NOTES

The Staggers Rail Act of 1980: Authority to Compete with Ability to Compete

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I. INTRODUCTION

A new climate has swept the body politic of contemporary America. Cries for indiscriminate deregulation ring from every sector of society. This shift in attitudes has not gone unnoticed by the federal government or the agencies it has created. Government responses have been many and more can be expected from the new Administration. Given what the future holds, consideration of recent deregulatory legislation is both timely and necessary. This paper will examine one recent act of deregulation: The Staggers Rail Act of 1980.[1]

The purpose of selecting this legislation for review is twofold. First, as energy supplies dwindle, railroads should play an increasingly central role in providing the nation's transportation. The rail industry's continued existence is necessary for a healthy national economy. Consequently, government deregulation in this area presents issues of importance in and of itself. Second, neither the general public or their elected representatives have distinguished railroad regulation from other regulatory schemes. Railroad regulation was created in response to the view that free market controls are insufficient to protect both the industry and the shipping public. Since 1920,[2] the legislative purpose of rail regulation has been to ensure the economic viability of this mode of transportation. This type of economic regulation must be distinguished from regulation designed to achieve other social goals. The consequences of abandoning economic regulation may differ dramatically from the consequences of abandoning non-economic regulation. The Staggers Rail Act will be used to highlight what these differing consequences.

Promulgated in October of 1980, the Staggers Rail Act is an extensive piece of legislation which is too broad to be comprehensively examined in one paper. Instead, examination of this Act will be confined to those measures which directly reduce government control and increase managerial flexibility to compete in the marketplace. After an exposition of the prior economic and regulatory conditions of the rail industry, relevant sections of the Act will be discussed including the changes brought about by deregulation and the probable effects on railroads and the transportation industry in general. Finally, a concluding section will discuss the implications of economic deregulation.

II. Prior Economic and Regulatory Conditions

A. *Overview*

American railroads lost their dominant position in the transportation industry long ago. Since the end of the second World War, the rail industry has experienced dramatic declines in both freight and passenger demand.[3] Between 1947 and 1977, intercity tonnage almost doubled, while railroad

1. Staggers Rail Act of 1980, Public Law 96-448, 94 Stat. 1895 (1980).
2. Transportation Act of 1920, Ch. 91, 41 Stat. 456 (1920).
3. Note, *Proposed Regulatory Reform in the Area of Railroad Abandonment*, 11 Transp. L.J. 213 (1979).

tonnage decreased by 9 percent.[4] During the same period, the rail industry's market share of total revenue dropped from 70 percent to 30 percent.[5] In every region of the nation, more than half of all industrial goods are, today, transported by non-rail modes.[6] Thus, railroads which used to be the dominant carrier of agricultural products carried only 43 percent of the total[7] in 1977.

The primary cause of the rail industry's decline has been its inability to compete with alternate modes of transportation. For example, in terms of ton-miles, truck traffic increased 450 percent, pipeline 433 percent, and barge traffic by more than 700 percent, but railroad traffic increased by only 25 percent in the post-war markets.[8] Part of the railroads' inability to compete can be attributed to changed market conditions. The movement toward service-oriented and light industry has created new demands for transportation, which non-rail modes are equally capable of providing.[9] No longer is the nation's freight dominated by bulk and heavy commodities for which rail transportation is inherently suited. Instead, the industry must now compete directly with other modes for the same freight. Furthermore, industry itself has moved away from areas traditionally served by rail transportation.[10]

Competition alone did not cause the decline of the railroads. The industry's decline is more directly related to artificial competitive disadvantages which the railroads have faced because indirect government subsidies have aided other modes of transportation.[11] The completion of the national highway system coupled with the construction of navigable waterways has increased the number of alternate modes of access to new markets at minimal costs.[12] Furthermore, the government provided right-of-way has allowed non-rail carriers to implement technological advances. For example, the construction of better highways allowed motor carriers to utilize larger trailers.[13] These same conditions did not exist for rail carriers.

4. *A Bill to Reform the Economic Regulation of Railroads to Improve the Quality of Rail Service in the United States through Financial Assistance which Encourages Railroad Restructuring, and for Other Purposes: Hearings on H.R. 4570 Before the Subcomm. on Transportation and Commerce of the House Comm. on Interstate and Foreign Commerce*, 96th Cong. 1st Sess. 5 (1979) (statement of William H. Dempsey, President of the Association of American Railroads).

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. U.S. Dep't of Transportation, A Prospectus for Change in the Freight Railroad Industry 39 (1978), [hereinafter cited DOT Study].

10. *Id.*

11. Investigation of Railroad Freight Rate Structure-Grain and Grain Products, 345 I.C.C. 2975, 2486 (1979).

12. *Supra* note 3, at 214.

13. *Supra* note 4, at 2986, 3019.

The railroads industry is the only mode of transportation that builds, owns and maintains its own rights-of-way. Accordingly, railroads incur substantially higher costs for access to markets.[14] These higher costs have inhibited the industry's ability to implement technological advances.[15] The net result has been that even in areas where the railroads have traditionally served bulk shippers, the government's indirect subsidies to other modes of transportation have adversely affected the rail's competitive position.[16] Grain, a bulk commodity for which rail transportation is inherently suited, has been increasingly diverted to motor carriage because better roads and increased trailer size have made the motor carrier a viable alternative while the cost of upgrading the trackage to handle the new, larger, covered hopper cars has prohibited the rail industry from implementing this technological advancement to its competitive detriment.

The unique position of the railroads in owning their own rights-of-way along with the government's regulation of abandonment have both adversely affected the competitive position of the rail carriers. Two-thirds of all rail traffic moves over only 20 percent of the rail system, while 10 percent of the total trackage accounts for only one-half of one percent of the traffic.[17] The cost of maintaining unprofitable track has adversely affected the industry's earnings and ability to attract capital. Abandonment proceedings before the Interstate Commerce Commission (ICC) have been slow and costly.[18] This procedure has inhibited managerial flexibility to cut losses and consolidate services. On the other hand, exempt motor carriers with whom the rail industry competes have had unrestricted entry and exit. Even regulated non-rail carriers are in a better competitive position because their costs for operating over marginal rights-of-way are more directly related to use.

Government regulation of rates has also adversely affected the rail industry's competitive position. The original grant of jurisdiction to the ICC to determine the reasonableness of rates included the power to consider the carrier's need for adequate revenues.[19] But, legislative amendments and ICC policy have strayed from this objective to the extent that the ratemaking standard originally intended to assure the railroads a fair rate of return has become the basis of protecting motor and water carriers from rail competition.[20] The use of umbrella ratemaking to protect the traffic of alternate

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14. *Supra* note 12.
15. *Supra* note 11, at 3019.
16. *Supra* note 11, at 3010.
17. ASSOCIATION OF AMERICAN RAILROADS, ECONOMIC REGULATION OF RAIL FREIGHT OPERATIONS 3 (1979).
18. *Supra* note 3.
19. DOT STUDY, *supra* note 9, at 118.
20. *Id.* at 119.

modes by keeping the rail rates higher prevented the rail carriers from competing for the same traffic on equal footing.

Umbrella ratemaking not only adversely affects the rail carrier's competitive position against other regulated carriers, but also has a particularly damaging effect on competition with exempt motor carriers. For example, raw agricultural products carried by motor transportation are exempt from regulation.[21] The price flexibility afforded by exempt status allows motor carriers to raise prices as demand increases and reduce rates as demand falls. Thus, it is not uncommon for exempt rates to vary from 300 percent of the rail rate during peak demand to 50 to 60 percent during slack times.[22] In other words, exempt carriers price against the fixed rail rate according to demand and are able to react to changing market conditions while railroad management is stifled by the lengthy regulatory process.

Rail rate regulation was also used to implement a policy of port and product equalization.[23] The industry was forced to transport commodities at a loss so the subsidized freight would be competitive with products of other locations. Equalization of places and products meant rail carriers had to recoup the losses of transporting subsidized freight on other traffic. This presented no small problem for the industry. A rail carrier could not lower rates for competitive traffic due to umbrella ratemaking so increasing volume in that traffic was not an option. Raising rates on competitive traffic could only have resulted in less traffic.[24] Therefore, the only real choice for the railroads was to raise the rates for captive shippers. At this point it is appropriate to discuss the many changes made by the 4R Act of 1976.

B. *The 4R Act of 1976*

The 4R Act made many changes in rail rate regulation. It attempted to return to the adequacies of revenue standard and deter umbrella ratemaking.[25] More importantly, it introduced the concept of market dominance.[26] Essentially, market dominance exists where there is a lack of competition from other carriers or modes of transportation for the product shipped. In employing this theory the ICC must first find that market dominance exists before it has jurisdiction to conclude that the proposed rates are unreasonably high. The 4R Act did not, however, limit the ICC's jurisdiction over minimum rates. It only gave railroads the freedom to raise rates for competitive

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21. 49 U.S.C. § 10526(a)(6) (1980).
22. *Supra* note 4 (statement of Hays T. Watkins, Chairman and President, Chessie System Inc.)
23. *Supra* note 11, at 3020.
24. *Id.* at 3022.
25. Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 § 205 (1976).
26. *Id.* § 202(i).

traffic. As might be expected, the railroads did not extensively exercise this new freedom because the market conditions dictated a lowering of rates for competitive freight rather than an increase in these rates.

Another advantage in not using this new maximum rate freedom was that the market dominance test was not a test for the reasonableness of the rate, but was only employed to establish the ICC's jurisdiction. Only where market dominance was deemed to exist did the carrier's need for adequate revenues become relevant. By not raising rates for competitive traffic, a rail carrier's case for the need for adequate revenues was strengthened. This allowed the rail carrier to justify a higher rate for the captive shipper. Since, by definition, there was a lack of competition for the freight, the carrier could increase rates without a loss in traffic. This was the strategy used by the industry and it was successful.[27]

The 4R Act also created the concept of demand sensitive pricing[28] which attempted to solve the problem of seasonal car shortages associated with peak grain shipments. It was thought that by allowing rail carriers to enjoy pricing flexibility, the demand curve for grain service would even out.[29] A carrier could raise the rate during peak demand and lower it during slack time, thereby inducing shippers to alter their shipping schedules. However, this objective was not realized.[30]

Demand sensitive pricing was premised on the assumption that transportation costs would be a primary factor in determining when grain would be shipped. However, that assumption was incorrect. Had Congress examined motor carrier price fluctuations, it would have realized the ineffectiveness of demand sensitive pricing. More importantly, the remedy did not address the underlying problem of competition with exempt motor carriers. During slack demand, grain transportation was provided by exempt motor carriers who effectively priced against the rail rate. The demand for rail service developed only after the supply of motor carriers had been depleted. Shortages of rail cars occurred because the cars were committed to service in locations other than where the demand existed. The railroads did not opt to lower rates during periods of slack demand. But even if they had, it would not have made a substantial impact because rail regulations still required 30 days notice to effect a rate change, while exempt carriers had no such requirement. Thus, exempt carriers were still able to react faster and, unless a rail carrier reduced the rate substantially, the exempt carrier could still price against the rail rate. Consequently, no incentive ex-

27. Railroad Coal Rates and Public Participation: Oversight of ICC Decisionmaking, Subcomm. on Oversight and Investigation of the House Comm. on Interstate and Foreign Commerce (February, 1980).

28. 49 U.S.C. § 10727 (1976).

29. DOT Study, *supra* note 9, at 121.

30. *Supra* note 11.

isted for rail carriers to slash rates to any degree while demand in other locations existed. What the rail carriers did do was raise the rate for peak demand.[31] This increase did not alleviate car shortages, but did have the effect of generating more revenue for the railroads. Demand sensitive pricing was repealed by the Staggers Rail Act.

C. Service

Another area where rail carriers were unable to compete on an equal basis with other modes was service. As noted above, railroad management was inhibited from implementing new technology to improve service because of the cost of upgrading the right-of-way. Another disadvantage was the industry's inability to match service with demand through long-term commitments.[32] Prior to the issuance of a general policy statement by the ICC in 1979,[33] it was thought that railroads were prohibited from entering into contracts for rates and service. Early ICC decisions had held that such contracts were invalid as an anti-competitive practice.[34] One case went so far as to state, as dicta, that "[c]ontract rates and agreed charges are deemed unlawful per se."[35] Rail carriers were left to their own managerial resources to maximize asset utilization while competing motor contract carriers could guarantee service to shippers and better plan the use of their equipment. The flexibility afforded by contract rates and their aid in predicting future demand were competitive advantages the rail industry did not possess. However, in 1979 the ICC announced that its policy on rail contracts had changed.[36] Contract rates would be approved where the potential benefits outweighed the possible adverse affects.[37]

D. Financial State

As the foregoing discussion has implied, the rail industry is not in good economic health. In fact, it is in serious financial straits. In Ex Parte No. 353,[38] the ICC determined that a rate of return on net worth of 10.6 percent was needed by the industry in order to cover its capital costs. In Ex Parte No. 363[39] and No. 381,[40] that figure was revised to 11 percent and

31. *Id.*
32. DOT Study, *supra* note 9, at 121.
33. Change of Policy, Railroad Contract Rates (General Policy Statement) 361 I.C.C. 205 (1979).
34. Contract Rates, Rugs and Carpeting from Amsterdam, N.Y., 313 I.C.C. 247 (1961); and Guaranteed Rates, Sault Ste. Marie, Ontario, to Chicago, 315 I.C.C. 311 (1961).
35. Guaranteed Rates, Sault Ste. Marie, Ontario, to Chicago, 315 I.C.C. 311, 323 (1961).
36. *Supra* note 33.
37. *Id.* at 205.
38. Adequacy of Railroad Revenue (1978 Determination), 361 I.C.C. 79 (1978).
39. Adequacy of Railroad Revenue (1979 Determination), 362 I.C.C. 344 (1980).
40. Adequacy of Railroad Revenue (1980 Determination), 364 I.C.C. 311 (1980).

then to 11.22 percent. This rate of return has not been achieved by the industry or any one carrier. In 1978, the average rate of return was just over 1 percent with the highest rate for any individual carrier not exceeding 7 percent.[41] In comparison, during the same year, the average for motor carriers was 18 percent, manufacturers 16 percent, and just over 11 percent for gas and electric utilities.[42] The railroad industry's low rate of return has impaired its ability to obtain capital and it is predicted that the industry will experience a capital shortfall between 16 billion and 20 billion dollars by 1985.[43] Thus, the industry was in dramatic need for revitalization. The Staggers Rail Act of 1980 was designed to effect that objective.

III. STAGGERS RAIL ACT OF 1980

The Staggers Rail Act[44] was promulgated in October of 1980. The overall purpose of this legislation was the revitalization of the rail industry through the removal of unnecessary regulation and the increase of competition. Congress, after determining that a greater reliance on the marketplace was essential, created a new Congressional declaration of railroad regulation policy.[45] The ICC is now directed to allow, to the maximum extent possible, competition and demand for services to establish reasonable rates for rail transportation.[46] Embodied in this first of fifteen new policy statements is the concern which permeates and complicates the Act. On one hand, Congress has decided regulation has distorted the transportation market and only competition will ensure the continued existence of a private rail system. On the other hand, the ICC is directed to continue regulation where competition is not possible. Congress, recognizing not all freight is competitive, did not intend to subject captive shippers to the pressures of the market system. To that end, the ICC is now directed to foster those economic conditions which produce a competitive environment, avoid undue concentrations of market power, and maintain reasonable rates where there is an absence of effective competition.

A. *ENTRY REGULATION*

In creating a new regulatory policy, the Act amended many provisions of the Interstate Commerce Act. For example, the requirements for a certificate authorizing the construction of new lines have been lessened. The ICC is no longer required to find that public convenience and necessity re-

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41. *Supra* note 4.

42. *Id.*

43. JOINT EXPLANATORY STATEMENT OF THE COMM. OF CONFERENCE H.R. REP. NO. 96-1430, 96th Cong. 2d Sess. 3 (1980).

44. Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (1980).

45. *Id.* § 101(a) (to be codified as 49 U.S.C. § 10101a (1980)).

46. *Id.* (to be codified as 49 U.S.C. § 10101a(1) (1980)).

quire or will be enhanced by the construction, or acquisition and operation of a railroad line. The new standard allows the ICC to grant authority on a finding that public convenience and necessity require or permit entry.[47]

The Act also creates a new section prohibiting a rail carrier from blocking another certificated rail carrier from constructing a line across its property if:

> A) The construction does not unreasonably interfere with the operation of the crossed line;
> B) The operation does not materially interfere with the operation of the crossed line; and
> C) The owner of the crossing line compensates the owner of the crossed line.[48]

Should the carriers be unable to agree on those matters involving terms of operation or compensation, either party may ask for an ICC determination of the problem.[49]

B. *Exit Regulation*

Abandonment and discontinuance procedures were streamlined in the Staggers Rail Act to reduce processing time. The Act requires the ICC to find that public convenience and necessity requires or permits the proposed termination of service if no protests are received within 30 days after the application for authority is filed.[50] If a protest is filed, the ICC must determine within 45 days whether to conduct an investigation.[51] Should the Commission decide not to conduct an investigation, a deposition must be rendered within 25 days after the application is filed.[52] When an investigation is ordered, it must be completed within 135 days and an initial decision entered by the 165th day. When an initial decision is appealed, the ICC must render a final order within 255 days.[53] Assuming a carrier can meet its burden of showing public convenience and necessity, the effective date of the abandonment or discontinuance can be no later than 330 days from the date the application is filed. The effective date may, however, be stayed by the ICC pursuant to a new section.[54]

The Staggers Rail Act also created a new section whereby interested parties may make offers of financial assistance to avoid abandonment or discontinuance.[55] Within 10 days after the ICC has published notice of

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47. *Id.* § 221(a) (amending 49 U.S.C. § 10901(a) (1976)).
48. *Id.* (to be codified as 49 U.S.C. § 10901(d) (1980)).
49. *Id.* (to be codified as 49 U.S.C. § 10901(e) (1980)).
50. *Id.* § 402(b)(2) (amending 49 U.S.C. § 10904(b) (1976)).
51. *Id.* § 402(b)(3) (amending 49 U.S.C. § 10904(c)(1) (1976)).
52. *Id.* (amending 49 U.S.C. § 10904(c)(2) (1976)).
53. *Id.* (amending 49 U.S.C. § 10904(c)(3) (1976)).
54. *Id.* (amending 49 U.S.C. § 10904(c)(4) (1976)).
55. *Id.* § 402(c) (amending 49 U.S.C. § 10905 (1976)).

approval of an application for discontinuance, any person may offer to pay the carrier a subsidy or to purchase the line.[56] If within 15 days after publication of approval, the Commission determines that:

A) a financially responsible person has offered financial assistance; and
B) the assistance offered is likely to be equal to either:
   1) the acquisition cost of the line or
   2) the difference between the revenues attributable to the service being provided and the cost of such service plus a reasonable rate of return,[57]

then the ICC shall postpone the issuance of the certificate of authority. Where a subsidy agreement is actually reached, the ICC will stay the issuance of authority for the duration of the agreement. When a line is sold, and the sales agreement provides for continued rail service, the application for discontinuance will be dismissed.[58] However, if the parties fail to reach an agreement, either party may then submit the dispute to binding arbitration before the ICC. After arbitration, the person offering assistance has 10 days either to accept the ICC's determination or withdraw the offer, at which point the certificate will be issued. If neither party has requested ICC arbitration of an impasse within 30 days after an offer has been made, the ICC must issue the certificate of authority to abandon or discontinue service.[59] It must be emphasized that this section does not come into effect until after approval for termination of service is granted, and that the Act did not alter the standards for obtaining such approval.

C. Rate Regulation

The main thrust of the new legislation is the alteration of rate regulation. Competition is to be fostered by increased rate flexibility. For example, rail carrier may now establish any rate for transportation it chooses within boundaries. In addition, the Act changes both minimum and maximum rates and amends procedures for determining the reasonableness of the rate. Thus, a rate increase can now become effective upon 20 days notice, while decreases now require only 10 days notice.[60]

1. Minimum Rates

Rail carriers subject to ICC jurisdiction may not establish rates below a reasonable minimum.[61] A rate which is non-compensatory is presumed unreasonable while rates which contribute to the going concern value of the

56. *Id.* (amending 49 U.S.C. § 10905(c) (1976)).
57. *Id.* (amending 49 U.S.C. § 10905(d) (1976)).
58. *Id.* (amending 49 U.S.C. § 10905(e) (1976)).
59. *Id.* (amending 49 U.S.C. § 10905(f) (1980).
60. *Id.* § 216(a) (amending 49 U.S.C. § 10762(c)(3) (1976)).
61. *Id.* § 201(a) (to be codified as 49 U.S.C. § 10701a (c)(1) (1980)).

carrier are conclusively presumed reasonable. The ICC may not require rates conclusively presumed reasonable to be raised.[62] But, rates may be challenged as being too low.[63] The burden is on the party challenging the rate to show that the proposed rate would not contribute to the going concern value of the carrier. Once the presumption of unreasonableness is established, the burden shifts to the carrier to show that the rate is reasonable. Upon finding that the rate is too low and that the carrier is in a worse position than it would have been had the rate been higher, the ICC may increase the rate to the minimum level at which the rate will benefit the carrier.[64]

Congress enacted this new freedom to ensure that carriers, whose pricing meets rational economic standards, will not be prevented from improving their economic position by reducing rates.[65] The drafters did not foresee many instances where rates would be found to be unreasonably low because a carrier has no reason to keep a rate below the most beneficial level. Thus, there is no reason to believe that rates will ever be held down below the most beneficial level except by oversight.[66] Presumably, predatory rates would be held unreasonable.[67]

2. *Maximum Rates*

As has been indicated, there is no maximum rate limitation for rail transportation unless the rail carrier has market dominance over the freight to which the rate applies.[68] Congress intended that the forces of the market should regulate transportation and that competition should be used to hold rates down.[69] However, where market dominance exists, the rates must be reasonable.[70] The Act does not alter the definition of market dominance, but does create a formula for conclusively determining when it does not exist. The formula created by the Act is:

$$\text{Revenue—variable cost percentage} = \frac{\text{Total Revenues}}{\text{Total Variable Cost}^{71}}$$

Market dominance conclusively does not exist where the revenue variable cost percentage is less than:

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62. JOINT EXPLANATORY STATEMENT OF THE COMM. OF CONFERENCE, H.R. REP. NO. 96-1430, 96th Cong. 2nd Sess. 90 (1980) [hereinafter JOINT EXPLANATION].

63. Staggers Rail Act § 201 (to be codified as 49 U.S.C. § 10701a(c)(3)(A) (1980)).

64. *Id.* (to be codified as 49 U.S.C. § 10701a(c)(3)(B) (1980)).

65. JOINT EXPLANATION, *supra* note 62 at 90.

66. *Id.*

67. Staggers Rail Act § 101(a) (to be codified as 49 U.S.C. § 10101a(13)) directs the ICC to "prohibit predatory pricing. . . ."

68. *Id.* § 201(a) (to be codified as 49 U.S.C. § 10701a(a) (1980)).

69. JOINT EXPLANATION, *supra* note 62, at 89.

70. Staggers Rail Act § 201(a) (to be codified as 49 U.S.C. § 10701a(b)(1) (1980)).

71. *Id.* § 202 (to be codified as 49 U.S.C. § 10709(d)(1) (1980)).

160 percent between October 14, 1980 and September 30, 1981,
165 percent between October 1, 1981 and September 30, 1982,
170 percent between October 1, 1982 and September 30, 1983, and
175 percent between October 1, 1983 and September 30, 1984.[72]

After October 1, 1984, the formula becomes the cost recovery percentage during the preceding year. A finding that the rate meets or exceeds the applicable revenue-variable cost percentage does not raise a presumption of market dominance or a presumption of an unreasonably high rate.[73] The burden is on the carrier to show that the rate is below the ICC's jurisdictional threshold.

When the ICC determines that market dominance exists, then the reasonableness of the rate becomes an issue. The reasonableness of a rate must be considered in light of the policy that rail carriers shall earn adequate revenues.[74] To aid in this determination, the Act creates three zones of reasonableness for rate increases.[75]

The first zone of reasonableness incorporates the concept of a base rate (the rate existing at the promulgation of the Act) and an adjusted rate base (the base rate multiplied by the latest cost adjustment factor determined by the ICC.)[76] A rail carrier may increase its rate to conform to the adjusted rate base so long as the carrier has not recovered inflation increases through a general rate increase pursuant to section 10706 or an inflation-based increase under section 10712.[77] Rate increases which conform to the adjusted base rate may not be held to be unreasonable.[78]

The second zone of reasonable rate increases allows a carrier to increase the rate up to 6 percent annually over the adjusted base rate.[79] There are carry-over provisions for unused percentages, but in no event may the total increase exceed 18 percent of the adjusted base rate.

Finally, a third zone of reasonable rate increases allows a carrier an additional 4 percent over the 6 percent increase included in the second zone.[80] This rate does not apply to single-line rates where the carrier already earns adequate revenues. The Commission is directed to promulgate regulations regarding the application of the 4 percent increase to joint rates.

Neither the 6 percent zone nor the 4 percent rate increases are immune from being held unreasonable. In fact, the Congress intended that

72. *Id.* (to be codified as 49 U.S.C. § 10709(d)(2) (1980)).
73. *Id.* (to be codified as 49 U.S.C. § 10709(d)(4) (1980)).
74. *Id.* § 201(a) (to be codified as 49 U.S.C. § 10701a(b)(3) (1980)).
75. *Id.* § 203(a) (to be codified as 49 U.S.C. § 10707a (1980)).
76. *Id.* (to be codified as 49 U.S.C. § 10707a(a) (1980)).
77. *Id.* (to be codified as 49 U.S.C. § 10707a(b)(1) (1980)).
78. *Id.* (to be codified as 49 U.S.C. § 10707a(b)(2) (1980)).
79. *Id.* (to be codified as 49 U.S.C. § 10707a(c)(1) (1980)).
80. *Id.* (to be codified as 49 U.S.C. § 10707a(d) (1980)).

"the same standards of maximum reasonableness applicable to any other rate or rate increase" should apply here also.[81] Even rates found to exceed these zones may be held reasonable while rates below the zones may not. The Act does, however, provide direction to the ICC when reviewing certain increases within the 6 percent zone. For example, if the proposed increase sets the rate at a level which results in a revenue-variable cost percentage less than 20 percentage points above the jurisdictional level or a revenue-variable cost percentage of 190 percent, then the Commission's determination of the reasonableness of the rate shall reflect due consideration of the carrier's overall need for adequate revenues.[82] A carrier already earning total adequate revenues is to be prevented from reaping excessive profits on the traffic involved. This section does not imply that excessive profits will be permitted for carriers who do not have adequate revenues.

The purpose of creating the 6 percent and 4 percent zones of increase is to establish a procedural mechanism for carriers to change rates without undue regulatory interference.[83] The Commission cannot suspend a rate increase in either zone pending final Commission action.[84] Furthermore, the Commission may not investigate, by its own motion, rate increases which do not set a rate level above 20 percentage points over the jurisdictional threshold or a total-variable cost percentage of 190 percent.[85] A rate set above these levels may be investigated by the Commission on its own initiative or upon receiving a complaint.

3. *Investigations and Suspensions*

If the Commission decides to conduct an investigation into a proposed rate, it must be completed within five months unless the ICC reports to Congress its reasons for the delay.[86] The Commission may not suspend a proposed rate during an investigation unless the protestant shows:

1) It is substantially likely that the protestant will prevail on the merits;
2) without suspension, the proposed rate change will cause substantial injury to the protestant; and
3) because of the peculiar economic circumstances of the protestant, the provisions for post determination reimbursement do not protect the protestant.[87]

If the Commission does not suspend a proposed rate increase, the carrier is required to keep an accounting of all amounts received under the increase

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81. Joint Explanation, *supra* note 62 at 93.
82. Staggers Rail Act § 203(a) (to be codified as 49 U.S.C. § 10707a(e)(1) (1980)).
83. Joint Explanation, *supra* note 62 at 93-4.
84. Staggers Rail Act § 203(a) (to be codified as 49 U.S.C. § 10707a(e)(1) (1980)).
85. *Id.*
86. *Id.* § 207(a) (amending 49 U.S.C. § 10707(b)(1) (1976)).
87. *Id.* § 207(b) (amending 49 U.S.C. § 10707(c)(1) (1976)).

until final action is taken.[88] Should the Commission hold the rate increase to be unreasonable, the carrier must return the excess amount collected with interest. Similarly, when a suspended rate is later determined valid, the carrier is entitled to collect the suspended amount plus interest.[89]

4. Contract Rates

The Act clarifies the status of the contract rate and service agreements. Rail carriers may now enter into contracts with purchasers of rail transportation, subject to ICC approval.[90] Within 30 days after a proposed contract is filed, the Commission must decide whether or not to initiate proceedings to review the contract. If the Commission does not make this decision within the alloted time, the contract will become effective 60 days from the filing date.[91] The ICC may commence an investigation on its own initiative or by acting on a complaint filed by either:

1) an individual shipper who alleges he will be harmed because the proposed contract unduly impairs the carrier's ability to meet its common carrier obligation to the complainant; or
2) by a port on the grounds that the port will be harmed because the proposed contract will result in unreasonable discrimination against the port.[92]

A carrier may delegate up to 40 percent of the utilization of carrier-owned or leased equipment through contractual arrangements[93] but the Commission may limit the right of a carrier to enter into future contracts if it is found that the carrier's ability to fulfill its common carrier obligation would be impaired by these delegations.[94] The Commission is further empowered to require the carrier to provide services at rates similar to those of agricultural shippers in the same position as the contracting shipper.

The Act creates a new class of rail carriers, thereby making carriers entering into such rate contracts both common *and* contract carriers. Once a contract goes into effect, the contract is exempt from all regulations and requirements of the Interstate Commerce Act.[95] During peak demand, rail carriers may fulfill their contractual obligations before responding to reasonable requests for service without violating the common carrier obligation.[96] The exclusive remedy for breach of a contract is the appropriate state or

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88. *Id.* § 207(c) (amending 49 U.S.C. § 10707(d)(1) (1976)).
89. *Id.* (amending 49 U.S.C. § 10707(d)(2) (1976)).
90. *Id.* § 208(a) (to be codified as 49 U.S.C. § 10713 (1980)).
91. *Id.* (to be codified as 49 U.S.C. § 10713(d)(1) (1980)).
92. *Id.* (to be codified as 49 U.S.C. § 10713(d)(2) (1980)).
93. *Id.* (to be codified as 49 U.S.C. § 10713(k)(1) (1980)).
94. *Id.* (to be codified as 49 U.S.C. § 10713(k)(2) (1980)).
95. *Id.* (to be codified as 49 U.S.C. § 10713(d)(2)(B) (1980)).
96. *Id.* § 222 (amending 49 U.S.C. § 11101(a) (1976)).

federal court, unless the parties agree otherwise.[97]

5. *Permissive Limited Liability Rates*

Rail carriers may now establish rates which limit their liability for loss and damage in transit.[98] For such a rate, liability is limited to the value established by written declaration of the shipper or written agreement by the shipper and carrier. Carriers may also provide for amounts to be deducted from any claim against the carrier. Interestingly enough, rail carriers are not required to maintain any rates which do not limit their liability.

The Act does not change the common law grounds of carrier liability codified in the Carmack Amendment.[99] Instead, the Attorney General and the ICC are directed to study and make recommendations as to whether a no fault system of liability should be established.[100] Venue has been changed to: point of origin for actions against the originating carrier, destination or principle place of business of the plaintiff against the delivering carrier, or the point where the loss or change occurred in actions against the carrier alleged to have caused the loss or damage.[101]

6. *Joint Rates: Surcharges and Cancellations*

The Act establishes procedures whereby a rail carrier, not earning adequate revenues under existing joint rates and divisions, may add a surcharge to the through charge between points subject to a joint rate without the concurrence of other carriers. Any carrier not earning 110 percent of its variable costs of providing service over a line which carries more than 3 million gross ton-miles of traffic per year may apply a surcharge increasing or decreasing the rate if it has concurred with all of the rate increases of general applicability agreed to by all other carriers that are party to such joint rate for the preceding year.[102] Such a surcharge must be applied in equal dollar amounts over all routes between the points designated by the surcharging carrier and any increases must be applied to the surcharging carrier's single-line rates between the same points.[103]

Other carriers to the joint rate may cancel the application of the surcharge by showing that the surcharging carrier would earn at least 110 percent of its variable cost under either the existing rate, a new rate division, a higher lawful rate published by the cancelling carrier, or a lesser

97. *Id.* § 208(a) (to be codified as 49 U.S.C. § 10713(i)(2) (1980)).
98. *Id.* § 211(b) (amending 49 U.S.C. § 10730(c) (1976)).
99. *Id.* § 211(c) (amending 49 U.S.C. § 11707 (1976)).
100. *Id.* (amending 49 U.S.C. § 11707(d) (1976)).
101. *Id.* (amending 49 U.S.C. § 11707(c) (1976)).
102. *Id.* § 217(a)(1) (to be codified as 49 U.S.C. § 10705a(a) (1980)).
103. *Id.* (to be codified as 49 U.S.C. § 10705a(a)(1)(C) (1980)).

surcharge.[104] A shipper may cancel the application of the surcharge on a showing that there is no competitive alternative route and that the surcharging carrier is already earning 110 percent of its variable cost under existing joint rate and division.[105]

A carrier not earning adequate revenues may apply surcharges in differing amounts to lines which carried less than 3 million gross ton-miles of traffic if the existing revenue does not cover 110 percent of its variable costs of providing service plus 100 percent of the carrier's reasonably expected costs of continuing service.[106] Carriers earning adequate revenues may apply this surcharge to lines which carried less than 1 million ton-miles.[107] However, no surcharge may be applied which results in any shipper being required to bear more than a reasonable proportion of the costs of continuing the service.[108] Special provisions are made to protect class III carriers from anti-competitive surcharges and for the sharing of the revenues created by another carrier's surcharge.[109]

7. *Rate Bureaus*

The role of rate bureaus has been severely restricted by the new legislation. Carriers may no longer discuss or participate in agreements affecting single-line rates except for general rate increases and broad tariff charges.[110] Carriers may only discuss and enter into joint rate agreements which the carrier "practicably participates in."[111] Transcripts of all meetings must be submitted to the ICC.[112] Anti-trust protection is provided for agreements which merely provide for the publication of tariffs[113] and anti-trust violations may not be inferred if a carrier, after participating in a lawful joint rate agreement, takes similar action on another route or traffic.[114] After 1984, however, rate bureaus will no longer be able to discuss general rate increases or broad tariff changes for single-line rates.

D. *Car Service Orders*

The Commission's jurisdiction to order emergency car service has been restricted only to those emergency situations of such a magnitude as to have substantial adverse effects on rail service in the United States or a

104. *Id.* (to be codified as 49 U.S.C. § 10705a(2)(B) (1980)).
105. *Id.* (to be codified as 49 U.S.C. § 10705a(3)(A) (1980)).
106. *Id.* (to be codified as 49 U.S.C. § 10705a(b)(1)(A) (1980)).
107. *Id.* (to be codified as 49 U.S.C. § 10705a(b)(1)(B) (1980)).
108. *Id.* (to be codified as 49 U.S.C. § 10705a(b)(4)(A) (1980)).
109. *Id.* (to be codified as 49 U.S.C. § 10705a(d) (1980)).
110. *Id.* § 219(c)(1) (to be codified as 49 U.S.C. § 10706(a)(3)(A)(i) (1980)).
111. *Id.* § 219(c)(3) (to be codified as 49 U.S.C. § 10706(a)(3)(A)(ii), (iii) (1980)).
112. *Id.* § 219(c)(3) (to be codified as 49 U.S.C. § 10706(a)(3)(D) (1980)).
113. *Id.* § 219(d) (to be codified as 49 U.S.C. § 10706(a)(4) (1980)).
114. *Id.* § 219(c)(3) (to be codified as 49 U.S.C. § 10706(a)(C)(3) (1980)).

substantial region thereof.[115] Such orders may not exceed 30 days unless the Commission, after a hearing, certifies that a transportation emergency exists. It is the Congressional intent that these extraordinary powers be exercised only in genuine emergencies.[116]

IV. Analysis of the Act's Effects

Given that the Staggers Rail Act is designed to revitalize the rail industry through increased competition and the fact that the railroads' decline has been fostered by the industry's inability to compete with alternate modes of transportation, the analysis of the new legislation will be presented in terms of how the Act affects the rail industry's competitive disadvantages and what advantages are created.

A. Right-of-Way

It should now be easier for rail carriers to obtain authority to construct new lines, thereby allowing carriers to enter into markets not traditionally served by rail transportation. Provisions allowing a rail carrier to cross another rail carrier's right-of-way will further increase the industry's flexibility to enter new markets. All this assumes, however, that the carriers will have the capital to make the investment required to construct new lines. At the same time, it should be understood that the Staggers Rail Act does not alter the competitive advantages enjoyed by other modes of transportation which receive indirect subsidies for their rights-of-way. Provisions for subsidized construction of rail lines do not exist. Therefore, railcarriers will still have to shoulder this extra burden. Whether or not the industry will be able to earn adequate revenues to take advantage of the new entry flexibility will be discussed below. Suffice it to say, the prospects are doubtful.

Streamlined abandonment proceedings created by the new legislation will reduce a carrier's administrative costs. The reduction of notice of abandonment from 60 days to 30 days will also increase the carrier's ability to react more expeditiously to changing market conditions. Furthermore, provisions allowing financial assistance to maintain service where approval for abandonment has been granted are the equivalent of the indirect subsidies enjoyed by other modes of transportation. However, these subsidies can be obtained only after it has been determined that the line is so marginal that public convenience and necessity require or permit discontinuance of service. Thus, the standards for abandonment have not been changed and the effect of the subsidies will be limited.

Exit has not been made any easier for rail carriers, while exempt motor carriers still enjoy no exit restrictions. Even regulated motor carriers enjoy a

115. *Id.* § 226 (amending 49 U.S.C. § 11123(a) (1976)).
116. Joint Explanation, *supra* note 62, at 119.

competitive advantage over rail carriers because if they are forced to continue marginal service their costs are limited to providing only the service, while a rail carrier in the same position must also bear the additional expense of maintaining right-of-ways.

In summation, the Staggers Rail Act does not significantly alter the competitive right-of-way advantages enjoyed by alternate modes of transportation. While rail entry authority is now easier to obtain, the cost to the rail carrier of constructing the right-of-way has not changed. While rail carriers may now obtain exit authority more quickly, the process has not been made any easier. The bottom line still remains the same: other modes of transportation receive indirect subsidies for right-of-way, while rail carriers do not.

B. Service

The creation of contract rail carriers will allow the rail industry to offer better service to contract shippers. A railroad, through contractual agreements, may now guarantee service to a shipper without fear of violating his common carrier obligation. The ability to be certain of rail service and transportation deadlines should attract more traffic to the rail industry. Reduced rates, stemming from the carriers' new ability to rationalize the use of its physical plant and the possibility of limited liability provisions, should further enhance railroad service. Although a rail carrier is also obligated to provide contract conditions to agricultural shippers of the same commodity similarly situated, its competitive position for transportation of agricultural products should still be enhanced. In as much as rail carriers generally do not have market dominance over light density lines over which grain is transported, the use of contract rates and service may prove to be the competitive advantage the industry needs to recapture this market. The possible scenario would roughly be as follows:

1) A rail carrier sets the single car rate for agricultural products excessively high. Since there is no market dominance, the rate need not be reasonable.
2) Then the carrier offers contractual service to agricultural shippers at competitive prices. A carrier may wish to employ its authority to use limited liability rates to further reduce the rate. In any event, the carrier would want to attempt to arrange service to be spread out beyond peak demand periods. This would allow the carrier to rationalize the use of its physical plant and to obtain off-peak traffic currently transported by motor carriers.
3) If the carrier is able to reach contractual agreements with some shippers, it will have created a competitive advantage for those shippers against other shippers similarly situated.
4) Assuming the carrier can still meet its common carrier obligation to those shippers which did not agree to the contract services offered, those shippers can either suffer their competitive disadvantage or agree to enter into

contract service with the rail carrier. Those same shippers cannot file a complaint on the ground that they have been unreasonably discriminated against because a shipper must also be able to allege in any complaint that they were ready, willing and able to enter into a similar contract.

5) A carrier, in this manner may even be able to generate sufficient traffic to warrant upgrading the line so that the new giant hopper cars may be used, thereby increasing the carrier's ability to compete with the service of motor carriers.
6) Should the carrier be unable to attract contract shippers, it will still benefit because presumably few, if any, shippers will pay the excessively high single car rate. In this situation, the carrier simply applies for a certificate of authority to abandon the trackage, arguing that public convenience and necessity require or permit it.

Whether or not the above strategy will be employed remains to be seen, but the use of contract rates in this manner has applicability beyond agricultural products. In any event, the Staggers Rail Act does increase the rail industry's competitive position to provide better service by giving railroad management more flexibility to order their operations. The restriction of the ICC's jurisdiction to order emergency car service and the exemption of cars delegated to contract service from regulation will further allow the rail industry to rationalize the use of its physical plant to provide better service.

C. Rates

Managerial flexibility to react to changing market conditions was increased by reducing the notice required for increases and decreases in rates to 20 and 10 days, respectively. One of the competitive disadvantages the industry faced was the inability to react quickly to changes in demand. Whether or not the industry will be able to make changes in rates so as to be competitive with other carriers remains to be seen.

The Staggers Rail Act relieved rail carriers from the obligation to carry freight at noncompensatory levels. The consequence of this change should be the end of the policy of equalization of the competitive posture of ports and products. No longer must rail carriers subsidize the transportation of some freight with the revenue from other traffic. This will relieve the industry from the burden of having to hold other rates artificially high to cover losses incurred on subsidized freight. By allowing a rail carrier to charge any rate it chooses, the Act also ended the policy of umbrella pricing. Carriers now have the authority to price competitively against other modes on a cost-of-service basis rather than being forced to price on the value of the service.

Taken in isolation, it would appear that these changes give the rail industry the ability to compete with other modes of transportation. In the past, other carriers were pricing against the fixed rail rate, so the industry had to lower its rates to be competitive. Now that a railroad no longer has to subsidize freight and has the authority to establish limited liability and contract rates, the new rate freedom would appear to place the rail industry back in a competitive position for competitive freight. However, two factors suggest this may not be true. First, if motor carriers could charge rates for agricultural products transportation during non-peak demand that were half of the posted rail rate, which they have done, it must be because they have lower costs.[117] In the competitive environment envisioned by the Act, railroads may never be able to reduce rates to a level which motor carriers cannot undercut. The rate structure for alternate modes of transportation may have been held artificially high precisely because they priced against the rail rates. Thus, the introduction of rail price competition may drive the rate structure to levels below which the rail industry can earn adequate revenues. While the Act does allow rail carriers to charge rates that do not contribute to the going concern value of the line, such rates are presumptively unreasonable and carriers were envisioned to be able to rebut this presumption only in a few exceptional cases.[118]

The second factor which suggests that the rail industry does not have the ability to be competitive is the recent deregulation of motor carriers.[119] This legislation exempted more motor carrier traffic from regulation, and eased the standards for the granting of certificates of operating authority for motor carriers.[120] The purpose of these changes was to foster more competition between motor carriers. Given relaxed entry standards and low entry costs, a substantial increase in the number of motor carriers can reasonably be expected. As a result supply could well exceed demand causing the return of distraction competition which was previously prevented by economic regulation. The impact on railroads could be disasterous. With an over-supply of motor carriage, backhaul rates may be set at levels which would not even cover the motor carrier's cost. All this may serve the shipping public's best interest in the short run, but it certainly will not allow the railroads to earn adequate revenues. Given the current meager earnings of the rail industry and its predicted capital shortfall, the combined effect of the Staggers Rail Act and motor carrier deregulation may not result in the objective of maintaining a private sector rail industry.

D. Need for Adequate Revenues

Further analysis of the Staggers Act suggests that this new legislation not only fails to provide the rail industry with the ability to compete, but further inhibits the railroads' ability to generate sufficient revenues. For ex-

117. *Supra* note 3 at 214.
118. H.R. Rep. No. 96-1430, 96th Cong., 2d Sess. 90 (1980).
119. The Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793 (1980).
120. *Id.* § 3. *See generally* Harper, *Entry Control and the Federal Motor Carrier Act of 1980*, 12 Transp. L.J. 51 (1981).

ample, the joint rate provisions of the Staggers Rail Act are essentially the product of a compromise struck between Conrail and other rail carriers.[121] Basically, Conrail needed to increase its share of the joint rates by claiming that such increases penalized them for being efficient.[122] As a consequence the joint rate surcharge provision now allows Conrail to cover costs by independently increasing the through rates over its portion of the line. Other carriers will have two options. One option a carrier has is to file a protest. But, if the carrier cannot demonstrate that Conrail is already earning adequate revenues, then the only alternative which does not increase the joint rate is to propose a new division of the joint rate. In effect, other carriers can opt to subsidize Conrail. The second option carriers have is to do nothing and allow the surcharge to increase. In a market which is becoming more competitive, a raise in the joint rate is exactly the opposite of what is needed to maintain existing traffic, let alone attract more. Regardless of what option the carriers choose to attack Conrail surcharges, their revenue will be reduced.

The revenue earning capability of the rail industry is also going to be reduced by the introduction of another type of competition: rate competition between rail carriers. The Staggers Rail Act, in emasculating the role of the rate bureaus, places railroads in direct price competition with each other for the first time since the creation of the ICC in 1896. Prior to October of 1980, rail carriers were able to participate in single-line rate agreements which were shielded from anti-trust exposure. Competition between rail carriers existed but was based on the ability to provide service. Eliminating single-line rate agreements will provide the rate competition that Congress desired, but it will not provide rail carriers with the adequate revenues that they need. Elimination of single-line agreements, the absence of requirements of posting limited liability rates, and increased competition may bring about the return of certain discriminatory practices: the same discriminatory practices that led to the creation of the ICC.[123] Prior to 1896, railroads faced with destructive competition from other rail carriers gave preferential treatment to large shippers. This practice was specifically banned and enforcement was provided by the requirements that all tariffs be posted and that only the posted rate could be charged.[124] In the near future, railroads will again be faced with the same destructive competition.

121. *See Statement of James L. Tapley, Vice President-Law, Southern Railway Company Before the Subcommittee on Transportation and Commerce of the House Committee on Interstate and Foreign Commerce* (Oct. 16, 1979); *Statement 6, Edward G. Jordèn, Chairman and Chief Executive Officer, Consolidated Rail Corporation (Conrail) Before the Subcom. Transportation & Commerce of the House Comm. on Interstate & Foreign Commerce* (Oct. 16, 1979).

122. *Id.*

123. I.C.C. Ann. Rep. 6 (1887); S. Rep. No. 46, 49th Cong., 1st Sess. (1886).

124. Louisville & Nashville Railroad Company v. Maxwell, 237 U.S. 95 (1915).

While discrimination is still prohibited,[125] the regulatory mechanisms which were designed to ensure enforcement can now be easily circumvented by a carrier wishing to do so. If a carrier seeks to give undue preference to a particular shipper, he need only arrange it through a limited liability rate. For example, rate that only stipulates a one dollar deductible clause, but at a substantially reduced fare, need not be published.

E. Conclusions

The Staggers Rail Act increases managerial flexibility while giving the railroad the authority to compete for the express purpose of revitalizing and maintaining a private sector rail industry. The Act, however, does not give the rail carriers the ability to compete with other carriers or earn adequate revenues. Entry and exit authority have been altered, but the basic fundamental disadvantage of indirect subsidies of competitors' rights-of-way has not been addressed. Contract carriage by rail carriers may provide the competitive service edge necessary for rail carriers to attract new freight, but this must be offset against the industry's inability to price compete. The isolated view taken by Congress in creating competition through price flexibility failed to adequately address the competitive conditions among alternate modes of transportation. Even if the railroads are able to price competitively against other modes of carriage, they certainly will not be able to do so at levels that will revitalize the industry. The days of a private railroad system in the United States may be numbered. In the meantime, destructive competition and discrimination will exist.

V. Economic Deregulation Generally

Historically, economic regulation has been promulgated for the protection of industry. Certain industries deemed to provide essential services have been shielded from the forces of competition. This was done to ensure their economic survival. Without regulatory protection, destructive competition arising out of unique market conditions would have ruined the industry. With the recent interest in deregulation generally, the lessons of the past should be remembered. A condition precedent to the decision to remove economic regulation is a determination of whether the industry can survive in an unregulated environment. If the industry cannot survive, then the question of whether it should continue to exist becomes an issue. The answers to these questions entail an understanding of the underlying economic conditions which led to the promulgation of regulations. The mere conclusion that the industry is presently competitive, as was determined in passing the Staggers Rail Act, is not enough. The rail industry was always

125. The Staggers Rail Act did not repeal prior anti-discrimination provisions of the Interstate Commerce Act.

competitive. In fact, it was because the industry was too competitive that the railroads were regulated. Prior to any act of deregulation, the question that must be answered, which was not answered for the rail industry, is whether the factors which led to destructive competition have ceased to exist. The answer to this question for the rail industry is "no." Thus deregulation poses serious questions about the survival of this vital industry. While it may be too late for the railroads, there is hope for other industries if Congress learns from its mistake: The Staggers Rail Act of 1980.

Richard Dash