



American Bar Association's Antitrust Experts Call for End to Rail Antitrust Exemptions

In December 2008, the American Bar Association's Section on Antitrust Law submitted to Congressional leaders a 13 page document in support of the Railroad Antitrust Enforcement Act, legislation ending the current railroad industry exemptions from the nation's antitrust laws. Current exemptions allow railroads to merge without an antitrust review by the U.S. Department of Justice and the Federal Trade Commission and to avoid competition, thus keeping their shipping rates artificially and unfairly high, resulting in higher prices for U.S. consumers on a vast array of goods and services. Highlights of the ABA Section on Antitrust Law comments include:

- “Encourages Congress to move forward quickly to dismantle the antitrust exemption for the railroad industry, through the Railroad Antitrust Enforcement Act.” (pg. 1)
- “Railroads today benefit from several antitrust exemptions and immunities which are legacies of a bygone era.” (pg. 5)
- “Only in the railroad industry does the regulatory agency have complete discretion to ignore the DOJ.”(pg. 9)
- “These exemptions have survived as long as they have because their benefits apply to small, concentrated interest groups that receive substantial benefits – such as railroads ... It is consumers that suffer the most from higher prices, lower output, reduced quality and reduced innovation.” (pg. 3)
- “The economy is best served by promoting competition in the marketplace, and statutory immunities and exemptions from the antitrust laws should be strongly disfavored.” (pg. 2)
- “Over a century of development has shown that the antitrust laws are the best guardian of competition, and are capable of growing to accommodate the unique characteristics of particular industries.” (pg. 3)
- “Under the ICC's and the STB's administration and approval the number of large (or Class I) U.S. railroads has dropped from sixty-three to seven through a series of mergers over the past four decades and the agency's stewardship of competition has been challenged.” (pg. 6)