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House Judiciary Committee Focuses on Bringing the Railroads Under Antitrust Laws

Shippers testify in support of legislation that would bring competition to the rail industry

Washington, D.C. (February 25, 2008)—The railroad industry’s exemptions from key antitrust laws have allowed rail companies to wield significant monopoly power according to rail customers testifying today at a House Judiciary Committee hearing. Committee members also heard how the Surface Transportation Board, responsible for overseeing the railroad industry, too often turns a blind eye to these abusive practices.

During the Committee’s Task Force on Antitrust and Competition Policy hearing, rail customer representatives testified in favor of the Railroad Antitrust Enforcement Act of 2007 (H.R. 1650 and S. 772). The legislation, sponsored by Congresswoman Tammy Baldwin (D-WI), would promote competition in the rail industry by removing the railroads’ exemptions from key antitrust laws. These exemptions have resulted in many rail customers facing skyrocketing rates and inferior service. Customers noted how their industries are all subject to the nation’s antitrust laws.

Witnesses at the hearing included Terry Huval, Director, Lafayette Utilities Service, and Susan Diehl, Senior Vice President, Holcim, Inc., and Dr. Darren Bush, Professor of Law at the University of Houston. Congresswoman Baldwin also testified before the committee on her legislation.

“The railroad industry should be brought under the same antitrust laws that govern other industries—including rail customers,” said Glenn English, Chairman of Consumers United for Rail Equity (CURE) and CEO of the National Rural Electric Cooperative Association. “Removing these exemptions will allow customers access to competition helping consumers and businesses around the country. Currently, customers must rely on the STB to monitor for monopolistic abuses. Unfortunately, under their ‘watch’ customers continue to experience railroad captivity resulting in outrageous rail rates and poor service.”

When Congress partially deregulated the railroad industry in 1980, Congress failed to remove the exemptions from the antitrust laws that the railroads had obtained during the era of regulation. Congress charged the Interstate Commerce Commission—now the Surface Transportation Board (STB)—with overseeing the railroads to monitor for

potential monopoly abuse and to give rail customers an outlet for relief. But the STB has failed in its mission, as verified by a Government Accountability Office study published in October, 2007 and supplemented in August, 2007.

“The proposed legislation would bring fairness to an industry that has been profiting unfairly for years from monopoly power,” said English. “There is no excuse for this anti-competitive behavior to continue. It is up to Congress to step in and rectify the situation because the STB is not getting the job done.”

CURE supports Congressional efforts to bring accountability and fairness to the rail industry. H.R. 1650 would:

- Repeal the railroad antitrust exemptions in the antitrust and transportation statutes;
- Empower the Justice Department and the Federal Trade Commission to review railroad mergers and acquisitions to ensure that they comply with the nation’s antitrust laws; and
- Allow state attorneys general and other private parties to seek injunctions against anticompetitive conduct.

A companion Senate bill (S. 772) was reported by the Senate Judiciary Committee on September 25th without objection and placed on the calendar of the Senate on December 19, 2007. Earlier this month, Senator Herb Kohl (D-WI), along with six other Senators, sent a letter to Senate Majority Leader Harry Reid (D-NV) urging him to bring S. 772 to the Senate floor for consideration in 2008.

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Consumers United for Rail Equity (CURE) represents a wide variety of rail customers including public utilities, rural electric coops, agriculture; chemical, ethanol, cement and other manufacturers, forest and paper companies, and their customers.

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