



Proposed Railroad Antitrust Enforcement Bills

H.R. 1650 and S. 772

Soy Transportation Coalition Briefing Paper

Prepared for the Soy Transportation Coalition and United Soybean Board by Market Solutions LLC

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Summary.

Legislation being considered by the U.S. Congress is intended to remove the antitrust protection enjoyed by the railroads, meaning that the courts would not have to defer to the Surface Transportation Board in the event of suits under the antitrust laws. The proposed legislation has been reported favorably by the Senate Judiciary Subcommittee and a hearing is scheduled in early October.

Introduction.

The Railroad Antitrust Enforcement Act of 2007, introduced in March 2007, amends Federal antitrust laws to expand coverage and eliminate exemptions with respect to railroads. The House bill H.R. 1650 is sponsored by Rep. Tammy Baldwin (WI) and has 17 cosponsors in September, 2007. It has been referred to the Subcommittee on Commerce, Trade and Consumer Protection. The Senate bill S. 772 is sponsored by Sen. Herb Kohl (WI) and has 9 cosponsors. It has been referred to the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights which ordered it to be reported favorably on September 20, 2007 and has scheduled a hearing for October 3, 2007.

Major Points of the Bills

The proposed legislation amends exemptions for railroads under the Clayton Act from prohibitions against mergers and acquisitions that tend to create monopolies. It provides that, in any civil suit against a railroad, the U.S. district court shall not be required to defer to the primary jurisdiction of the STB. It also empowers the Federal Trade Commission to regulate, and engage in antitrust enforcement regarding, collective rate agreements and certain transactions, including railroad mergers and acquisitions.

The bills also amend federal transportation law to terminate the exemptions from antitrust laws for collective ratemaking agreements. They require the STB, and other reviewing agencies, when reviewing a proposed agreement, to take into account its impact upon shippers, consumers, and affected communities. They also revise STB authority to exempt railroads from antitrust laws for specific transactions.

Current law provides extensive exemptions for railroads from the nation's antitrust laws. Bill sponsors argue that exemptions for mergers, acquisitions, collective ratemaking and coordination among railroads have enabled freight railroads to charge high rates while providing less than reliable service. Rail customers, unlike customers of other industries have not been able to use U.S. antitrust laws to ensure competitive rail conduct. The proposed bills would change this.

Currently the STB may approve railroad acquisitions and mergers without regard to the impact on competition. H.R. 1650/ S. 772 would require the STB, within 6 months, to review its prior rulings and reverse those that do not meet the requirements of US antitrust law. More importantly, it would provide that in the future the STB must consider the antitrust implications of all railroad mergers and acquisitions.

Under current law neither shippers, the U.S. Attorney General nor the state attorneys general are able to file suit in federal court to stop railroad actions that violate U.S. antitrust laws because the railroads are presumed to be under the jurisdiction of the Surface Transportation Board. H.R. 1650/S. 772 would give them that right as well as the right to sue for treble damages.

Sponsors argue that the law is a fundamental step toward ensuring competition in the railroad industry and will result in better, more reliable service and lower fees for shippers. Opponents disagree. Implications for soybean producers are unclear.



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Bill Sponsors and Cosponsors as of September, 2007

H.R. 1650

Rep Baldwin, Tammy [WI-2] (introduced 3/22/2007)
Rep Alexander, Rodney [LA-5] - 3/22/2007
Rep Baker, Richard H. [LA-6] - 3/22/2007
Rep Berry, Marion [AR-1] - 5/21/2007
Rep Boren, Dan [OK-2] - 5/9/2007
Rep Frelinghuysen, Rodney P. [NJ-11] - 9/5/2007
Rep Garrett, Scott [NJ-5] - 7/10/2007
Rep Gillmor, Paul E. [OH-5] - 5/23/2007
Rep Grijalva, Raul M. [AZ-7] - 3/28/2007
Rep Inglis, Bob [SC-4] - 6/21/2007
Rep Kagen, Steve [WI-8] - 3/27/2007
Rep Kind, Ron [WI-3] - 6/21/2007
Rep Pomeroy, Earl [ND] - 3/22/2007
Rep Renzi, Rick [AZ-1] - 5/9/2007
Rep Ross, Mike [AR-4] - 5/9/2007
Rep Snyder, Vic [AR-2] - 5/9/2007
Rep Walz, Timothy J. [MN-1] - 3/22/2007
Rep Wamp, Zach [TN-3] - 5/9/2007

S. 772

Sen Kohl, Herb [WI] (introduced 3/6/2007)
Sen Biden, Joseph R., Jr. [DE] - 9/19/2007
Sen Coleman, Norm [MN] - 3/6/2007
Sen Dorgan, Byron L. [ND] - 9/5/2007
Sen Feingold, Russell D. [WI] - 3/6/2007
Sen Harkin, Tom [IA] - 3/21/2007
Sen Leahy, Patrick J. [VT] - 9/6/2007
Sen Rockefeller, John D., IV [WV] - 3/6/2007
Sen Schumer, Charles E. [NY] - 9/20/2007
Sen Vitter, David [LA] - 3/6/2007