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The Honorable Daniel R. Elliott, III
Chairman
Surface Transportation Board
395 E Street SW, Suite 1220
Washington, DC 20423-0001

EP 705

Dear Chairman Elliott:

We commend you for holding a hearing before the Surface Transportation Board on the state of competition in the rail industry and possible policy alternatives to facilitate more competition. Rail-to-rail competition is an issue of critical importance to industries across the United States, especially since many agricultural producers, paper mills, local utilities, and other shippers are captive to one railroad and face excessive shipping rates that hinder their ability to compete in the global marketplace. Congress has given the STB broad discretion to encourage effective competition, and we urge you to take action to better protect shippers and confirm they have access to reasonable rates.

As railroads have consolidated in the past three decades, captive shippers around the country have been vulnerable to excessive rates and unreliable service. For example, in 2006, Dairyland Power Cooperative, which serves customers in Wisconsin, Minnesota, Iowa, and Illinois, experienced a 93 percent increase on average in rail transportation costs for coal delivery. As a direct result, Dairyland was forced to increase its wholesale electric rates by 20 percent. The cost of these rate increases is ultimately born by families and small businesses through higher electric bills, which is deeply disturbing.

The President's Export Council has noticed the lack of rail-to-rail competition and has recommended the STB address this issue to reduce the burden on small and medium-sized businesses that need cost-effective interstate commerce to survive in this difficult economy. We cannot expect American businesses to participate in the global economy if they can't afford to transport or export their goods using freight rail—especially if foreign companies are able to obtain lower rates as a result of substantial competition between rail carriers at U.S. ports.

Lack of competition in the rail industry has also caught the attention of the Government Accountability Office (GAO) and of lawmakers in Congress. A 2006 GAO report stated: "Despite STB's actions, there is little effective relief for captive shippers because STB's standard rate relief process is largely inaccessible. While STB continues to refine its practices, an assessment of competitive markets would provide further information about the extent of captivity among shippers and the merits of a range of proposed actions to enhance competitive options available to shippers." GAO proposed several open access policies that the STB should strongly consider to increase competition in the railroad industry.

First, GAO recommended that STB consider mandating reciprocal switching agreements between railroads. Railroads serving shippers that are close to another railroad would be required to transport the competing railroad's cars for a regulated fee. This gives shippers access to railroads that come close to their facilities but do not actually reach them.

A second and related recommendation was that the STB mandate terminal agreements, whereby one railroad must provide access to its terminal facilities or tracks to another railroad for a regulated fee. Currently, reciprocal terminal agreements are not required unless a shipper can prove anti-competitive practices by the railroad that owns the terminal. This is an extremely high bar for shippers that makes action against excessive rates very difficult. A 2008 STB report on rail competition found that mandatory reciprocal switching and terminal agreements would likely lead to increased competition and would have little to no effect on investment incentives or railroad profitability.

A third option identified by GAO was to mandate trackage rights, whereby one railroad must grant access to its tracks to another railroad for a regulated fee. Finally, the STB could consider revising its "bottleneck decisions" to require railroads to quote separate rates for each segment of transportation by rail. This approach could increase competition and would likely reduce rates by providing shippers access to a second railroad for some portion of its transportation needs, even if the shipper is served by a single railroad at its origin or destination points.

In addition to these recommendations, we urge you to reconsider the STB's current accounting policies that allow the inclusion of acquisition premiums in a railroad's asset base, as outlined in a March 22 letter that we sent to you with several other senators. The STB's current policy has the potential to adversely impact captive shippers that may have no choice but to pay higher rates passed on to them by the railroad. Additionally, by including an acquisition premium in the capital asset base of the railroad, a railroad is able to inflate artificially its revenue-to-variable cost ratio, which ultimately means a smaller number of shippers will meet the 180 percent threshold that is required to challenge rates before the STB. We hope you will address this issue when considering other ways to improve competition in rail markets.

There is no question that the rail industry is essential to American commerce, and we appreciate and support the Staggers Act's goal of restoring financial health to the rail industry by minimizing federal regulatory controls. We also recognize that the rail industry is a capital intensive industry that requires significant investments to maintain our rail infrastructure. But much has changed since the 1980s, and it is imperative that the STB take all feasible actions to make sure that the shippers that depend on our railroads receive fair rates and reliable service.

Thank you for considering our views on this matter, and we look forward to continuing to work with the Board to address these important issues.

Sincerely,

Al Franken
United States Senator

David Vitter
United States Senator

Herb Kohl
United States Senator

Tim Johnson
United States Senator

Amy Klobuchar
United States Senator