

STATEMENT OF SENATOR HERB KOHL

**SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
HEARING ON THE FEDERAL ROLE IN NATIONAL RAIL POLICY**

SEPTEMBER 15, 2010

Thank you, Chairman Rockefeller, for holding today's hearing on the federal role in national rail policy and for accommodating my request to testify before your Committee. We all share your goal of updating and modernizing our nation's rail policy so that this vital means of transportation truly serves the interests of passengers, rail shippers and consumers all across the nation.

I am testifying today in my capacity as Chairman of the Judiciary Committee's Subcommittee on Antitrust, Competition Policy and Consumer Rights. As we consider the federal role in national rail policy, I believe it is crucial that antitrust law enforcement be a part of our nation's rail policy. On the Antitrust Subcommittee, we have seen that in industry after industry, vigorous application of our nation's antitrust laws is the best way to eliminate barriers to competition, to end monopolistic behavior, to keep prices low and quality of service high.

I raise the importance of antitrust and competition principles because our current federal rail policy does not include enforcement of the antitrust laws in most respects. For decades freight railroads have been insulated from the normal rules of competition followed by almost all other parts of our economy by an outmoded and unwarranted antitrust exemption. Consolidation in the railroad industry in recent years has resulted in only four Class I railroads providing nearly 90 percent of the nation's freight rail transportation, as measured by revenue. Three decades ago there were 42. The railroads' obsolete antitrust exemptions mean higher prices for consumer and manufactured goods, for food and electricity.

As you know, I have introduced legislation designed to repeal this obsolete antitrust exemption. This bipartisan legislation has eleven co-sponsors, including members of both the Judiciary and Commerce Committees, and was reported out of the Judiciary Committee on a unanimous 14-0 vote in March 2009.

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The ill-effects of railroad consolidation and immunity from the antitrust laws are exemplified in the case of “captive shippers” – industries served by only one railroad. Over the past several years, these captive shippers have faced spiking rail rates. They are often the victims of monopolistic practices and price gouging by the single railroad that serves them, price increases which they are forced to pass along into the price of their products, and ultimately, to consumers. And in most cases, the ordinary protections of antitrust law are unavailable to these captive shippers. A recent study by Consumer Federation of America found that rail shipping rates for captive shippers are \$3 billion dollars higher than they would be if the market was competitive. These unjustified cost increases cause consumers to suffer higher electricity bills because a utility must pay for the high cost of transporting coal, result in higher prices for goods produced by manufacturers who rely on railroads to transport raw materials, reduce earnings for American farmers who ship their products by rail and raise food prices paid by consumers.

This special exemption is unique to the rail industry – virtually all other regulated industries, including telecom, energy, and air transportation, are fully subject to antitrust law. Our railroad antitrust legislation is supported by the Attorneys General of 20 states, a wide range of consumer organizations and leading industry trade organizations including the American Public Power Association, the American Chemistry Council, the National Farmers Union, the American Corn Growers Associations, among others.

That is why I am so pleased, Mr. Chairman, that in May 2009 you and I reached an agreement that a repeal of the railroad industry’s undeserved antitrust exemption would be incorporated in your comprehensive rail reform bill. I look forward to continuing to work together to achieve this goal. However, all should know that if comprehensive rail reform is not possible, I will also seek to advance repeal of the antitrust exemption by any other means possible. All those who rely on railroads to ship their products deserve the full application of the antitrust laws to end the anti-competitive abuses all too prevalent in this industry today.

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