

Major Railroads Should Be Covered by the Nation's Antitrust Laws Like Other American Industries

- The nation's antitrust laws are a basic protection for consumers against monopoly power and anticompetitive practices by providers of services and goods.
- The nation's major railroads enjoy one of the broadest exemptions from U.S. antitrust laws of any industry. This situation, which began when rail rates and service were heavily regulated, is particularly inappropriate now since most railroad movements are considered competitive and thus are exempt from regulation. Non-competitive rail movements (mostly shipments of bulk items such as coal, grain and chemicals) are rarely, if ever, subject to any rate regulation by the Surface Transportation Board (STB).
- In the last 25 years, the nation's railroads have consolidated to the point that four major railroads now provide 95 percent of all freight rail transportation in America.
- Under current law and STB policies, in "bottleneck" situations major railroads can refuse to offer service to utilities and other captive rail customers that involves moving their freight to routes of competing railroads. The major railroads also are allowed to have exclusive tie-in agreements with short-line railroads, under which the short-line railroad can only do business with one major railroad, thus creating a "paper barrier" blocking customers' access to competition. The Justice Department in 2004 suggested both of these practices could constitute violations of the nation's antitrust laws if those laws applied to the railroads.
- Railroad mergers also are not subject to the Justice Department's full antitrust review and approval process, which would apply if the railroads' antitrust exemptions were eliminated.
- An October 2006 Government Accountability Office (GAO) report found that "[c]oncerns about competition and captivity [in the rail industry] remain as traffic is concentrated in fewer railroads" and that the STB is not ensuring competition in the rail industry. An August 2007 update to the GAO report found accelerated increases in freight rail rates in 2005 and a continued shifting of costs from railroads to customers.
- In 2007, the attorneys general of 19 states (Arizona, Arkansas, California, Connecticut, Delaware, Iowa, Louisiana, Minnesota, Mississippi, Montana, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, and Utah), Guam and the District of Columbia sent a joint letter asking Congress to remove the rail industry's antitrust exemptions so that the U.S. Attorney General, state attorneys general, and private citizens can take advantage of legal protections against freight railroad monopoly power that is resulting in high rates and poor service.
- In December 2008, the ABA Section on Antitrust Law wrote congressional leaders encouraging Congress to move forward quickly to dismantle the antitrust exemption for the railroad industry.
- The Railroad Antitrust Enforcement Act (S. 146 & H.R. 233) is bipartisan legislation that would remove the current railroad exemptions and subject the railroad industry to the full power of the nation's antitrust laws. Introduced by Senator Herb Kohl (D-WI) and Representative Tammy Baldwin (D-WI), these bills would repeal the railroad industry's outdated antitrust exemptions so that antitrust law fully covers railroads as it does other industries.
- In the 110th Congress, the Senate and House Judiciary Committees reported, by voice vote with no objection, legislation identical to S. 146 and H.R. 233.

Support S. 146 and H.R. 233, the Railroad Antitrust Enforcement Act of 2009