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Freight Railroads Make False Claims to Protect Monopoly Pricing Power

Washington, D.C. (March 11, 2009) – The freight railroads continue their campaign of misinformation in an effort to protect their unrestrained monopoly pricing power. They now claim that legislation to bring the railroad industry back under U.S. antitrust laws will result in confusing and overlapping dual regulation by antitrust courts and the Surface Transportation Board (STB), the federal agency that regulates the railroads.

The truth is that the antitrust and regulatory legal regimes neither overlap nor conflict. They complement each other in constraining the kind of monopoly abuse to which railroad customers are presently exposed. The principal effect of the antitrust legislation will be to treat railroads like every other industry in the United States. Today, rail transportation that is subject to STB jurisdiction is the only major federal regulated activity that operates outside U.S. antitrust laws. All other U.S. industry activities that are subject to federal economic regulation are also subject to the antitrust laws that protect consumers from monopolization, agreements in restraint of trade, and mergers that may lessen competition. There is no reason to treat the railroad industry differently.

For example, the interstate transmission of electricity and its interstate sale for resale is closely regulated by the Federal Energy Regulatory Commission, but is also subject to the antitrust laws. The same Commission regulates interstate natural gas pipelines, which also operates under the full force of antitrust law. Similarly, key aspects of interstate telecommunications are regulated by the Federal Communications Commission under a statute that expressly preserves the application of antitrust law. In all of these industries consumers have benefited from the protections of antitrust law as well as federal economic regulation.

“The purpose of the nation’s antitrust laws is to protect consumers by ensuring competition in markets,” said Bob Szabo, executive director and counsel for Consumers United for Rail Equity (CURE). “Because the STB is not required to ensure that its regulatory program complies with the nation’s antitrust laws, railroad mergers have been approved that have resulted in less competitive transportation markets, and rulings have been made that block rail customer access to competing railroad systems. Some of these questionable transactions would not have been approved had railroads been subject to antitrust law.”

Legislation to end the railroad industry’s exemption from antitrust law – the Railroad Antitrust Enforcement Act of 2009 (H.R. 233 in the House, S. 146 in the Senate) – was approved by the Senate Judiciary Committee on March 5 by a bipartisan vote of 14 – 0 and is awaiting action by the full Senate. In addition, legislation to tighten the captive shipper protections of the Surface Transportation Board (STB) is also expected to see action in Congress this year.

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Consumers United for Rail Equity (CURE) represents a wide variety of rail customers including public utilities, rural electric co-ops, agriculture groups, as well as chemical, ethanol, cement, forest and paper companies, and other manufacturers.