

The Railroad Competition Act of 2005: fine tuning capitalism to help remotely located railroad shippers

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Rail transit's inherently limited routing renders it a unique mode of transportation. Oceans and skies are boundless; roads run virtually everywhere. But trains go only to and from those limited places where at least one railroad has seen fit to invest big bucks laying track and conducting operations. Notwithstanding that limitation, rail carriage is the most practical and economical mode for many segments of America's agriculture and heavy industries.

Transportation capitalism has been shaped and formed through an evolutionary process of deregulation in all modes aimed at allowing market factors to do their natural thing. But the law of supply and demand, when left to its own forces, can have some pretty inequitable effects on shippers who have only one service option.

"Captive shippers," i.e., railroad customers whose geographical location or particularized transportation needs leaves them essentially at a single carrier's mercy, present an example of our economic system's downsides. Often remotely located agricultural or mining concerns, captive shippers have long complained about the effects of no railroad competition in their regions. Unchallenged freight rates are higher per rail/mile – often significantly so – than in areas where carrier competition forces rates down. This imposes disadvantages on out-of-the-way shippers as compared to their competitors who happen to do business in more heavily traveled locales.

The problem has been compounded with mergers of Class I railroads, the big boys of train carriage which haul most interstate freight. In the days of pre-deregulated transit, over 40 Class I railroads operated trains – often in coordination with each other – over the vast network of tracks that criss-cross the nation. But with the business advantages offered by leveraged economic freedom over the past two decades, coupled with liberally granted government approval of carrier marriages, only four Class I's now service America's rail shippers.

The U.S. Surface Transportation Board (STB), the federal agency that replaced the Interstate Commerce Commission with regard to most railroad regulation, attends to the intricacies of railroad economics. Among numerous other things, STB serves as a forum for shipper/carrier rate disputes. Legislation and STB regulatory rule making has been aimed at alleviating captive shippers' economic plight, but this specially-challenged transportation consumer and its trade organizations have been less than satisfied with the actual results.

Renewing stalled legislation that commenced in 2003, Congress is now considering The Railroad Competition Act of 2005 ("the Act," which is co-sponsored by numerous representatives and senators). The idea is to structure a system providing resources and

procedural mechanisms to ensure railroads don't price gouge their option-challenged patrons.

A big part of the problem, urge captive shippers, is that STB has issued some bad decisions over the past decade, effectively denying them a fair economic shake. If passed, the Act would both direct and empower STB to engender railroad competition and do everything possible to ensure captives are quoted and charged reasonable rates. Envisioned is a whole new methodology for determining reasonableness, taking into consideration railroads' actual operating costs in the formation of a new rate standard.

The Act would provide a specialized forum for aggrieved captives to complain about unreasonable rates by way of STB-sanctioned arbitration (as opposed to the multi-million dollar litigation they've had to endure when suing allegedly rate-extortionist carriers in court). Proposed law would require railroads to charge captives reasonable rates and maintain good service, including supplies of enough cars to meet varying needs (a cause of another captive-shipper headache). In squabbles over what's "reasonable," train operators could still rebut by pointing to the higher cost of servicing remote areas; how railroad profits lag behind those of all other modes; and how the Act would be "re-regulation" of the railroad industry in an era premised and guided by decreasing government oversight.

The Act contains provisions whereby STB could declare a state or smaller area essentially a carrier-competition disaster area with urgently needed attention to captive shipper freight rates. These could be remedied by appropriate action and/or targeted federal investment. The idea is something akin to legislated competition in a sector where natural economic forces are missing.

The Act also would empower STB to eliminate "paper barriers," created typically when a Class I prevents other carriers from providing more efficient service. For example, two smaller railroads operating through a Class I's terminal or other asset might be prohibited by paper barrier from joining their operations and offering shippers otherwise unavailable service options. The bill earmarks \$35 billion for railroad infrastructure improvement (hiked up ten times from what was proposed in the Act's 2003 version).

Lastly, a government think tank would be commissioned to study deregulated railroad economics, and a watchdog for heavily concerned agricultural captives would keep an eye on developments from a post within the U.S. Department of Agriculture.

The much-celebrated deregulation of transportation is not without its downsides. Paralleling our economic system as a whole, individualized treatment for transportation consumers in unusual circumstances must be made for the good of American industry as a whole. The Act is a fine-tuning process that, if passed, will correct the rare circumstance where market-driven forces yield potentially undesirable results.

Ref: The Railroad Competition Act of 2005, available at <http://thomas.loc.gov/cgi-bin/query/z?c109:S.919.IS>: