

Testimony of Rep. Rodney Alexander

Railroad Antitrust Enforcement Act of 2009,
H.R. 233

Judiciary Committee
Subcommittee on Courts and Competition Policy

May 19, 2009

I would like to thank the Chairman and Ranking Member for granting me the opportunity to testify before this subcommittee. I would also like to thank the entire committee for considering HR 233, the Railroad Antitrust Enforcement Act of 2009. This bipartisan legislation is crucial to leveling the playing field by providing competition to the rail industry.

I would like to be clear in stating that this bill is not about “reregulation” of the railroad industry. The bill does nothing of the sort. It simply places the rail industry under the same antitrust laws that every other industry such as energy, telecommunications, or even other forms of freight transportation, including trucking and aviation, faces. These laws, of course, are the nation’s basic laws for ensuring competitive markets.

As you know Mr. Chairman, thirty years ago the railroad industry was failing and Congress removed much of the regulatory oversight over the industry and merger authority was transferred to the industry’s only regulator, the Surface Transportation Board. Unfortunately at that time Congress did not remove the antitrust exemptions that the industry had accumulated through various acts of Congress during the 1900s. Since 1980, the railroad industry has been able to use the antitrust exemptions that they still currently enjoy to consolidate over 40 major Class 1 railroads into four major carriers that today carry 90% of our nation’s freight rail.

The problem that this poses is that freight rail customers are subject to abusive practices without the protection of our nation’s antitrust laws. This problem is now evident not only to consumers, but to the Department of Justice as well. In her Senate nomination hearings, Christine Varney, who is now the chief antitrust enforcer at the Justice Department, recognized the need for competition in the rail industry when she stated that she did support this bill.

Shippers continue to report skyrocketing rates and unreliable service. Louisiana is the second largest chemical manufacturing state in the nation. As such, the chemical industry provides significant economic benefits to the state and to the nation as a whole. I think it’s important to remind ourselves that over 96% of all manufactured goods are directly touched by the business of chemistry, making this industry an essential part of every facet of the Louisiana and national economy, but these businesses do not see the railroads as a reliable source of transportation especially when you compare that service to the rates they are forced to pay.

The chemical companies are not alone. Utility companies are being forced to raise the cost of electricity provided to the businesses and households that they serve. Recently in Florida, the railroads have doubled its charges to ship coal. It is estimated that this rate hike will cause consumers to pay an additional \$100 million in 2009. This is also happening in manufacturing, agriculture, timber and paper companies that are all facing rising rates that they are forced to pass on to their consumers.

These high rate hikes can be seen in the earnings that are being reported by the railroad industry. The earnings posted for the final quarter, October through December of 2008, report revenues are up, while volume in fact has decreased.

Representative Tammy Baldwin has introduced HR 233, the Railroad Antitrust Enforcement Act of 2009 to level the playing field in the railroad industry by doing the following

First, it eliminates the antiquated railroad antitrust exemption that has no current public policy justification and is protecting anticompetitive conduct by the railroad industry.

Second, the bill permits the Justice Department and the FTC to review railroad mergers under the antitrust law standard to ensure competitive markets.

And finally, the bill allows state Attorneys General and other private parties to sue for damages and to halt anticompetitive conduct, both of which are not currently allowable under federal law.

In March of this year, the Senate Judiciary Committee unanimously passed this same legislation by a vote of 14 – 0.

Some have argued that this legislation would result in overlapping dual regulation by antitrust courts and the STB, but in fact they would not be overlapping nor would they conflict. This legislation would only treat railroads like every other industry in the U.S.

Rail Transportation that is subject to STB jurisdiction is the only major federal regulated activity that operates outside of U.S. antitrust laws. All other U.S. industry activities that are subject to federal economic regulation are also subject to the antitrust laws that protect consumers from monopolization, agreements in restraint of trade, and mergers that may lessen competition. This should also be the same for the railroad industry.

While this bill is by no means the final solution in perfecting the railroad industry, it is a giant step forward in the right direction. It is not an attack on railroad companies, it is simply a necessary measure in ensuring a level playing field for all.

Again, I thank you Mr. Chairman for allowing me to testify in support of this important piece of legislation and I look forward to working with you and all the members of the committee as we hope to move forward toward full consideration of this bill this year.