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Commentary: Time to put railroads under anti-trust

By Lori Swanson, Minnesota Attorney General
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A little over 100 years ago, some famous names — J.P. Morgan, John D. Rockefeller and Minnesota's James J. Hill — got together and formed the Northern Securities Co., a trust to control the Northern Pacific Railway, the Great Northern Railway, the Chicago, Burlington and Quincy Railroad, and other lines.

The nation's rail system west of Chicago became a monopoly, and there was great public outcry. President Teddy Roosevelt took umbrage, filed a law-suit against the trust and the U.S. Supreme Court in 1904 held that the Sherman Anti-trust Act forbid such monopolistic control. The Northern Securities Co. was dissolved.

Out of this, President Roosevelt earned the reputation as a "trustbuster." Unfortunately, we seem to have forgotten why he was one.

The railroads then became regulated by the federal Interstate Commerce Commission. Because of this high degree of regulation, the railroads got an antitrust exemption from Congress. In 1980, however, Congress deregulated most railroad activities, and the ICC was eventually replaced by the federal Surface Transportation Board, or STB.

Today's STB is little more than a revolving door whose members come from the railroads or want a job with them afterwards. As a result, since 1980, 40 major railways have consolidated down to seven, with just four controlling 90 percent of the rail traffic.

Government studies point out that rail costs have skyrocketed, with customers paying triple the cost of shipping by rail due to the lack of competition or effective regulation.

Look at the experience of the city of Lafayette, La., a municipality that uses coal for its power plant. The city's power plant gets its coal from the Powder River Basin in Wyoming, which is 1,500 miles away. Both the BNSF and the Union Pacific railways haul coal out of the Powder River Basin. Both railways can move the coal in competition with one another for 1,480 of the 1,500 miles between Wyoming and Lafayette.

The last 20 miles of track into Lafayette, however, are exclusively owned by Union Pacific. With the assent of the Surface Transportation Board, the Union Pacific will not provide a quote for the 20 mile short line. In other words, because of the 20-mile "bottleneck," Lafayette is a captive of the Union Pacific for all 1,500 miles of track from Louisiana to Wyoming. This means higher costs, less service and little efficiency.

The same thing occurs in Minnesota with Blandin, a paper mill in Grand Rapids. While there are multiple lines operating out of Duluth, there is only one “bottleneck” line between Grand Rapids and Duluth.

Blandin is owned by UPM, a company based in Finland. UPM can produce paper at a mill in Finland, ship it across the Atlantic Ocean, then deliver it by competitive rail to customers in the Southeastern United States — a distance of 5,000 miles — for about the same cost as it can ship it by a monopoly rail carrier to the same customers — a distance of 1,400 miles.

Electrical cooperatives get the same bottleneck experience on the shipment of coal from the Powder River Basin in Wyoming. Similarly, rural grain elevators are forced to consolidate to regional sites because the monopoly railway controls the stops, causing farmers who rail their grain to face lower margins.

The additional costs to the consumer are reflected in higher electricity bills, higher costs of consumer goods, higher cost of food and lower margins for manufacturers.

Unlike most other industries, today’s railroads continue to be exempt from the antitrust laws, despite the lack of competition or effective regulation. Because of the antitrust exemption, the short line railroads and the major railroads enter into “paper barrier” agreements, which essentially pass control of the railways to the bottleneck operators.

These paper agreements essentially accomplish the same objectives as the Northern Securities Co. tried to accomplish 100 years ago: the elimination of competition and control over the rail system. This control was bad 100 years ago. It is bad today.

A bill introduced in Congress — the Railroad Antitrust Enforcement Act — would remove the antitrust exemption for the railroads, and hopefully begin a process where our nation’s railways will become more responsive to the needs of our economy.

The Railroad Antitrust Enforcement Act is co-sponsored by a number of Minnesota public officials, including Reps. Collin Peterson and Tim Walz, and Sen. Norm Coleman.

Another bill — the Railroad Competition and Service Improvement Act — co-sponsored by Reps. Jim Oberstar, Jim Ramstad, Betty McCollum, Walz and Sen. Amy Klobuchar, attempts to breathe new life into the regulatory authority of the STB.

Rail customers who lack access to competitive rail transportation face higher rates and inadequate service. Ultimately, the price is passed on to all of us as consumers. The Railroad Antitrust Enforcement Act merits our support, because those who fail to remember the lessons of history are bound to repeat its mistakes.

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