Regulation of Discrimination in Railway Freight Transport

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Controls over discrimination in railway rates and services are scrutinized in terms of (a) problems stemming from their existing application and (b) their relationships with recent proposals to change economic regulation and carriers' practices in the pricing and contract carriage areas. Although originally identified with the achievement of equity and economic efficiency, such controls now appear to contravene those objectives in situations involving competition between railways and unregulated water and motor carriers. Legislative and administrative efforts to reduce rate regulation and carrier antitrust immunity and place greater reliance on market forces must not be undertaken without giving adequate attention to interrelationships between such changes and provisions for the regulation of discrimination. Proposals to transfer control over transport discrimination to the jurisdiction of other price discrimination laws and other agencies (e.g., the Federal Trade Commission) could produce problems no less onerous than those ascribed to existing statutory and institutional arrangements. This paper examines the basic meaning of discrimination and the reasons for its control.

The control of discrimination in rates and service has long been a key element in the economic regulation of railways at both the state and federal levels. Indeed, public resentment against rail carriers' discrimination among individual shippers, geographic locations, and types of commodities was a leading cause of the enactment of commission-administered railway regulatory statutes during the last quarter of the nineteenth century. Provisions proscribing the practice of certain types or degrees of discrimination were accorded prominent positions in such statutes. Similar, although not identical, statutory language was included in subsequent twentieth-century extensions of economic regulation to motor, water, and air freight carriage (1, 2). A summary of existing federal legislative provisions pertaining to rail freight transport discrimination is presented in Table 1.

Enforcement of these provisions is one of the basic purposes of freight rate regulation. Hence, their need, content, and application are inextricably bound up with the intense debate and pressure for change currently weighing against both rate control and other leading elements of the economic regulation of transport. Yet, despite this relationship, commentators on all sides of the contemporary controversy over regulation have given little attention to either (a) problems stemming from the present structure and administration of statutory controls over transport discrimination per se or (b) alternative courses of action (and implications thereof) that might be taken toward the future form and role, if any, of such controls. This paper scrutinizes conditions and questions concerning these two focal points.

NATURE OF DISCRIMINATION

Ambiguity and total unfamiliarity with the basic meaning and causes of discrimination and the reasons for its control by government are widespread, even among individuals directly concerned with transport. Price or rate discrimination, as viewed in an economic sense, occurs when a carrier charges different rates for the movement of different categories of traffic in instances where the differences in rates are not proportional to the differences in costs, if any, of accommodating each category of traffic. Discrimination in an economic sense also occurs when identical rates are charged for the movement of different categories of traffic in instances where the costs of accommodating each category differ. Categories of traffic can be distinguished from one another on the basis of (a) type of commodity carried; (b) time at which service is performed; (c) spatial differences, i.e., the particular origin and destination points between which specific consignments are moved; (d) direction of movement over the same route; and (e) particular consignor or consignee served. (The latter is known as personal discrimination and involves the charging of different rates to different shippers for the movement of identical or substantially identical shipments over the same route in the same manner between the same origin and destination points.)

Some additional attention to terminology is necessary at this point. One should be aware that the words "preference" and "prejudice" appear in the Interstate Commerce Act of 1887 in reference to the results of rate differentials that may, but need not necessarily always, represent instances of discrimination in the economic sense described here. Preference and prejudice are deemed unlawful under the terms of the Act only when determined to be "undue" or "unreasonable." Also, judicial, regulatory, and political representations of discrimination sometimes differ from its meaning in an economic sense. For example, differences in rates based largely or wholly upon differences in a carrier's costs have sometimes been looked upon as unjustly discriminatory or unduly prejudicial by those who purchase the carrier's service under higher-cost conditions—for example, certain ocean ports disadvantaged by greater distances from inland traffic origination centers vis-à-vis other competing ports (3)—a view that is understandable on emotional and self-interest grounds but indefensible when judged by economic criteria.

Causes of Rate Discrimination

The incentive to engage in discriminatory pricing stems from (a) the existence of some degree of excess capacity in a carrier's plant and equipment, (b) fixed costs, and (c) indivisible costs—i.e., cost elements that cannot be traced or assigned on a causal basis to individual sales units of a carrier's services. Inability to trace all of a carrier's costs to individual freight traffic sales units will compel the firm to attempt to earn enough to cover its aggregate traceable or divisible costs and untraceable or indivisible overhead costs by extracting as much revenue as it can from each of its individual categories of traffic. Rates charged in each category (or market) thus will vary with differences between shippers' or shipper groups' ability and willingness to pay for the carrier's service. The presence of fixed costs and excess capacity lead a carrier to seek increases in traffic volume and revenue by reducing rates in markets where additional traffic can be obtained only at charges below those already in effect for traffic already being handled, but not below traceable costs, assuming rational economic behavior by the carrier. The attraction of traffic by differentiating rates in this

Table 1. Principal federal provisions for control of discrimination in railway rates and services.

Legislation	Purpose
Interstate Commerce Act, Part I, Section 2	Holds personal discrimination in any form to be illegal per se
Interstate Commerce Act, Part I, Section 3	Prohibits all forms of undue preference or advantage and undue prejudice or disadvantage
Interstate Commerce Act, Part I, Section 4	Prohibits long- and short-haul rate discrimination except in instances where specific relief therefrom is obtained from the Interstate Commerce Commission; contains the so-called Aggregate-of-Intermediates Rule, which prohibits through rates from exceeding summations of rates between intermediate points on the same route
Interstate Commerce Act, Part I, Section 6	Requires that all rates and fares be filed with the Interstate Commerce Commission and that tariffs showing rates and fares be kept open to public inspection; requires full adherence to published rates and fares
Interstate Commerce Act, Section 10	Prohibits solicitation of rebates and concessions by shippers or the offering of rebates and concessions by a railway
Elkins Act (supplementary to Interstate Commerce Act)	Prohibits the solicitation, offering, receipt, and/or payment of rebates or any other form of concession that constitutes a departure from published and filed tariffs

manner will increase use of the carrier's plant; improve coverage of the carrier's indivisible overhead costs, thus spreading the burden of overhead cost coverage over a greater number of units of traffic; and make freight service and its benefits available to additional shippers able and willing to purchase it only at lower rates.

Prerequisites for Successful Rate Discrimination

The ability to achieve revenue gains through rate discrimination is based on three conditions. First, the discriminating firm must possess some degree of discretion over establishment of the level of its selling price. It must command some degree of monopoly power, or a range within which it can set a price without causing shippers to either divert traffic to a competing carrier or cease movement of the traffic. Second, the discriminating firm must be capable of isolating its markets from one another to prevent customers purchasing at lower prices from trading with those subjected to higher prices. Such market segmentation is facilitated in transport by various forms of discrimination—e.g., types of commodities shipped, geographic location, and direction of movement. Third, differences in price elasticity must exist between the various markets served by the carrier. If such differences did not exist, the incentive to discriminate would be absent because revenue would be maximized by charging identical rates in each of the carrier's markets.

RATIONALE FOR SOCIAL CONTROL OF DISCRIMINATION

The immediate goal or purpose of the social control of discrimination can be construed as the prevention, mitigation, or elimination of economic injury stemming from the exercise of monopoly or monopsony power, or the failure of competitive forces to produce appropriate price-cost relationships in the sale of transport services, either at all or within an acceptable period of time. Beyond this immediate goal or purpose are two fundamental objectives, equity and economic efficiency. Equity can be characterized as the maintenance or achievement of fairness or justice in economic relationships between (a) carriers and individual shippers; (b) one shipper or shipper group vis-à-vis another, as affected by their comparative transport service purchasing conditions (i.e., bargaining powers); and (c) particular regions or communities and the carrier serving them. Economic efficiency emerges as the second basic objective to the extent that regulation of discrimination minimizes or prevents misallocative consequences of the nonoptimal price-cost relationships that can ensue from various types of discrimination.

CURRENT PROBLEMS

Incongruity

There is reason to question whether the just-mentioned objectives of equity and economic efficiency are being served or subverted by the existing framework of control over discrimination.

Under the statutory provisions depicted in Table 1, regulated rail common carriers presently face constraints against rate and service discrimination that do not apply to either interstate for-hire truck movements of agricultural products or for-hire domestic waterway movements of liquid and dry bulk commodities, which are exempted from all economic regulation by provisions contained in the Interstate Commerce Act. Motor and water carriers doing business under the terms of the exemptions thus are immune from those regulatory provisions that are indispensable for preventing or minimizing the practice of personal discrimination by regulated carriers—i.e., the requirements that (a) rates be published, (b) charges for transport services be billed and paid in conformance with terms published in applicable tariffs, and (c) rates be initiated or adjusted only in conformance with advance notice and tariff publication requirements. In addition, exempt carriers have no legal obligation to provide service of any type.

Exempt water and motor carriers, therefore, can freely accept or reject traffic whenever, wherever, and with whomever they please, and they may price their services on whatever terms they find it possible to command in negotiations with their customers. The handicap that this set of circumstances imposes upon regulated carriers competing with exempt carriers for the movement of rate-sensitive commodities is obvious. Exempt carriers, or brokers of the services, can use published regulated rates as pricing benchmarks or targets against which to "sharpshoot"—i.e., as points of departure from which to quote whatever prices they deem acceptable for capturing particular movements from regulated carriers. The latter firms cannot readily respond with rate changes of their own because both rate publication requirements and other regulatory controls prevent instantaneous or timely reactions.

The pricing flexibility enjoyed by exempt carriers vis-à-vis regulated carriers enables the former to achieve a higher degree of efficiency in equipment use in freight markets where traffic fluctuates widely and rapidly. For example, exempt barge rates on grain fluctuate freely in response to changes in the demand for, and supply of, barge lines' grain-carrying capacity. During peak periods, they sometimes exceed regulated rail rates by more than 200 percent. At other times,

they decline to levels well below the lowest published rail grain charges (4).

This pricing discretion, together with the absence of any legal obligation to provide service per se, gives exempt carriers full ability to maintain their capacity at investment levels that do not greatly exceed the aggregate value placed on exempt transport service by shippers during peak and off-peak periods taken together. Such carriers need not either (a) limit rates in "strong" markets to levels construed as "reasonable" via governmental regulatory criteria or (b) meet requests for service in instances where costs exceed revenues. Yet, the pricing and service patterns of exempt carriers have never drawn perceptible negative reaction from either shippers or the commercial representatives of communities served by such carriers.

It can be argued that the chronic problem of severe seasonal shortages in grain-carrying railway rolling stock would not exist if comparable rate-making flexibility were possessed by rail firms. The price system would function to ration the supply of rail equipment in the same manner that it presently allocates resources committed to exempt barge and truck grain-hauling capacity. Moreover, grain shippers might well be drawn away from the frequent practice of fulfilling their basic movement requirements with exempt water and motor carriage, as well as using rail transport only when exempt truck and barge rates exceed rail rates, or when exempt motor and water carrier services are interrupted, or both. Such a shift would serve the cause of equity as well as economic efficiency, for it is ludicrous to contend that any measure of fairness prevails when a carrier or mode of carriage cast in a secondary or supplemental role and encumbered with both constraint on discrimination and other regulatory obligations and limitations must compete against carriers with no such restraints on their market behavior.

The anomaly posed by inequality in the imposition of regulatory control over discrimination in freight transport is amplified by the fact that exempt water and motor carriers face no statutory antidiscriminatory controls whatsoever because the proscriptions against price discrimination contained in Section 2 of the Clayton Act and Sections 2 and 3 of the Robinson-Patman Act apply only to the sale of commodities; coverage of services is omitted from their purview.

Questions of Obsolescence Versus Relevance, Infeasibility Versus Attainability

The following alternatives are among those that conceivably could be considered for dealing with the situation sketched above:

1. Extend the agricultural and bulk exemptions to railways on either a selective or an across-the-board basis.
2. Extend the exemptions to rail transport as in the previous option, but subject both rail carriers and the currently exempt sectors of motor and water transport to either (a) price discrimination provisions of the Robinson-Patman and/or Clayton Acts, as administered by the Federal Trade Commission, or (b) controls over discrimination specifically attuned to transport, perhaps transferred with modification from provisions contained in the Interstate Commerce Act, and administered by an agency solely concerned with transport, e.g., the Interstate Commerce Commission, with requisite reforms, or a new successor agency to the Commission.
3. Repeal the agricultural and bulk exemptions and subject the exempt water and motor transport sectors to all rate and service controls borne by nonexempt water and motor carriers. It should, however, be acknowledged immediately that the political feasibility and economic merit of this alternative are dubious at best (5).

ELIMINATION OF CONTROL OVER DISCRIMINATION: POSSIBLE CONSEQUENCES

Basic to the making of a rational choice among these alternatives (from the vantage point of economic desirability rather than political feasibility) is a determination of the degree to which regulated carriers can, if freed from regulatory constraints, exert economic injury by imposing rates, or service characteristics, or both, that depart from the norms of workable, if not a purer form of, competition.

Predatory Discrimination

Desirable consequences of rate discrimination—i.e., the extension of service to transport markets or shipper groups capable only of paying lower rates than hitherto charged, greater utilization of capacity, and a wider basis for spreading the burden of overhead or indirect costs—were presented in the introductory section of this paper. However, it is also possible for a carrier possessing relatively high degrees of monopoly power in some markets, and facing discernible competition in others, to engage in predatory discrimination by selling its services in the latter markets at rates below the direct or traceable costs of serving them. Such behavior is predicated on the expectation that the discriminating firm's competitors will be destroyed, whereupon rates in the affected markets can be raised to levels sufficiently above costs to (a) recoup the losses incurred during the period of predation and (b) provide returns in excess of those that could have been earned in the continued presence of competitors.

Instances of such pricing behavior have been cited at various points in transport history, both on an intramodal basis within rail transport and in rivalries between railways and other modes, particularly water carriage. Indeed, barge-line representatives continually raise the spectre of its recurrence as part of their arguments in opposition to proposals that would reduce or end railway regulation on commodity movements highly susceptible to water carriage (6).

The validity of the water carriers' case against railway deregulation rests on (a) the traditional conceptual rendition of the "typical" rail firm's cost structure—i.e., a relatively high proportion of indivisible costs vis-à-vis traceable costs—coupled with the ability to serve a wider range of transport markets as identified or delineated in terms of both geographic coverage and types of commodities, thus providing rail managers with a wide range of discretion in the establishment of rates on individual movements; (b) sufficient liquidity for financing bouts of predatory pricing; and (c) little or no threat or possibility of reemergence of nonrail competitors following the rail firm's winning of an initial round of predatory pricing combat.

Arguments Supportive of Abolition

Proponents of railway deregulation through either extension of the agricultural and bulk exemptions or even broader forms of decontrol contend that the relatively low costs of initiating both for-hire and private motor carrier operations on freely accessible publicly

provided way facilities will preclude rail firms from garnering monopoly-level earnings (in either individual freight markets or on an aggregate basis) via predatory pricing, and that this is fully perceived by contemporary railway managers. Other points frequently cited in support of the view that substantial or total railway deregulation will not open the door to either predatory discrimination or the simpler case of exploitation of shippers in existing captive markets are as follows:

1. The decline and even virtual disappearance of rail market share in the movement of numerous commodities and the availability of evidence that rail carriage no longer commands significant cost advantages (excluding social costs)—even at levels approximating traceable or marginal costs—over motor carriage in the long-distance movement of either most types of manufactured goods or agricultural commodities (7);
2. Restraint of rail-pricing discretion by competition between alternative types of materials and alternative production locations for specific commodities, respectively;
3. Critical and seemingly intractable qualitative defects that afflict many rail services and make it difficult to either recapture traffic lost to other modes or win new traffic (7, 8);
4. The financial malnutrition that besets much of the railway industry, both in the absolute sense of bankrupt companies and in the relative sense of carriers earning inadequate rates of return (8); and
5. The rise of executives cognizant of the role that properly developed cost information should play in rate making, thus obviating the possibility that minimum rate regulation might have to be invoked to prevent carriers from self-impairing their ability to serve the shipping public through pricing errors stemming from ignorance of costs.

Arguments Against Total Abolition

Other students of transport accord varying degrees of acceptance to these phenomena, but they contend that the distribution of bargaining power on both the buyers' and sellers' sides of at least some transport markets remains uneven enough to warrant the retention of some measure of social control over both carriers' pricing and service behavior and the influence of shippers on these factors (6, 9-11). This view is based on the following arguments:

1. Rail service continues to be the only means for moving some socially significant types of commodities (e.g., utility steam coal and grain) in great quantities between certain pairs of points.
2. Some situations still exist in which rail use cannot be circumvented by lower-cost alternatives without the endurance of lengthy lead times involving either the creation of a completely new transport alternative such as a slurry pipeline or the discovery of a substitute commodity or new supply source bearing more favorable terms of transport.
3. The concept of threat of entry by a competitor at a somewhat distant point in time cannot be relied on to influence a market-dominant firm's price and service policies within the near future for reasons such as (a) incumbent managers and/or directors who desire to maximize profits within the limits of their terms of office and who leave the problem of coping with future competition to their successors, and (b) managerial ignorance or insensitivity toward potential future forms of competition that, even if perceived, might be viewed as having relatively low probabilities of emergence.
4. The reinforcement of tendencies toward inertia and indifference in pricing and service that can stem from exclusive access to particular segments of right-of-way by individual rail carriers.
5. The presence in some freight transport markets of monopsony or oligopsony—i.e., imbalances in bargaining power favoring certain shippers vis-à-vis carriers and other shippers.

Further discussion concerning the relative workability (or imperfection) of competition between rail firms and carriers in other modes and its implications for the overall spectrum of economic regulation exceeds the scope of this paper. However, if continuance of some degree of public control over discrimination and related aspects of the pricing and supply of freight services is judged to be desirable in principle, then judgments must also be made about the administrative feasibility and prospective results of alternative means for achieving it. Conversely, moves toward substantial reductions in both rate regulation and the antitrust immunities heretofore accorded rail pricing activities conducted under the aegis of rate bureaus (as noted in the Interstate Commerce Act and Public Law 94-210) should be accompanied by appropriate action concerning some little-recognized but crucial relationships between such proposed changes and existing controls over rate discrimination.

Standards for Judging Discrimination: Problems

The history of efforts to control both railway price and service discrimination and the reasonableness of rates per se has been clouded by varying degrees of ambiguity over criteria for drawing distinctions between just and unjust discrimination, due and undue preference and prejudice, and reasonable and unreasonable levels of charges and service (1, 12). It has been noted that

> The decisions made by the ICC and reviewed by the courts...determine when discrimination will be permitted and when it will not. But the line thus drawn between legality and illegality is not always clear. The limits of discrimination, at any time, will depend upon the composition and the judgment of the Commission and the courts (13).

At the heart of this ambiguity are debate and uncertainty over (a) the roles that cost evidence and comparisons between different rates and movements, respectively, should play in determining the appropriateness of rate differentials; (b) the particular cost concepts to be employed (e.g., marginal versus average and variable versus fully allocated); (c) methods or formulas most appropriate for computing cost evidence admissible in a commission or court proceeding; and (d) the selection and application of criteria for judging the justness or reasonableness of contribution margins (or elements of rates and revenues in excess of traceable costs related thereto) and the aggregate level of one particular rate or group of rates vis-à-vis another (1, 3, 9, 12).

Cost: Dominant Criterion

The greatest potential for improvement of the process and results of discrimination control might well be realized by (a) the pursuit of opportunities for achieving a greater measure of definitiveness in the construction of cost evidence and the specification and application of cost standards numerated by such evidence and (b) placement of sole or dominant reliance upon cost evidence in determining a particular rate's reasonableness per se and whether a particular rate is excessively low in com-

parison with another in cases involving allegations of undue preference and prejudice. For example, the concepts of "variable cost" and "contribution to going concern value" specified in the Railroad Revitalization and Regulatory Reform Act of 1976 (also known as the 4-R Act) could be given a stronger, more dominant joint role in determination of the lawfulness of particular rates. This or a similar course of action, if properly implemented, could (a) prevent or diminish the delay or rejection of proposed new freight services and rates (on the grounds that they might, or do, respectively, violate one or more discrimination control provisions of the current Interstate Commerce Act) in instances where such rates are cost justified, and/or (b) give railways the ability to adjust rates and service characteristics on unremunerative movements without being greatly delayed or barred from doing so by the invocation of discrimination control provisions.

Intractable Problems Involving Rate Maximums

The task of judging whether a particular rate's aggregate level—or its level in excess of the traceable cost element within it—is just and reasonable, either in and of itself or in comparison with another rate, is inherently subjective for reasons that have been amply discussed in the literature of rate regulation (1).

Subjective judgment—and the provocation of widely differing reactions, ranging from exuberant approbation to vitriolic condemnation—also obtains in cases involving choices between reliance on efficiency-oriented cost criteria and those types of equity criteria that may be in conflict with efficiency. A prime example can be found in the Interstate Commerce Commission's attempt to make at least some rail service available to all grain shippers during the 1978 car shortage by ordering the reassignment of covered hopper cars from lower-cost unit train movements (limited to shippers large enough to utilize the higher individual load minimums of such operations) to higher-cost, less-efficient single-carload service (14).

OTHER PRICE DISCRIMINATION LAWS OF QUESTIONABLE MERIT

Substitution of the price discrimination control provisions of the Robinson-Patman and Clayton Acts, or adaptations thereof, for existing discrimination control provisions in the Interstate Commerce Act was mentioned earlier in this paper as a conceivable alternative (and Robinson-Patman Act language was incorporated in the proposed but never-enacted Transportation Act of 1974, which was directed toward relaxation of rate regulation). However, such a change does not hold promise for improvement because the administration and impact on competition of the Robinson-Patman and Clayton Act provisions have posed difficulties no less onerous than those that have beset known experience with Interstate Commerce Act provisions (13). There is also reason to question whether the inevitable difficulties of continued control over transport discrimination, even in modified form, could be dealt with more effectively by the Federal Trade Commission rather than by another agency with greater expertise in the vagaries of transport markets.

In summary, the process of controlling transport discrimination, particularly in cases focusing primarily on rate maximums, is inherently subjective and imprecise. Decisions about whether the costs of its imperfections will outweigh whatever social benefits it might confer are subject to sociopolitical value judgment.

ANTITRUST IMMUNITY AND EXISTING CONTROLS OVER DISCRIMINATION

The 4-R Act repealed antitrust immunity for the collective pricing of single-line rail freight movements, but continued language permitting rate-bureau-administered pricing of interline movements by carriers participating in such movements. However, in a recent ruling concerning rate bureau procedures for interline rate matters, the Interstate Commerce Commission appears to have effectively blocked rail-pricing executives from collectively establishing rates on interline traffic in which they participate.

If the Commission's ultimate disposition of this case remains substantially the same, it would appear that railways could and would revert to individual negotiations with one another for the construction and publication of joint through rates. However, such an approach would increase the possibility of potential violations of Sections 2, 3, and 4 of Part I of the Interstate Commerce Act. For example, a rail carrier connecting end-on with two or more other railways extending to a common metropolitan area destination would have to carefully monitor the relationships between the levels of each of the through rates that it might negotiate with each of the connecting carriers. If one rate happened to differ from another (all other things being equal), the initial carrier could conceivably be confronted with a charge of violation of Section 2 (personal discrimination) and/or Section 3 (undue prejudice of a particular point or location) by a shipper or consignee confronted by the higher rate and limited to one-carrier private siding access within the metropolitan area. This example, although oversimplified, should stimulate recognition of the possibilities for inadvertent violations when consideration is also given to the vast number of changes and combinations of origin and destination points and types of commodities that characterize rail movements.

The Commission's action could terminate the pricing and marketing of interline rail freight services by individual carriers. Shippers requiring interline rail service would be forced to negotiate separately with each carrier participating in operation of the service. Or, alternatively, a new industry consisting of carload (and multiples thereof) freight service brokers (as distinguished from freight forwarders) might appear. It would serve as an intermediary between rail carriers and shippers for the development, pricing, and marketing of single- and multiple-carload interline services.

The discontinuities and consequent costs of this possible outcome (e.g., traffic losses to other modes of transport at the same time that the railway industry's financial performance and condition are already at lows not matched since the 1930s, and the forcing of marked adjustments in shippers' logistics systems and traffic management functions) strongly suggest that any and all types of effort directed toward deregulation of railway rate making and increased play in the interaction of rail freight market forces must be accompanied by significant reductions in the scope and stringency of existing controls over discrimination.

Another illustration of the need for coordinating reductions in a particular aspect of regulation with controls over discrimination can be found in current moves to reduce long-standing restrictions on the offering of common and contract carriage by the same firm (15, 16). These moves are at the core of statutory proscriptions against personal discrimination and bring

into question both the relevance or necessity of such proscriptions and the feasibility of their continued application in a consistent manner.

CONCLUSIONS

Existing controls over railway rate and service discrimination, in common with other aspects of economic regulation, have reached a critical point in their history. Although originally identifiable with equity and economic efficiency objectives, they (together with other facets of economic regulation) now appear to contravene the achievement of those objectives in instances where railways face competition from unregulated water and motor transport. The decline and even disappearance of rail transport's economic advantages vis-à-vis other regulated and unregulated carriers for the movement of many commodities and significant lengths of haul cast doubt on the continued need for control of discrimination in affected transport markets.

The administration and effects of discrimination control in areas where it might still be needed could be improved in some ways by placing greater reliance on cost information and criteria. However, the judgment of cases involving the reasonableness of profit or contribution margins and rate maximums is inherently subjective and subject to ambiguity and conflicting value judgments.

Efforts to reduce or eliminate regulatory barriers that limit or prevent the offering of both contract and common carrier services by the same transport firm pose questions about the future role of proscriptions against personal discrimination.

Finally, recent legislative and administrative moves toward reductions in rate regulation and greater reliance on competitive market forces have apparently been taken without adequate consideration of their interrelationships with controls over discrimination (17). Larger measures of immediate attention to these circumstances by transport researchers and policymakers are necessary.

REFERENCES

1. D. P. Locklin. Economics of Transportation. 7th ed. Richard D. Irwin, Inc., Homewood, IL, 1972, pp. 211-222, 421-538.
2. A. T. Hadley. Railroad Transportation: Its History and Its Laws. G. P. Putnam's Sons, New York, 1888.
3. Rail Rate Equalization to and from Ports, Preliminary Report. Rail Service Planning Office, Interstate Commerce Commission, July 1978.
4. Subcommittee on Transportation and Commerce, Committee on Interstate and Foreign Commerce, U.S. House of Representatives. Hearings on the Matter of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company's Petition for Reorganization Under Section 77 of the Federal Bankruptcy Act. 95th Congress, Jan. 5, 1978, Serial No. 95-90, pp. 112, 118-119.
5. J. C. Spychalski. On the Nonutility of Domestic Water Transport Regulation. ICC Practitioners' Journal, Vol. 37, No. 1, Nov.-Dec. 1969, pp. 7-20.
6. J. A. Creedy. Time to Apply Antitrust Principles to Transport Regulation. Paper presented at American Society of Traffic and Transportation Annual National Conference, Pittsburgh, Aug. 24, 1978, 10 pp.
7. D. Daryl Wyckoff. Railroad Management. Lexington Books, Lexington, MA, 1976.
8. Improving Railroad Productivity: Final Report of the Task Force on Railroad Productivity. National Commission on Productivity and Council of Economic Advisors, Nov. 1973.
9. J. R. Clark. Coal Freight Rate in the United States: An Inevitable Confrontation Between Economical Energy and Railroad Monopoly Pricing. ICC Practitioners' Journal, Vol. 44, No. 3, March-April, 1977, pp. 292-304.
10. M. T. Farris. The Case Against Deregulation in Transportation, Power, and Communications. ICC Practitioners' Journal, Vol. 45, No. 3, March-April, 1978, pp. 306-332.
11. Incentive Rate on Coal: Cordero, Wyoming to Smithers Lake, Texas. Interstate Commerce Commission, Ex Parte No. 366608, Nov. 1977.
12. J. J. Hillman. Competition and Railroad Price Discrimination. Transportation Center, Northwestern Univ., Evanston, IL, 1968.
13. C. Wilcox. Public Policies Toward Business. 4th ed. Richard D. Irwin, Inc., Homewood, IL, 1971.
14. Distribution of Grain Cars. Interstate Commerce Commission, Service Order No. 1322, April 12, 1978, p. 3.
15. American Trucking Associations, Inc. Comments Before the ICC on Railroad Contract Rates, Proposed Change of Policy. Interstate Commerce Commission, July 7, 1978, 10 pp.
16. P. Cavanaugh. ICC Ends "Rule of Eight" in Contract Carrier Cases. Transport Topics, No. 2246, Aug. 1978, pp. 1, 23.
17. R. W. Harbeson. Pricing Developments in Transportation and Public Utilities: Comment. Transportation Journal, Vol. 14, No. 3, Spring 1975, pp. 43-44.

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