

The Effect of Deregulation and NAFTA

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A. A Brief History of Regulation and Deregulation

The federal government began regulating prices and competition in the transportation since 1887. In that year, Congress created the Interstate Commerce Commission (ICC) to supervise cargo licensure and pricing on the railroad. The trucking industry was added to the list of transportation modes regulated by the ICC in 1935. This was done in response to the railroads complaining that they were losing business to the unregulated trucking industry.

The Motor Carrier Act of 1935 placed a number of restrictions and obligations on truckers. It required new truckers to obtain a “certificate of public convenience and necessity” from the ICC. Trucking companies already in existence when the law was passed were grandfathered in and were not required to get the certificates. New trucking companies were severely disadvantaged as they often had a very difficult time meeting the very restrictive standards set by the ICC.

The law also required the public posting with the ICC of all rates charged by the company and any changes to those rates had to be posted for 30 days before they could become effective. Competitors had the right to inspect the new rates and contest their fairness in front of the ICC who could then suspend the new rate change. Then, in 1948 Congress authorized carriers to set rates in unison and exempted truckers from the anti-trust laws (the Reed-Bulwinkle Act).

For four decades from 1940 to 1980, the ICC made it extremely difficult for new carriers to expand their services, routes or types of cargo hauled. If a new carrier desired to expand their cargo, they were often denied with the ICC reasoning that existing carriers could handle the proposed expansion. This achieved economic stability for old carriers but stifled competition from new carriers. Because of the difficulty in obtaining expanded authority, it became common during this era for one carrier to purchase another existing carrier’s route. The ICC disapproved of this practice, but carriers continued to pay sometimes exorbitant fees for these not so subtle purchases or “mergers”.

B. The Effect of Federal Deregulation in 1980

The economic regulation of trucking was seen by many as being inefficient, and President Kennedy in 1962 was the first President to recommend some economic deregulation of the industry. The move towards deregulation then began a slow process of evolution with the Teamster’s Union and the American Trucking association strongly opposing any reform. Finally, in 1980 the Congress passed the Motor Carrier Act of 1980 (MCA) which had been originally proposed by President Carter.

The MCA substantially deregulated the trucking industry by making it much easier to obtain a certificate of public convenience and necessity. In addition, it eliminated many of the restrictions on the commodities that could be carried and the routes that carriers could use, as well as the geographical areas carriers could serve. Finally, it allowed truckers free reign to price their services, although initially they could only increase or decrease their rates by 15% without challenge. This was liberalized by the ICC as the benefits of deregulation were realized.

The positive impact of deregulation has been mainly seen in the increase in efficiency, availability of additional services and competition in pricing. The total of new trucking firms increased dramatically after 1980 with a doubling of the number of carriers to more than 40,000 by 1990. Moreover, the use of trucking as a mode of transportation in conjunction with the railroad (intermodal transportation) shot up abruptly by 70% from 1980 to 1986.

The negative impact of trucking deregulation appears to be most felt by the labor market. Non union truckers were able to enter the labor market and the living wages of some truckers has gone down significantly since deregulation.

Today, there are still some regulations left over from the past. Federal law still requires new carriers to obtain certificates of public convenience and necessity and rates still must be filed with the government. It is in the individual states where the most regulation continues to exist with many states continuing to enforce strict price controls on intrastate carriers.

C. The Impact of NAFTA

In the ICC Termination Act of 1995, Congress authorized the President to remove or modify the moratoriums imposed on Mexican domiciled motor carriers from operating within the United States. Prior to this Act, Mexican carriers had no authority to operate here. This action was intended to fulfill the U.S. obligations assumed when it entered the North American Free Trade Agreement (NAFTA) with Mexico. Under this Act, the President had the power by executive authority to order the DOT to permit Mexican carriers to operate in the U.S.

Then in 2001, Congress froze the DOT's authority to issue permits for Mexican carriers unless these carriers met safety and inspection standards set forth by the Federal Motor Carrier Safety Administration (FMCSA). These standards were extensive and made meeting them a condition precedent to obtaining DOT authority to operate.

Effective April 2, 2002, the DOT promulgated rules clearing the way for issuance of DOT operating authority to Mexican trucking companies. 49 C.F.R. parts 368 and 387. Generally, these rules impose upon Mexican motor carriers all of the existing FMCSA safety regulations plus additional inspection and pre-certification requirements. There is also a dual application process. Onfor carriers seeking to operate only within 25 miles of the border and another for those carriers seeking to go beyond that zone. Those carriers

who go beyond the 25 mile zone must demonstrate financial responsibility through insurance issued by a U.S. insurance company on the same conditions as apply to U.S. carriers. Those carriers who operate only in the commercial 25 mile zone can avoid this requirement by purchasing 24 hour insurance certificates. These 24 hour commercial zone policies are usually issued through a master policy sold through general agents and trade unions located in Mexico. They are usually endorsed for just a 24 hour period, and such policies must also include a BMX-90 endorsement or equivalent federal filing as would be the case with domestic financial responsibility requirements.

Finally, the new rules impose the same financial responsibility requirements on Mexican carriers without regard to whether the carrier is common, contract or a private carrier. Further, these carriers are also given a special DOT number so that they can be easily distinguished.

In sum, Mexican carriers are now held to the same standards as domestic carriers, with some very narrow exceptions.