

Trucking Deregulation in the United States
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1. History of Trucking Regulation in the U.S.

Over the past thirty years, the U.S. transportation sector has benefited from significant regulatory reform at the federal level. For many years interstate trucking was heavily regulated by the Interstate Commerce Commission (ICC). The ICC reviewed rates that common carriers were required to file, and strictly limited entry. Beginning in the late 1970s, a series of administrative and legislative actions liberalized regulation of the industry. These, and similar initiatives deregulating the railroad industry, led to the abolition of the ICC in 1995. The Surface Transportation Board (STB) was established in 1996 as an independent adjudicatory body housed within the U.S. Department of Transportation (DOT), with jurisdiction over certain surface transportation economic regulatory matters.

Today little economic regulation of trucking remains, and the antitrust laws, including merger review by the federal antitrust agencies, apply, except with respect to certain immunized conduct discussed below. Even that immunity will expire on January 1, 2008. Entry is no longer restricted and barriers to entry are low. Rates are no longer filed or reviewed for reasonableness,¹ and Congress has pre-empted state economic regulation of intrastate transport (except for transport of household goods).

Congress passed the Motor Carrier Act of 1935 (the 1935 Act), initiating a system under which the ICC restricted new entry into the trucking business and approved specific routes. The 1935 Act also required motor carriers to file tariffs with the ICC 30 days in advance of their entry into force, allowed protest from other common carriers of proposed tariffs, and required that carriers' rates be reasonable "as to both minimum and maximum." The underlying rationale of the 1935 Act was that the motor carrier sector was economically unstable and that cut-throat competition might destroy the fledgling industry.

In 1948, with the motor carrier industry facing antitrust lawsuits and investigations by the Department of Justice (DOJ) and several states regarding collective activity, Congress passed the Reed-Bullwinkle Act. That act allowed "rate bureaus" operating under ICC-approved agreements to set rates collectively, and immunized the activities of bureaus operating under an ICC-approved agreement from the antitrust laws.

In the environment of pervasive regulation, almost all carriers belonged to a rate bureau. Most customers paid the undiscounted rates that the bureaus set for classes of goods and published for their member carriers. The bureaus also published adjustments to those rates (whether

¹ Rates and rules relating to movements of household goods and to non-contiguous domestic trade (*i.e.*, involving Alaska or Hawaii) are subject to review by the STB for reasonableness. Filing requirements are limited to non-contiguous domestic trade. Significant consumer protection regulation continues for shipments of household goods.

reductions or increases) that any member carrier might request. The bureaus calculated and published, for their member carriers, the amounts of any across-the-board increases or decreases to rates that should be applied to take into account changes in the carriers' labor and fuel costs. All rates were subject to regulatory challenge.

The regulatory environment has changed substantially since the bureaus began. The regulation of highway transport began as a complement to the pre-existing system of railroad regulation, which predated the existence of an adequate highway system. As the Interstate Highway System was built and trucks, rather than the railroads, came to dominate the carriage of manufactured goods,² the motor carrier industry achieved financial stability and the original rationale for restrictive motor carrier regulation ceased to exist. However, the existing system of railroad regulation created regulatory disincentives to ship by truck.³ With the enactment of the Motor Carrier Act of 1980, and a similar deregulation of railroad rates, the way in which interstate trucking firms formulated their rates changed dramatically. As noted above, prior to 1980, virtually all interstate motor common carriers collectively formulated their rates through regional rate bureaus that enjoyed broad antitrust immunity. The collectively established rates were subject to review by the ICC. Deviations from published bureau rates through the independent actions of individual motor carriers were rare. The rate bureaus were effective in establishing both less-than-truckload (LTL) general freight sector rates and, to a lesser extent, truckload (TL) rates. After 1980, however, the scope of antitrust immunity for motor carrier rate bureaus was greatly reduced, and collectively agreed single-line rates were no longer generally immune from the antitrust laws. The main exception is the formulation of general rate increases (GRIs).⁴

The U.S. antitrust agencies were active proponents of trucking deregulation, and sought to advocate competition in the sector by explaining the costs that trucking regulation imposed on consumers and the benefits of competition. The Federal Trade Commission (FTC) alone made at least 17 such submissions, principally directed to state governments that retained the power to regulate *intrastate* trucking even after *interstate* regulation ended at the Federal level. In a submission to the Railroad Commission of Texas, for example, the FTC presented evidence that shipping of a common consumer product that cost \$2.52 per mile between two key cities in Texas' regulated market cost only \$1.46 per mile for a similar distance in the unregulated

² In 1980, approximately 70% of the nation's total freight expenditures were paid to motor carriers, compared with 87% in 2004.

³ See generally Viscusi, Harrington, and Vernon, *Economics of Regulation and Antitrust* 591-605 (4th Ed. 2005).

⁴ The law permits a rate bureau to establish "rate adjustments of general application based on industry average carrier costs (so long as there is no discussion of individual markets or particular single-line rates)." 49 U.S.C. § 13703(a)(1)(G). Antitrust immunity is also given for collective action with respect to through routes and joint rates, rates for the transportation of household goods, classifications, mileage guides, rules and divisions. 49 U.S.C. §13703(a)(1).

interstate market. It also cited the positive effects of deregulation in states that had deregulated: lower prices, and continued service to small communities, and undiminished service.⁵

Deregulatory efforts are ongoing. The STB recently completed a review of the status of rate bureau agreements and has determined not to renew their immunity, effective January 1, 2008. The STB agreed with DOJ advocacy, as set forth in a series of comments submitted to the STB, that despite the provision for independent action and a competitively structured industry, the ability to engage in collective ratemaking for GRIs can lead to supracompetitive rates. The STB noted Congressional directives that the STB approve motor carrier collective agreements only if such agreements are in the public interest. The STB's decision was influenced by the strong commitment in Congressional policy statements to the promotion of competition in the motor carrier industry.

2. Effects of Regulatory Reform

The deregulation of the trucking industry has been closely studied in order to learn whether the policy indeed benefited consumers. This section describes the findings of several key studies, which generally agree that deregulation brought down shipping costs without adverse effects on consumers.

According to a 1988 FTC study, federal and state regulation of trucking drove prices up and encouraged inefficient practices. According to earlier statistics, trucking regulation increased freight rates by one-third to one-half and increased the freight bill to U.S. industries by \$5.5 to \$7.3 billion per year. Studies indicate that high prices and protection from competition generated substantial supracompetitive profits for carriers owning operating certificates and significantly higher wages for union members employed, but imposed large net welfare losses on society. Even during the years of high fuel prices (in the mid-seventies), major carriers earned on average a 50 percent higher rate of return than did firms in other sectors of the economy.⁶

The same study cited research finding that the average interstate TL rates fell about 25 percent between 1977, before the reforms took effect, and 1982, after they were in place. During the same period, average LTL rates fell about 12 percent. The cited studies found that LTL rates dropped less than TL rates because more truckers entered the truckload part of the business. These declines occurred despite the more than doubling of fuel prices over the same period. Prices have remained low after the initial adjustment to deregulation and rate discounting has become standard practice. At the same time, shippers overwhelmingly indicate that service quality has improved or remained constant.⁷

⁵ Letter from Thomas Carter, Regional Director, Federal Trade Commission, to Raymond Bennett, Director, Transportation/Gas Utilities Division, Railroad Commission of Texas, October 2, 1989

⁶ Diane S. Owen, Federal Trade Commission, Bureau of Economics, *Deregulation in the Trucking Industry* (1988).

⁷ Thomas Moore, *Rail and Truck Reform – The Record So Far*, Regulation (Nov./Dec. 1983), 33-41; Thomas Moore, *Rail and Trucking Deregulation*, in Leonard Weiss and Michael Klass (eds.), *Regulatory Reform: What Actually Happened* (1986).

In 1998, Clifford Winston reported on the effects of deregulation on the LTL and TL sectors:

The trucking industry is composed of two sectors: “less-than-truckload” (LTL), which uses a network of terminals to consolidate shipments of more than one shipper’s goods on a truck, and “truckload” trucking, which provides point-to-point service for one shipper’s goods that fill an entire truck. In the LTL segment, low-cost non-union regional carriers ... have become an important competitive force. In response to this challenge, the national LTL carriers ... have pursued an aggressive policy of purchasing regional (non-union) carriers and operating them as independent business units. The dominant force in “truckload” trucking has become the “Advanced Truckload” or “High Service” mega-carrier These carriers have become so efficient that they are capturing substantial traffic from firms that historically, in response to high regulated truck rates and poor service, provided their own trucking services. For-hire trucking operations are now roughly 25 percent less expensive than private carriage, which relies primarily on (more costly) unionized labor.⁸

For LTL trucking, he concludes that carriers have substantially reduced their empty miles since deregulation, with real operating costs per vehicle mile dropping 35 percent. For truckload trucking, these costs have fallen at least 75 percent; in both cases, operating profits are slightly lower than they would have been under regulation.⁹ Average rates charged per vehicle mile have declined by the same percentages as have costs, with significant service improvements.¹⁰

A separate FTC study specifically examined the relationship between regulation and price at the level of individual states in the United States. That study, which compared the degree of regulation for shipments within particular states with shipping cost, found that for LTL carriers, each of three types of regulations studied -- rate regulation, entry regulation, and the provision of antitrust immunity for decisions made jointly (*i.e.*, rate bureaus) – were positive related to the cost of trucking services. Rate regulation was also shown to increase cost of TL shipping. The authors concluded that market forces are effective regulators of shipping costs in smaller markets, such as those of individual states, as well as at the national level.¹¹

Further studies examined the dynamics of competition and the nature of efficiencies achieved under deregulation. A 1999 study by Morrison and Winston notes that “the number of large (Class I [over \$10 million in revenues]) LTL carriers fell from more than 600 in 1976 to around 50 in 1995. Nonetheless, although figures for specific markets are difficult to obtain, competition in LTL markets has clearly become much more intense since deregulation, both

⁸ Clifford Winston, *U.S. Industry Adjustment to Economic Deregulation*, Journal of Economic Perspectives, Summer 1998, at. 94.

⁹ *Ibid.*, p. 99.

¹⁰ *Ibid.*, p. 101.

¹¹ Timothy P. Daniel, Andrew N. Kleit: Federal Trade Commission, Bureau of Economics: Disentangling Regulatory Policy: the effects of state regulations on trucking rates, 1995 (available at <http://www.ftc.gov/reports/trucking.pdf>).

because of the growth of low-cost (non-union) regional LTL carriers . . . and because of increased competition from alternative small shipment carriers such as UPS and Federal Express. . . . LTL carriers' share of small shipment revenue declined from nearly 60 percent in 1980 to 35 percent in 1995. The truckload (TL) industry has always been quite competitive, and although the number of competitors has increased since deregulation, from some 20,000 small (Class III) TL carriers in 1980 to nearly 55,000 in 1995, competition has actually intensified because of the growth of national mega-carriers (commonly referred to as advanced truckload carriers)"¹² with annual revenues of roughly \$1 billion each.

The same study found the reduction in rates charged has matched cost savings. "Large shippers in high-density markets have undoubtedly gained more than small shippers in low-density markets, but small shippers have been able to share in some of the benefits from lower rates through third-party logistics firms. Shippers have also gained from improvements in service time and service time reliability. Including these benefits, the annual net benefits to shippers from trucking deregulation amount to more than \$18 billion (1996 dollars)."¹³

The 1988 FTC Study also addressed the efficiency gains brought about by deregulation. Deregulation has allowed the trucking industry to use resources more efficiently, leading to both cost savings in the trucking industry and reduced logistic costs for shippers. Before deregulation, private fleets carried 50 percent of the nation's TL freight, primarily because many shippers could not obtain the services they needed at competitive rates from common carriers laboring under operating restrictions. Running such private carriage imposed costs in two ways: firms had to divert resources from their primary lines of business and also had to accept the empty backhauls frequently imposed upon private carriers by regulation.¹⁴ After deregulation, firms were no longer forced to bear these costs. Lower prices and more efficient service since deregulation have dramatically reduced the costs of moving and storing raw materials and transporting finished products.¹⁵

3. Addressing the Skeptics of Deregulation

The 1988 FTC study is especially instructive because it closely examined and addressed the arguments advanced by proponents of trucking regulation. Opponents of trucking deregulation have made four main predictions about the effects of partial deregulation: that service to small communities will be reduced, that "destructive competition" will ultimately harm consumers, that confusion and inefficiency will be created, and that highway safety will deteriorate. The study examined each in turn, as well as the effects of deregulation on labor:¹⁶

¹² Stephen Morrison and Clifford Winston, *Regulatory Reform of U.S. Intercity Transportation*, in *Essays in Transportation Economics and Policy*, Brookings 477, eds. (Jose Gomez-Ibanez, William Tye, and Clifford Winston, eds. 1999).

¹³ *Ibid.*, p. 486-87.

¹⁴ A substantial "freight brokerage" business has emerged to match up freight loads awaiting shipment and truckers with excess hauling capacity.

¹⁵ Owen, *supra* note 6, 24-26.

¹⁶ Owen, *supra* note 6, 8-22.

a. Service to small communities

Defenders of trucking regulation argued that service to small and remote communities would deteriorate under deregulation. This argument assumed that regulated carriers cross-subsidized service to small towns at rates below cost by setting big-city rates above competitive levels. In a deregulated market, carriers will be unable to keep big-city rates high and so will not generate sufficient revenue to maintain service to small towns.

Despite the predictions, studies generally find that service to small communities has stayed constant or improved since deregulation. An ICC study concluded that, “the Motor Carrier Act of 1980 has not harmed shippers in small and isolated communities. In fact, evidence suggests that small communities have actually benefited from this legislation.”¹⁷ This observation was confirmed in later studies. One found that, “if anything, small rural shippers appear to be more bullish about deregulation than their larger, urban counterparts.”¹⁸

b. Destructive competition

Opponents of trucking deregulation argued that relaxed prices would lead to “destructive competition.” They claimed that well-financed carriers in the LTL market¹⁹ would drive out their competitors by using predatory prices and when rivals left the market, the predators would exploit their market power by raising prices above competitive levels. Under such conditions, entry by new firms could be discouraged.

However, studies indicate that LTL carriers have not engaged in predatory pricing since deregulation. LTL trucking seems no more susceptible to predation than most other industries. A General Accounting Office (GAO) study confirms earlier results from the ICC, the Motor Carrier Ratemaking Study Commission, and the Department of Justice in finding no predatory behavior in LTL trucking.²⁰

Carriers have apparently used discount pricing not to drive rivals from the market but to promote new services or to reflect the lower costs of serving high-volume or frequent shippers. Nor do surviving carriers seem to be earning the supracompetitive profits of successful predators. The increased number of firms on most routes suggests that deregulation has promoted price competition that is beneficial, rather than predatory.

c. Pricing inefficiencies

¹⁷ Interstate Commerce Commission, *Small Community Service Study* (1982)

¹⁸ Richard Beilock and James Freeman, *Deregulated Motor Carrier Service to Small Communities*, *Transportation Journal* (Summer 1984).

¹⁹ Because the TL market is characterized by low capital requirements, few sunk costs, and ease of entry, the argument was not advanced in that market.

²⁰ General Accounting Office, *Trucking Regulation: Price Competition and Market Structure in the Trucking Industry* (1987).

A third argument made against deregulation was that pricing freedom would translate into pricing chaos. However, results to date indicate that federal deregulation has promoted efficiency rather than inefficiency in pricing systems.

The pre-regulatory system was very inefficient. The ICC actively exercised control over maximum and minimum rates. Because truck freight rates could not be reduced selectively, rates could not be adjusted across routes of similar distances even though the density of the routes might vary and higher density routes could result in lower unit cost that would not be reflected in shipping rates.²¹ Stated otherwise, the system did not allow shippers to pass on economies of scale.

After deregulation, freight brokers emerged as intermediaries between shippers and carriers in response to the growing complexity of traffic management. These brokers allowed shippers to place loads on trucks that would otherwise be returning home empty, and allowed trucking firms to efficiently deploy capacity to match demand. Some carriers also instituted electronic data exchange systems that allow shippers to obtain rate information by telephone within 90 seconds. Deregulation also brought into question the need for rate bureaus. Collectively, these developments suggested that removal of federal and state antitrust immunity for collective ratemaking could prompt not only price efficiency, but also further innovation.²²

d. Safety

The fourth argument raised against trucking deregulation is that would reduce highway safety. Most recent studies show that deregulation has had no effect on trucking safety. A joint study by the California Public Utilities Commission and the California Highway Patrol finds no link between deregulation and trucking safety. A 1987 study by Weinstein and Gross of Southern Methodist University concluded that, “this is not to suggest that deregulation makes trucking safer; but evidence does not support the contention that deregulation makes trucking less safe.” Thus, safety regulation may be a more effective policy approach than renewed economic regulation.

e. Labor

The 1988 FTC study also addressed the effects of deregulation on labor. It found that employment in the trucking industry has risen sharply since deregulation. In 1980, 1.368 million people were employed in trucking services. By 1987 that number had risen 29.2% to 1.767 million. While overall employment has risen, organized labor lost membership and experienced lower wage due to trucking deregulation. Union power declined, because nonunion carriers had entered the trucking industry and gained a competitive advantage over higher cost unionized carriers.²³

²¹ Viscusi, Harrington, and Vernon, supra note 3, at 595-96.

²² Diane S. Owen, Federal Trade Commission, Bureau of Economics: Deregulation in the Trucking Industry 16-18 (1988).

²³ Nancy L. Rose, *Labor Rent Sharing and Regulation: Evidence from the Trucking Industry*, 95 *Journal of Political Economy* 1146-78 (1987).

4. Conclusion

The United States has now had sufficient experience with deregulation of the trucking industry to conclude that it has been entirely beneficial for consumers. None of the concerns expressed by skeptics of deregulation have proven valid. To the extent that transportation costs form a component of the ultimate retail price of goods, trucking deregulation has significantly driven down the cost of those goods.