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TIME TO COMPLETE TRUCKING DEREGULATION

INTRODUCTION

Congress partially deregulated America's trucking industry with the Motor Carrier Act of 1980. At the time, opponents of deregulation predictably warned of dire consequences from a freer market in trucking. They forecast higher prices and inferior service for customers, eventual domination of the industry by a few huge companies, loss of service to small communities, and a host of other problems. They were wrong. During the last five years, trucking prices have dropped, service has improved, competition has increased, and service to small towns has continued. The partial deregulation of trucking has been an unqualified success.

Now it is time to complete the deregulation. Most of the regulatory apparatus is still in place. Truckers are still required to file millions of pages of documents with the Interstate Commerce Commission (ICC) each year, costing the economy millions of dollars. Many states are still strictly regulating the activities of truckers within their states, damaging their own economies and interstate commerce generally.

There is also a danger that the industry could be re-regulated through the back door by antitrust laws, just when other forms of regulation are being removed. Such an extension of antitrust restrictions would bar truckers from engaging in many economical activities and could lead to less competition in the industry and higher prices for consumers.

To complete the job of deregulation, it is first necessary to dismantle the remaining ICC controls over the industry, sparing truckers the paperwork burden of gaining formal approval of their rates and routes, and lessening the chance of a return to regulation. Further, truckers should be protected from state trucking regulation,

which interferes with or raises the cost of interstate trucking. At the same time, truck safety rules must be maintained or even strengthened. Finally, the industry should not be re-regulated through the antitrust laws. Voluntary arrangements within the industry should be permitted, leaving the market--rather than the government--to decide which are beneficial.

Congress is considering several proposals to expand trucking deregulation. The Reagan Administration has offered a bill, S. 1711 (H.R. 3929), which would end the remaining ICC regulation of the industry as Secretary of Transportation Elizabeth Dole has long advocated. A second bill, H.R. 3222, introduced by Representatives James Moody (D-WI) and Thomas DeLay (R-TX), would protect many truckers from state regulation, as well as end ICC controls. Both bills, however, would impose antitrust regulation on the industry. Though neither bill completely fulfills the Reagan commitment to deregulation, both provide a good start for debate on this issue. Congress thus should address the matter immediately, recognizing that it must move quickly to prevent the trucking industry from sliding back into regulation.

THE REGULATORY SYSTEM TO DATE

The U.S. trucking industry has been regulated by the federal government since the enactment of the Motor Carrier Act of 1935. It required commercial truckers to obtain federal certificates of "public convenience and necessity" before offering their services to the public. Required too was specific approval for the routes truckers were to take; sometimes the license even specified the particular roads to be traveled. Prices, or "tariffs" had to approved in advance by the ICC. Proposed tariffs differing from those of the rest of the industry were rarely granted, and truckers were penalized if the prices they charged were lower or higher than those approved. Further, any mergers involving trucking companies required ICC clearance.

In 1980, the industry was partially deregulated by a new Motor Carrier Act. The regulatory apparatus was kept essentially intact by the legislation, but the amount of regulation was significantly reduced. Among its most important provisions, the Act:

- Lifted the burden of proof from the applicant for an operation permit. Prior to 1980, an applicant had to prove to the ICC that the services to be offered were consistent with the "public convenience and necessity." Under the new law, the person objecting to the permit would have to prove that the service would be inconsistent with the public convenience and necessity.

o Granted truckers a "zone of rate-making freedom." Carriers were permitted to raise or lower rates by 10 percent a year without having to obtain ICC approval.

o Directed the ICC to repeal its rules requiring truckers to take circuitous routes or to stop at designated intermediate points.

o Directed the ICC to reduce restrictions on the commodities that could be carried by a trucking firm and the territory that could be served.

The 1980 Motor Carrier Act still leaves much to ICC discretion. Through its administrative practices, the ICC could have preserved much of the old regulatory scheme. But led by deregulation-minded commissioners such as Frederic Andre, Heather Gradison, Andrew Strenio, and Malcolm Sterrett, the ICC saw the 1980 Act as a mandate to deregulate and went much farther than required by the new law. Example: it began routinely to approve applications for operating authority, recognizing that new, competitive services are almost never inconsistent with the "public convenience and necessity." New rate tariffs were also routinely approved, leading to today's intense price competition. More mergers among truck companies were approved, while mergers between railroads and truck companies were permitted for the first time. The result: firms are serving consumers more efficiently.

EFFECTS OF DEREGULATION

The bills currently before Congress extend the deregulation begun in 1980. The experience of the last five years suggests that further deregulation would be a wise move. There are now more trucking companies than ever, providing better service at lower prices to consumers. And there has been no reduction in service to small communities.

More Carriers

Over the last five years, the number of carriers has increased dramatically. In 1980 there were 18,045 general freight carriers in the U.S. By the end of 1984, this number had swelled to 30,481, an increase of 69 percent.[1]

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1. U.S. Department of Transportation, Five Years After the Motor Carrier Act of 1980: Motor Carrier Failures and Successes, September 1985, p. 5.

At the same time, there has been a significant increase in failures in the industry. In 1984, 549 intercity trucking companies ceased operations, compared with 67 in 1979, and 125 in 1980.[2] These failures were predictable and natural results of deregulation, as competition began to weed out inefficient firms previously insulated from challengers and their own mistakes. And while many firms have left the business, thousands of others have entered the field for the first time, all to the benefit of consumers.

Lower Prices

Although no general index of trucking rates exists, the evidence points solidly to a decline in the real price of truck transportation since deregulation. According to a survey by economist Thomas Gale Moore, now a member of the President's Council of Economic Advisors, by 1983 the rates paid by shippers fell between 11 and 25 percent due to deregulation.[3] One trucking executive has estimated the total savings to the economy from deregulation at $50 billion annually.[4]

These savings are the result of the truckers' new freedom to institute cost-saving practices, as well as of generally tougher competition in the industry. As regulation was lifted, carriers were able to cut the costs imposed by red tape and to allocate their resources better. ICC regulation, for instance, had forced many trucks to travel empty on "backhauls"--return trips after a delivery. This was a complete waste of resources for shippers and carriers. Now, most trucks can carry new shipments on backhauls, reducing overall costs.

Rate decreases, for the most part, have not come in the form of rate reductions filed collectively by the industry. Decreases generally are occurring outside these "official" industry-wide rates. Instead, individual carriers have acted independently, offering discounts to shippers and negotiating lower priced individual contracts with shippers. Thus, prices charged to shippers are really much lower than reported industry rates.

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2. Ibid., p.10.

3. Calculating "deregulation" as beginning in 1977, when the first ICC moves toward reform were made. Thomas Gale Moore, "Rail and Truck Reform--The Record So Far," Regulation. November/December 1983, p. 38.

4. Robert V. Delaney, "Digging Deeper: A Review of the Managerial and Financial Challenges Facing Transport Leaders," p. 6 (to be published in Transportation Quarterly, January 1986).

Better Service

Shippers appear to be pleased with the level of service under deregulation. In a recent survey conducted for the Department of Transportation, for instance, most shippers reported that they were receiving better service now than before deregulation.[5] These benefits have not been limited to big shippers. According to the DOT survey, small shippers have actually seen the biggest improvement in service.[6]

Many shippers now have a wider choice in the type of service they receive. Before 1980, regulated truckers were required to charge specified rates for transporting goods over particular routes, regardless of the quality of service provided. They could even be penalized for providing additional or higher quality service to shippers if they did not charge a higher, government-approved rate. Now shippers and truckers are free to negotiate the level and type of service to be provided. They can opt for more frequent service, pickup, and delivery at specific locations, special care for certain fragile items, or simply for faster service.

Service to Small Communities

One of the most frequently heard objections to truck deregulation was that truckers would stop serving small, rural communities if they no longer were required to do so by the ICC. Such fears have proved unfounded. Each year since 1980, according to a Department of Transportation survey, a majority of shippers reported that the number of carriers serving them had remained the same or increased. The shippers reporting an increase in available carriers have outnumbered those reporting a decrease. Further, in every year, the vast majority of rural shippers reported no change or increases in the quality of their service, with the number of shippers reporting deterioration in service never rising above 4.2 percent. In 1985, only 2 percent of rural shippers saw their service worsen.[7] The general disruption of rural service predicted by deregulation opponents simply has not occurred.

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5. Industrial and Commercial Shipper Study, Final Report, prepared by Mandex, Inc. for the Office of the Secretary of Transportation, September 20, 1985, p. 50.

6. Ibid., p. 51.

7. Alice E. Kidder, "Fourth Follow-Up Study of Shipper Receiver Mode Choice in Selected Rural Communities, 1984-5," p. 19.

PROPOSED LEGISLATION

Because of the success of partial deregulation, legislation is now pending in Congress to complete the process and dismantle the remaining regulatory structure. While others no doubt will be introduced, the two major bills now are: S. 1711 (H.R. 3929), formulated by the Reagan Administration, and H.R. 3222, sponsored by Representatives James Moody (D-WI) and Thomas DeLay (R-TX). Among other things, these bills would:

1) End all remaining ICC jurisdiction over rates, routes, and entry in the motor carrier industry and abolish all remaining rate filing and publication requirements. The Administration's bill also would do the same for the household goods moving industry and eliminate regulations on truck leasing.

2) Shift full responsibility for regulation of truck safety to the Department of Transportation (DOT). The ICC and DOT currently share this authority. The Moody-DeLay bill also would require the DOT to assign an identification document to drivers and authorize vehicle identification and other information to be carried in each vehicle.

3) Limit the power of state governments to regulate the trucking industry. The Administration bill would prohibit states from regulating any aspect of trucking that previously had been regulated by the ICC. The Moody-DeLay bill would go farther and permit trucking companies operating in three or more states to voluntarily become "national carriers," subject to federal rather than state trucking rules.

4) Impose antitrust regulation on truckers by removing the industry's current partial antitrust immunity, making illegal many current industry practices by which functions are jointly performed by industry members.

WHY FURTHER REFORM IS NEEDED

Remaining Federal Economic Regulation

Although the bulk of ICC regulation has been abolished by Congress or by the Commission itself, the residue still imposes costs passed on to the consumer in the form of higher prices. Truckers still must file applications and forms with the ICC before offering a new service, discontinuing a service, raising or reducing their rates, or merging with another company. This paperwork volume is

staggering. Last year, the ICC received almost 1.4 million tariffs, or rate filings.[8] It is argued, by supporters of this system, that such filings are necessary to enable competitors and customers to contest changes in rates or service. But in the open market that exists today, dissatisfied customers simply can take their business to a competing trucker. In fact, out of almost one million tariff filings put before the ICC in FY 1984, only 50 were contested, of which none were found to merit rejection or modification.[9]

Certain commodities, notably agricultural goods, are exempt from the filing requirements and other regulation. Yet determining which goods are regulated and which are not is difficult. According to the ICC, for instance, dried fruit is exempt from regulation, while frozen fruit is not. An ICC permit is required to transport popped popcorn, but certain types of unpopped popcorn can be shipped freely.[10]

The remaining ICC jurisdiction is vulnerable to re-regulation, for the regulatory structure remains in place. A newly appointed ICC, with members less sympathetic to the free market than at present, easily could restore much of the old regulatory system and reverse the gains of the past five years.

State Regulation

In addition to remaining federal regulation, truckers are faced with continued strict state regulation of intrastate shipments of goods. While a few states lifted their truck regulations following the 1980 federal legislation, some 40 states still regulate intrastate trucking. Thus, the residents of many states have been denied the benefits of deregulation, unless their shipments happen to cross a state boundary, at which time trucking is subject to ICC rules. For example, one 1985 survey discovered that it cost $612 to ship a truckload of laundry detergent the 243 miles within Texas from Dallas to Houston, yet shipping the same load from Dallas to Tulsa, Oklahoma, a distance of 275 miles, would cost only $375.[11]

Since trucking companies that transport goods between states usually also transport goods within states, the increased cost of

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8. Statement of Reese H. Taylor, Interstate Commerce Commission Chairman, before the Senate Committee on Commerce, Science, and Transportation, September 9, 1985, p. 6.

9. Interstate Commerce Commission 1984 Annual Report, p. 109.

10. "Can They Do That?" Administrative Ruling No. 119, Office of Consumer Protection, Interstate Commerce Commission, undated.

11. See, Dennis Fulton, "Truckers Singing the Short-Haul Blues," Dallas Morning News, February 19, 1985.

intrastate trucking, caused by state regulation, can also affect the costs of interstate transport by increasing the overhead and reducing the efficiency of those firms. Thus, the negative effect of these regulations is a matter of national, as well as local, concern.

The Administration bill would prohibit states from "encroaching," or regulating areas that had been regulated by the ICC. This, however, would not eliminate increased costs in interstate trucking caused by state regulation of intrastate transportation. The easiest way to prevent state regulations from interfering with federal deregulation would be for the federal government to preempt state laws--prohibiting any state regulation of trucks. Such action, however, would have an impact on many state laws, which are of only local concern.

The Moody-DeLay bill attacks this problem in a different and novel way. It would create a classification of truckers to be called "National Carriers." They would be regulated exclusively by the federal government. These carriers would be subject to no rate, route, or entry regulation and would pay uniform fees and taxes. "National carrier" status would be applied only to carriers operating in three or more states that chose to be so designated. In this way, state regulation would only be preempted when it was most likely to affect interstate commerce, while each carrier still would retain the right to be governed by its own states' rules rather than by Washington.

Action to curtail harmful state regulation of trucking, such as the Moody-DeLay national carrier concept, would make a great deal of sense. While the federal government should not meddle in purely local matters, it could act to prevent the states from frustrating the purpose of federal deregulation.

Safety Regulation

The accident rate for trucks on U.S. highways increased in 1984 by about 18 percent, the largest increase since 1967, touching off calls for renewed ICC regulation of trucking in the name of safety.[12] While regulation to ensure safety is a legitimate and important government responsibility, a return to the regulatory system of the past is not the answer.

It is unlikely, however, that deregulation has compromised safety. While the accident rate did increase in 1984, the rate had

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12. See Maxwell Glen and Cody Shearer, "The Politics of Truck Safety," Los Angeles Herald-Examiner, December 2, 1985, p. A13.

not changed appreciably during the first three years of deregulation.[13] Moreover, the traditional regulatory scheme is ill-suited to ensure highway safety. When the ICC controlled entry into the industry, its primary concern was the protection of industry profits--not safety.

The way to improve highway safety is to take steps specifically geared to achieve that purpose, rather than to reintroduce massive and counterproductive economic regulation of the trucking industry. Congress took the first step in this direction by enacting the Motor Carrier Safety Act of 1984. This actually increased the DOT's power to regulate safety, including the power to impose civil penalties.

The federal government's role in ensuring safety on the nation's highways would continue to be strengthened under current deregulation proposals now before Congress. Instead of being split between the ICC and the DOT, safety henceforth would be consolidated within the DOT--a move that would promote effective enforcement. Further, the Moody-DeLay plan would increase the federal government's ability to ensure highway safety, directing the DOT to record information on owners and drivers of commercial motor vehicles, assigning identification to each driver, and authorizing DOT to require that identification and other information be carried in each vehicle.

ANTITRUST REGULATION

Since passage of the Reed-Bulwinkle Act of 1948, trucking firms have been largely exempt from federal antitrust regulation. They have been able to coordinate many activities under the supervision of the ICC. Under this antitrust exemption, industry members operate regional associations, known as "rate bureaus," which gather information on transportation costs, and publish industry-wide rates for trucking services. While this immunity was narrowed by the Motor Carrier Act of 1980, the existence and basic functions of the rate bureaus were preserved.

Proposals for Eliminating Antitrust Immunity

Both the Administration and the Moody-DeLay bills would eliminate completely the remaining antitrust immunity for trucking. Proponents of the step argue that this would increase competition in the industry. Yet removing the immunity actually would impose a new form of regulation on the industry.

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13. Elizabeth Hanford Dole, Testimony before the Surface Transportation Subcommittee of the Senate Commerce Committee, September 27, 1985, p. 18.

At a time when the current antitrust laws have come under severe criticism from many quarters, including the Administration itself, it is strange that an extension of antitrust controls to yet another industry is now being contemplated.[14] Antitrust regulation would be of very little benefit to the public, but potentially could impose very large costs.

When the trucking industry was heavily regulated, the harm caused by rate bureau activities was clear. At that time, the bureaus were able to fix prices in the industry, since their pricing decisions, once approved by the ICC, were enforced by the federal government. Trucking companies could submit different rates to the ICC, but such rates were rarely approved. Free of competition and protected by the ICC, industry members were thus able to keep trucking rates high, at the expense of shippers and consumers.

This situation changed dramatically after 1980. Rates still must be filed with the ICC, but the Commission rarely rejects independent rates and gives no preference to rates determined by the bureaus. The result is that independent filings are now commonplace, and discounting from the published rates is the rule rather than the exception. Free competition, in other words, has removed the threat of a cartel based on the rate bureaus.

Benefits of Rate Bureaus

While the new conditions mean that rate bureaus can do little to harm competition, they can do much to provide benefits, enabling truck companies to become more efficient. The reason for this is that cost determinations of particular services in the trucking industry can be a long, time-consuming, and expensive process. The rate bureaus reduce the cost of rate making by analyzing the cost of services and passing the information along to individual carriers. Bureaus compare and classify commodities, for instance, and analyze the likely cost of transportation on certain routes. Further, they provide a uniform system for the division of revenue for jointly provided services. Yet the carriers are not bound by published bureau rate recommendations. The published rates, in a sense, are merely a "Kelley blue-book" for truck services, serving merely as a baseline for the negotiation of rates by individual carriers and shippers.[15]

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14. Peter Bahr,"Revision of Antitrust Laws Sought," The Washington Post, November 22, 1985; James Gattuso, "Narrowing the U.S. Trade Deficit By Antitrust Reforms", Heritage Foundation Executive Memorandum No. 103, December 12, 1985.

15. See Christopher Barnekov, memorandum to ICC Vice Chairman Frederic Andre, dated August 7, 1984.

If antitrust immunity were eliminated, the carriers would likely lose the benefits of these services. Efficiency would be lost as each trucking company was forced to duplicate the job now performed by the rate bureaus. Further, cost-saving joint operations would be inhibited, since revenue sharing formulas would not be legal, and because of the ever present threat of an antitrust suit. Ironically, the hardest hit companies would be the lifeblood of a competitive trucking industry--new, small firms.

Without the resources to establish their own rate-analyzing departments, these firms would be most disadvantaged by the loss of rate bureau information. And being unable to share the expense of analyzing cost information with others, many of these companies would be forced to merge to gain the necessary resources.

Proponents of antitrust regulation argue that the laws would not ban the efficient aspects of rate bureaus--only those functions that provide no benefits to consumers. But even if this were true, which is by no means clear, truckers would be left uncertain as to the legality of certain practices, as government antitrust regulators and the courts determined whether a particular arrangement were beneficial or harmful. Further, since proving the value of any particular practice could involve years of costly litigation, truckers would be deterred from engaging in many beneficial activities, and consumers would be deprived unnecessarily of the potential savings. Antitrust regulation thus would be of little benefit to consumers and potentially could make the trucking industry less efficient and competitive.

Abolition of the industry's antitrust immunity therefore is not justified. Yet even if lawmakers remain concerned that anti-competitive practices would develop if immunity were continued, there are several alternatives that Congress could adopt. For instance, the antitrust immunity could be continued for a limited period only, perhaps five years, as evidence of the effect of collective rate making in an unregulated, competitive industry was gathered. At the end of the trial period, a permanent decision could be made. Alternatively, collective rate making could be permitted only in cases where a merger among the participating firms would be legal. In this way, the benefits of rate bureaus could be achieved for smaller firms without forcing them into mergers with other firms.

CONCLUSION

The deregulation of the trucking industry, started with the Motor Carrier Act of 1980, has been a success. The process of deregulation should now be completed. Both the current bills would eliminate residual entry, route, and rate regulation, while continuing and improving the necessary regulation of truck safety. By relieving

truckers of the need to send millions of pages of paperwork to Washington each year, these provisions would save the industry millions of dollars each year--savings that could be passed on to U.S. consumers. Further, by dismantling the regulatory structure, a reimposition of regulation would be made much more difficult.

The Moody-DeLay bill also would free many truckers from the regulation of their business now being imposed at the state level. These state rules often have a harmful effect on interstate traffic and are a proper matter for congressional concern. Some type of limitation of their scope is needed.

The proposals would be improved vastly by removing the provisions for the imposition of antitrust regulation upon truckers. By throwing this industry into the morass of existing antitrust law, the benefits of the last five years of deregulation could be lost.

Each bill has defects that need to be corrected, but they serve as a basis for crafting a blueprint for completing deregulation. A trucking measure that eliminated the remaining ICC controls and limited state regulation, while ensuring safety and refraining from antitrust regulation, would create a fully deregulated environment for trucking. This would benefit truckers, shippers, and consumers alike and provide a needed boost to the economy at large.

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