

# THE HILL



## **Congress should move to repeal railroads' antitrust exemptions**

By Sen. Herb Kohl (D-Wis.)  
April 8, 2008

Over the last several years, industries served by only one railroad have seen their delivery bills spike. These drastic increases have forced them in turn to raise prices on consumers purchasing their goods. The problem exists because the railroads, exempt from U.S. antitrust laws, have consolidated in the past couple decades to form four giants providing 90 percent of the nation's rail transportation.

A specific example of this abuse was presented at a hearing held by the Antitrust Subcommittee over which I presided last September, when an official from Dairyland Power in La Crosse, Wis., testified that the utility saw its freight railroad bill for coal delivery jump by \$35 million in one year. The 93 percent increase resulted in electricity rates jumping by more than 20 percent for the nearly 600,000 households served by the utility. Similar stories exist across the country.

With dominant market power, freight companies are free to charge whatever they want, whenever they want from the industries relying on them to ship vital commodities, such as coal and agriculture products. Not surprisingly, having no antitrust protections as with virtually every other industry, consumers are stuck with the bill. These unfair price increases on essential goods and services have only put further strain on household budgets already stretched thin in a struggling economy.

That is why it is essential for Congress to repeal the antitrust exemption for the rail industry and restore antitrust protections for consumers. Legislation I authored, S. 772, The Railroad Antitrust Enforcement Act, would do just that. If enacted, my bill would eliminate obsolete antitrust exemptions that protect freight railroads from competition, resulting in consumers having to pay higher prices every day. S. 772 won unanimous support among my colleagues in the Senate Judiciary Committee last year. But the Senate as a whole has yet to approve this commonsense measure.

The effects of this unwarranted antitrust exemption are plain to see throughout the country and in my home state of Wisconsin, where utilities and agriculture companies have absorbed millions of dollars in price increases when shipping by rail. In 2005, Wisconsin utilities incurred nearly \$73 million in additional costs associated with shipments of coal, according the Wisconsin Public Service Commission. These utilities, which provide more than half the state's energy, then raised rates for consumers already paying record-high rates for electricity.

The phenomena of “captive shippers” — businesses and industries served by a single railroad that are subject to rate increases or poor quality of service — was documented in an October 2006 Government Accountability Office report, which explained how the ripple effect of these unjustified cost increases are felt throughout our economy, especially by American households. Consumers suffer higher electricity bills because a utility must pay for the high cost of transporting coal; manufacturers who rely on railroads to transport raw materials charge a higher price for their goods; and American farmers who ship their products by rail pass on these cost increases in the form of higher food prices.

Prior to the GAO report, the attorneys general of 17 states and the District of Columbia sent a letter to Congress citing problems due to a lack of competition and urged that the antitrust exemptions be removed.

The letter stated that “rail customers in our states in a variety of industries are suffering from the classic symptoms of unrestrained monopoly power: unreasonably high and arbitrary rates and poor service.”

These drastic rate increases are also owed to the partial deregulated status enjoyed by the freight rail industry since 1980, when Congress stripped the price setting power from the Surface Transportation Board — the regulatory panel charged with oversight of the railroads. Despite this deregulation, Congress never restored the full effect of antitrust law to the railroad industry. My legislation would accomplish that, as well as enabling the U.S. Department of Justice, state attorneys general and private parties to sue railroads to stop mergers and acquisitions they believe to be detrimental to competition. This would reduce the ripple effect felt throughout the economy, and especially by American households. Dozens of organizations, unions and trade groups, including the American Public Power Association, the American Chemistry Council, American Corn Growers Associations and AFL-CIO, as well as many more affected by monopolistic railroad conduct, have endorsed S. 772.

Adoption of The Railroad Antitrust Enforcement Act is an excellent first step to bring needed competition to the railroad industry. By clearing out this thicket of outdated antitrust loopholes, railroads will be subject to the same laws as virtually every other industry in the rest of the economy, effectively bringing an end to the current situation in which captive shippers are at their mercy. Government antitrust enforcers will finally have the tools to prevent anti-competitive transactions and practices by railroads, bringing unfairly inflated prices down and providing relief for American families struggling to make ends meet.

Kohl is chairman of the Senate Judiciary Committee’s Subcommittee on Antitrust, Competition Policy and Consumer Rights.