.

NACD supports both S. 49, the Railroad Antitrust Enforcement Act and S. 158, the Surface Transportation Board Reauthorization Act. These bills together would provide needed recourse to freight rail customers that have been subject to increasingly high prices and poor service because of the railroads' monopoly in so many service areas. Removing the railroads' antitrust exemption and reforming the STB to address the needs of rail consumers would lead to more competitive pricing and reliable service.