

**STATEMENT OF SENATOR HERB KOHL
ON THE RAILROAD ANTITRUST ENFORCEMENT ACT
JUNE 2, 2009**

MR. KOHL: Mr. President, I rise today to speak about an agreement we have reached with Senator Rockefeller regarding today's planned consideration of the Railroad Antitrust Enforcement Act.

Before describing our agreement, I would like to say a few words about this legislation. We believe that this legislation is essential to restoring competition to the nation's crucial freight railroad sector. Freight railroads are essential to shipping a myriad of vital goods, everything from coal used to generate electricity to grain used for basic foodstuffs. But for decades the freight railroads have been insulated from the normal rules of competition followed by almost all other parts of our economy because of their outmoded and unwarranted antitrust exemptions. Our legislation is designed to eliminate the obsolete antitrust exemptions that protect freight railroads from competition. This bipartisan legislation has eleven co-sponsors, including members of the both the Judiciary Committee and Commerce Committee, and was reported out of the Judiciary Committee on unanimous 14-0 vote in March.

The railroad industry's obsolete antitrust exemptions result in higher prices to millions of consumers every day. Consolidation in the railroad industry in recent years has resulted in only four Class I railroads providing nearly 90 percent of the nation's freight rail transportation. Three decades ago there were 42. A 2006 Government Accountability Office Report found that, shippers in many geographic areas "may be paying excessive rates due to a lack of competition in these markets." The ill-effects of this consolidation are exemplified by the high prices paid by "captive shippers" – industries served by only one railroad. A recent study by the Consumer Federation of America found that rail shipping rates for captive shippers are \$ 3 billion dollars higher than they would be if the market was competitive. These unjustified cost increases cause consumers to suffer higher electricity bills because a utility must pay for the high cost of transporting coal, results in higher prices for goods produced by manufacturers who rely on railroads to transport raw materials, reduces earnings for American farmers who ship their products by rail and raises food prices paid by consumers.

Repeal of the railroad antitrust exemptions is supported by the Attorneys General of 20 states, and a wide range of consumer organizations and leading industry trade organizations including the American Public Power Association, the American Chemistry Council, the National Farmers Union, the American Corn Growers Association, the National Industrial Transportation League, and many more.

Once their outmoded antitrust exemptions are removed, railroads will be subject to the same laws as the rest of the economy. Government antitrust enforcers will finally have the tools to prevent anti-competitive transactions and practices by railroads. Likewise, private parties will be able to utilize the antitrust laws to deter anti-competitive conduct and to seek redress for their injuries. On the Antitrust Subcommittee, we have seen that in industry after industry, vigorous application of our

nation's antitrust laws is the best way to eliminate barriers to competition, to end monopolistic behavior, to keep prices low and quality of service high. The railroad industry is no different. All those who rely on railroads to ship their products deserve the full application of the antitrust laws to end the anti-competitive abuses all too prevalent in this industry today.

That is why I am so pleased by the agreement I have reached today with Senator Rockefeller. He has agreed to include this necessary repeal of the railroads' unwarranted antitrust exemption in his comprehensive bill to reform the freight rail industry and the Surface Transportation Board when that bill is introduced in the coming weeks. Sen. Rockefeller has also agreed that his comprehensive rail reform bill will address a specific railroad practice that is of great concern to me, a practice known as paper barriers. He has pledged that his legislation will give the STB enhanced power to address this issue, so that shippers are not denied the benefit of competition in relation to these arrangements. With this agreement, we have avoided a potentially divisive floor debate, and we have the solid support of the distinguished Chairman of the Commerce Committee for repealing the antitrust exemption and addressing paper barriers.

I thank my friend from West Virginia for this compromise and for his support for the need to reform the freight rail system in the United States in the interests of all parties, including railroad shippers and consumers. I yield the floor.