

MR. MEYER: Chairman Nober, Vice Chairman Mulvey, Commissioner Buttrey, thank you very much. In the spirit of the Board's decision scheduling this oral argument, I will not attempt to summarize in detail all of the evidence in this proceeding.

I think the application that we submitted, and the rebuttal that we submitted, and then the reply to the leasing company's effort to supplement the record, amply demonstrates in excruciating detail the voluminous benefits that TTX generates for the rail industry, not just in the intermodal arena but with respect to all of the types of flatcars that TTX owns and operates.

In addition, I think that record is quite extensive in demonstrating that there is no anti-competitive issue here. The issue here in this proceeding has been fabricated. TTX doesn't restrict any competitive option, as Mr. Goode just explained, from the railroad's perspective. And TTX's railroads wouldn't stand for it.

Let me begin, though, by recalling the statutory standard, because I think that puts in perspective what the issues are in this case. In the early part of the last century, railroad pooling was outright illegal. In the wisdom of the original Interstate Commerce Act, pooling was unlawful.

However, as a result of experience with railroad cooperation and collaboration, particularly during World War I when railroads were operated together by the Federal Government, it was found that significant efficiencies and economies can be generated by collaboration, by cooperation among railroads that otherwise would be in a competitive posture to one another.

Congress saw fit to add to the 1920 statute a provision called the pooling provision, now 11322(a), that allowed this Board to authorize pools when it found two things. First, does the proposed pooling arrangement generate better service to the public, or generate economies of operation? Second, does the proposed pooling arrangement unreasonably restrain competition?

If the benefits exist, as we think this record shows they clearly do, and competition will not be unduly restrained, as we think this record clearly demonstrates, then the proposed pooling under Congress' statute should be approved without conditions.

Importantly, and contrary to the position some of the leasing opponents have taken in this case, there is no separate burden, no separate inquiry, into the metaphysical question whether so-called antitrust immunity is necessary to allow the pooling activity to exist.

Antitrust immunity is the product of the judgment that Congress left to the Board.

It flows from that -- from the approval, from the finding that the Board makes that there are benefits that are in the interest of the public, and that there is no unreasonable restraint on competition.

Congress wanted the Board, with its expertise, to determine that activity that meets that standard ought to proceed, and the parties ought to be free to carry it out without being second-guessed by private parties exercising their self-interest, perhaps often their parochial self-interest, in going into antitrust courts or otherwise to attempt to put a halt or to interfere with the efficiency-generating activity that the Board has authorized.

Any other standard would create, we submit, an insurmountable Catch-22 for any proposed pooling arrangement. As the leasing opponents describe in their papers, if there is no competitive relationship between the railroads, no conceivable argument about the pooling arrangement involving a coordination among otherwise competing railroads, then there would be no need for antitrust immunity. This is true.

At the same time -- at the same time, in the opponent's eyes, arrangements that

needed immunity would by definition be illegal and anti-competitive, and, therefore, should not be approved. But that dichotomy is a false dichotomy.

The pooling we are proposing here is beneficial. And it is not going to restrain competition at all, we submit, and certainly not unreasonably so. However, the shield of antitrust immunity that Congress intended is very important, because of the risk, because of the concern posed most clearly by the leasing company's papers, that others who wish to impede the efficiencies TTX achieves would allege that it was some form of price-fixing conspiracy, and attempt to do so in an antitrust court where the judgments about the public interest may not be the same.

Before I turn to a more detailed discussion of the overwhelming evidence demonstrating the existence of benefits across the full range of TTX activities, and the lack of any anti-competitive harm, I think it would be useful to be clear about what the TTX flatcar pool is and what it is not.

First, at its core, a flatcar pool is an idea that has worked superbly for three decades now. Throughout extensive change in the railroad industry, there is no doubt that there has been tremendous change. The number of railroads is less, the way in which shippers call for rail services has changed over time, numerous changes have occurred in three decades.

But through all of those changes the fundamental core principles of TTX, the core benefits of TTX, continue unabated. The record in this case from the shipping community of specific benefits that have been demonstrated by TTX show that change has not changed the benefits of TTX.

Second, TTX's interests are aligned with those of its railroad participants, and, importantly, with the network, the railroad network as a whole. That is a key attribute of TTX that we submit ensures that TTX will be a force of pro-competitive benefits, of efficiencies, of greater investment, to better serve shipper needs, which all railroads have an interest in doing.

Now, what does TTX do? First and foremost, TTX acquires flatcars. The Board, and the ICC before it, has consistently found that the acquisition and ownership of flatcars is a core attribute of this pool.

TTX is able to determine through careful analysis not only what likely supply and demand conditions will be, but also what the optimum amount of equipment to acquire will be to meet the needs of the rail network as a whole, taking into account the inherent efficiencies and benefits that can be achieved through sharing of that equipment by the railroads.

TTX encourages greater investment in flatcar acquisition. As Mr. Goode pointed out with respect to the non-intermodal cars, the specialized equipment, risk of a need for cars drying up is one that individual railroads face uniquely as compared to TTX.

TTX, by pooling its risks, can invest in the right amount of cars for the railroads as a group, without worrying that one railroad will win the business from another railroad, without worrying about regional shifts in supply and demand, without worrying about seasonal changes. By pooling, TTX can invest at lower risk, and, therefore, encourage greater investment in the cars, especially the specialized non-intermodal cars that the railroads need to serve their shippers.

TTX also facilitates innovation and a constant improvement in its flatcar fleet and in the design of flatcars generally. TTX, again, embodies the collective interest of the railroad industry in the most efficient, best way of serving the shippers. TTX also takes into account shipper needs. We listen to shippers.

For example, the new unilevel car, which is described in our evidence, was the

product of TTX's efforts to find ways, using its resources, to meet an unmet railroad need. These shipments of large trucks over the rail, new trucks over the rail that had been traditionally moving by road, TTX designed a car that -- and invested in that car and demonstrated its capabilities to allow railroads to find a new market niche.

Then, of course, TTX places its cars in a shared pool of fungible equipment that railroads can share and can call upon to use when they need it at low usage rates. Railroads can count on TTX's cars being provided to them at the lowest possible costs consistent with TTX's need to cover the cost of the car and to cover the reinvestment that it is providing to the railroad industry, the billions of dollars that Mr. Reardon has described that TTX invests in new equipment on an ongoing basis.

The fact that this is a shared pool of cars that's fungible from the perspective of the railroads, that is available at a uniform and known charge, that is the lowest possible charge, and can be -- and the cars can be shifted to another railroad, not just through interchange but -- but shifted to another railroad that needs them for loading, seamlessly, without any bilateral negotiations, without any paperwork, without anything other than the flow of traffic and the transfer of the car to the management of TTX.

This increases capacity of the railroad industry. It reduces empty miles, as we have shown, with respect to all of TTX's car types, and it improves efficiency tremendously. But that's not the end of TTX's benefits and its role.

TTX, embodying the interest of the rail industry and the lowest network cost of using freight cars, maintains its cars and has structured a proactive maintenance program to ensure that the cars are available to be used as much as possible, are in -- are repaired when they need repair as efficiently as possible, and are there to serve the railroad industry, rather than relying upon the cars to be maintained if and when a break occurs somewhere out on a network, creating additional costs of moving a broken car or otherwise creating frictions in the network.

And then, finally, TTX is able to efficiently redeploy its cars in a way that we submit just hasn't been matched anywhere in the railroad industry. TTX can take cars, old intermodal flatcars, for example, and, because it has the ability to invest to alter the use of those cars and make them available to its users, can transform, for example, these intermodal flatcars to chain tie-down cars that are used by the Department of Defense or to the flatcars that underlie auto rack cars.

And this efficient redeployment that we have catalogued at length in our application is a very important benefit of TTX.

Now, what does TTX not do? I think it's important to remember -- and Mr. Goode made this point precisely -- that TTX does not limit in any way whatsoever how railroads go about meeting their car supply needs. It provides a very efficient way for railroads to invest jointly in cars that they need, and then to share those cars in an efficient way.

But it doesn't prevent the railroads from going about the acquisition of cars on their own in any manner they choose -- from leasing companies, buying them directly, building them, or any other alternative.

Second, contrary to some of the recent claims that the leasing companies appear to be making, TTX does not assign cars in the -- within the sense of the 1989 order prohibiting TTX from assigning cars. Assignment means an arrangement whereby a railroad makes a financial commitment to a car. In the 1989 discussion, the ICC was talking about three- to five-year commitments, but assignment is a long-term commitment by a railroad to a specific car that it will then have and use as it chooses.

The Board saw that as too much like leasing and prohibited TTX from doing it. TTX doesn't do it. We have complied to the letter and the spirit of the '89 decision, as clarified in the 1994 decision.

I see that we're out of time. We've reserved time for rebuttal. We'd be happy to answer any questions. I have a lot more to say. I think it has been said very well in our papers, but mostly I'm here to answer questions that the Board has about this case.