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STATEMENT OF  
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U.S. GENERAL ACCOUNTING OFFICE  
BEFORE THE  
SUBCOMMITTEE ON SURFACE TRANSPORTATION  
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
PREDATORY PRICING AND ANTITRUST ENFORCEMENT  
IN THE TRUCKING INDUSTRY

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here to discuss the Committee's concerns about predatory pricing and antitrust enforcement in the trucking industry. In 1980, the Congress adopted a new, more pro-competitive approach to regulation of the trucking industry. Some carriers were concerned at the time that the act was being considered that large carriers would use their new pricing freedom to set prices below cost so as to drive smaller trucking companies out of business. (Despite the fact that such predatory pricing was clearly prohibited by the new Motor Carrier Act, carriers continued to raise concerns about predatory pricing.) The ICC investigated the issue twice, and the Motor Carrier Ratemaking Study Commission,

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which was created by the 1980 Motor Carrier Act, also considered it. Last year David Lifschultz, a trucking company executive, asked the Justice Department's Antitrust Division to investigate the issue, but they declined because they concluded that structural conditions in the trucking industry made predatory pricing unlikely to occur. The ICC and the Motor Carrier Rate-making Study Commission came to the same conclusion.

Chairman Howard and Chairman Rodino of the Judiciary Committee asked us to investigate:

- (1) the nature of discount pricing and what effects, if any, it has had on competition in the industry, and
- (2) The structure of the less-than-truckload, or LTL segment of the trucking industry, how it has changed since 1980, and possible causes of those changes.

They also asked us to provide information concerning what remedies the antitrust and/or regulatory laws have provided for competitive problems in the industry.

Our comments today are based on a review of the available literature on the trucking industry, including government reports and academic analyses; discussions with a variety of observers of and participants in the trucking industry, including carriers, shippers, academic analysts, union representatives, tariff bureau officials, antitrust lawyers, and government officials; analysis of a limited body of data on changes in market shares since deregulation; and a review of recent court cases and complaints to the ICC involving predatory pricing in the trucking industry.

As agreed, we have limited the scope of our inquiry to the LTL segment of the trucking industry--the segment concerning which these allegations of predatory pricing have been made. This segment of the industry concentrates on small, less-than-truckload shipments which generally must be consolidated into truckload lots at terminals before they are carried to their destinations. LTL operations are generally characterized by a network of such terminals, which may require a substantial capital investment.

We wish to emphasize that very little information exists concerning costs, prices, and market structure in the LTL trucking industry. We are not certain how reliable these data are, and we are therefore presenting our findings based on the data we have been able to gather, and noting where the data are inconclusive.

#### SUMMARY

1. We found a substantial amount of discount pricing but no conclusive evidence relating to the existence of predatory pricing. Most of the carriers we talked to told us they believe that some carriers set prices below cost either inadvertently because they do not know how much it costs to carry each shipment, temporarily as a promotional device, or to secure possible spillover benefits from winning a large shipping account. Some carriers told us, however, that they believe others are practicing predatory pricing, but could not offer reliable data to support their allegations.

2. The available data suggest that all regions of the country have experienced some increase in the market shares of the largest firms in the industry since 1980. Theoretically, this increase in concentration may reduce competition in the industry, though it also may increase efficiency. Concentration levels in the LTL trucking industry are about the same as those in American manufacturing generally. /
3. We were unable to find any court cases in which predatory pricing was alleged in the trucking industry in recent years. We found two formal complaints of predatory pricing to the ICC, which they dismissed for lack of evidence.

In the discussion that follows, I will elaborate on these points.

#### THE NATURE AND CONSEQUENCES OF DISCOUNT PRICING

A variety of different kinds of discounts have been offered since the Motor Carrier Act was enacted in 1980. Some carriers told us they offer across-the-board discounts for all their customers (or at least all who ask for a discount) of 10-15 percent off the collectively established prices set by the tariff bureaus. In some cases, according to the Motor Carrier Ratemaking Study Commission Report, as well as several of the carriers we talked with, the size of the discount varies with the size of the pick-up (i.e., a lower price is offered if several shipments are picked up at the same time) or with the shipper's monthly traffic volume.

Some carriers told us that promotional or introductory discounts are sometimes offered. For example, the discount may be offered for the first 90 days after service is offered in a new territory. Carriers told us that, in some cases, discounts are larger on return trips.

There is wide speculation within the industry that some of the discounts offered do not cover costs. Several of the carriers and other industry observers we talked with told us this occurs because carriers do not know the costs of carrying particular shipments. Some told us promotional prices probably don't cover costs in the short run because they yield modest revenues per ton-mile at the same time that substantial start-up costs are being incurred. These start-up costs include costs of buying or leasing terminal space, trucks, and trailers, hiring and training additional staff, and advertising. They also are likely to include, according to some of the carriers we spoke with, the costs of running trucks without full loads because traffic is difficult to attract at first, even with substantial discounts. But carriers who offer promotional discounts argue that by increasing traffic they reduce costs per ton-mile sufficiently to cover costs in the long run. Others told us that discounted prices which do not cover costs are offered to large shippers on the grounds that these large contracts will have spill-over effects on other traffic. While carriers may lose money on the traffic carried from a particular supplier to a large retailer, for example, they may make money on shipments from the same supplier to other retailers,

which they wind up carrying because they are already calling on the supplier.

#### STRUCTURE OF THE LTL TRUCKING INDUSTRY

We examined the structure of the industry by looking at concentration (the extent to which the market is concentrated in the hands of a small number of firms), and barriers to entry (how difficult it is for a new firm to enter the industry). For example, the extent to which large firms have cost or marketing advantages over small firms is an entry barrier. Government entry regulation such as many states still apply to intrastate trucking is another example. An analysis of the structure of the industry is helpful in assessing how likely predatory pricing is to occur in an industry.

#### Concentration

Since many LTL trucking companies confine their operations to particular regions of the country, we analyzed regional market share data to judge the level of and changes in concentration in the industry. In some cases, e.g., for the Rocky Mountain region, the data include both traffic within that region and traffic between that region and other regions. The data available on regional market shares come from statements filed by regional tariff bureaus with the ICC to justify rate increases. We are not certain how reliable these data are. They combine data for truckload and LTL traffic, and therefore may understate LTL concentration if truckload traffic of reporting carriers is less concentrated than LTL traffic. These data also exclude carriers

who do not report their data to the tariff bureaus. However, the ICC staff we spoke with believe that most LTL carriers still report their data to the tariff bureaus. Finally, the most recent data available are for 1983.

Our analysis of the TL and LTL data combined showed that in the Eastern Central region, which includes traffic between 17 midwestern states and 13 northeastern states, the largest 4 firms received 50 percent of the revenues in 1983, and the largest 8 received 69 percent. In the Pacific Inland region, the top 4 firms received 49 percent of the revenues; in the Rocky Mountain region, 48 percent; in the Central States region, 30 percent, and in the Middle Atlantic and Middle Western regions, 28 percent.

The limited data available indicate that concentration has generally increased in each region since 1980. The data also indicate that the increase in concentration has been least in those regions which were already most concentrated. In the Pacific Inland region, for example, which was most concentrated in 1980 (48 percent), the share of the top 4 has risen by only one percentage point from 1980 to 1983, and was actually slightly smaller in 1983 than it was in 1981 and 1982. In the Rocky Mountain region, which includes coast-to-coast traffic, the share of the top 4 firms rose from 44 percent in 1980 to 48 percent in 1983. This growth continued an increase in the market share of the top 4 that had been underway at least since 1978. In the Eastern Central region, where the share of the top 4 was lower in 1980 (40 percent), the increase in concentration has been greater

(to 50 percent in 1983). This was also true in the Middle Western region (22 percent in 1980; 28 percent in 1983), the Central States region (20 percent in 1980; 30 percent in 1983), and in the Middle Atlantic region (21 percent in 1980; 28 percent in 1983).

The level of concentration shown in the 1983 data is moderate. Four-firm concentration ratios of 30 to 50 percent, such as those found in the LTL trucking industry, are about average for American manufacturing industries generally (for example, Frederic M. Scherer calculated that the weighted average four-firm concentration ratio in American manufacturing in 1972 was 39.2 percent). However, traffic levels are still below the peaks achieved in 1978, and several LTL firms have gone out of business since 1983. It is therefore likely that concentration will increase somewhat over the levels of 1983 unless traffic levels rise substantially.

There are several possible causes of the apparent increase in concentration. Increases in concentration may occur because of normal adjustments to economies of scale and scope and normal variations in business success, as well as the possible effects of below-cost pricing. The apparent increase in concentration has been greatest in the eastern and midwestern regions where predatory pricing has been most prominently alleged. But we would expect less entry and more exit in these regions because of the low profit levels prior to deregulation.

These concentration data are of uncertain reliability. If this Subcommittee wishes to monitor changes in concentration



levels, you may wish to consider, in any action taken on pending deregulatory legislation, the value of maintaining a data base on market structure in the trucking industry. Such a data base would allow trends in concentration to be assessed in the future. Such a data base might be maintained either by the Bureau of the Census or by the Department of Transportation, and could include time series data on both national and regional market shares for the LTL market.

#### Barriers to entry

Since 1980, Federal regulatory entry barriers have become virtually non-existent, but state regulation may still be significant. Some carriers who have sought to enter the LTL market or expand their operations told us they were unable to do so because of the difficulty of getting intrastate operating authority from state regulatory commissions within certain states. These carriers said that efficient LTL operations, at least for regional carriers, required intrastate operating authority.

Entry into the LTL sector of the trucking industry requires access to terminals as well as use of trucks. However, trucks and terminal space can be leased, reducing the capital required for entry. Nevertheless, entry can place a significant amount of working capital at risk. For example, Leaseway Express, generally considered to be the only significant entrant into the LTL market since deregulation, told us that it lost between \$5 and \$10 million before leaving the market in early 1985.

Size advantages could also result in entry barriers. The economic literature generally concludes that there are some advantages of size in the LTL trucking industry, but the extent of these advantages is subject to dispute. Moreover, some shippers and carriers told us there are also significant disadvantages of size. They argue that management becomes less effective as it attempts to oversee a larger and larger operation. Also, some shippers told us that large long-haul carriers using breakbulk stations (i.e., large regional terminals which consolidate traffic from smaller terminals) as part of their routing network provide slower service and charge higher prices on short-haul traffic than smaller regional carriers who ship direct from terminal to terminal without routing through breakbulk stations.

The depressed traffic levels of the LTL trucking industry since 1980 have also been short-run entry barriers that are not likely to remain in the long run if traffic levels recover. There has been virtually no entry into the LTL segment of the industry by companies wholly new to the trucking business since the 1980 Motor Carrier Act was passed. It is difficult to say how much this has been due to the continuing depressed levels of traffic in the industry and how much to entry barriers that would continue in place even under more favorable economic conditions. The depressed traffic levels have not prevented extensive entry into the truckload segment of the industry.

While there has been virtually no entry into LTL trucking by companies outside the trucking industry, numerous trucking companies operating in one region have expanded into other regions. There has been some entry into every region we have examined, but the largest number of companies have entered the Rocky Mountain region, despite the fact that this region, characterized by long-haul traffic, is considered to be more costly to enter than other regions. This may have been because, in 1978, concentration and profits in this region were relatively high.

While economic entry barriers in LTL trucking appear to be moderate, the lack of significant entry since 1980 makes it difficult to assess their importance. Certainly the liberalization of ICC certification requirements since the 1980 Motor Carrier Act has permitted significant entry by existing motor carriers into new territories, stimulating new competition. But continued state regulation of intrastate trucking may have inhibited entry into interstate LTL trucking. In any case, the absence of wholly new entrants leaves the relative importance of remaining entry barriers in the industry a partially open question.

INFORMATION ON REMEDIES PROVIDED BY  
THE ANTITRUST AND REGULATORY LAWS

In addressing this issue, we reviewed cases brought by the Department of Justice, the Federal Trade Commission, and private parties alleging antitrust violations in the trucking industry. We also reviewed complaints made to the ICC alleging predatory pricing. Neither the ICC nor the Justice Department could

identify any recent federal civil or criminal litigation alleging predatory pricing in the trucking industry. We have found five antitrust cases involving LTL trucking. All were price-fixing cases involving tariff bureaus or other industry groups and their members. Two were filed by the Justice Department's Antitrust Division; three were filed by private parties. The Justice Department told us they believe collective pricing by tariff bureaus and their members is more of a threat to competition than is predatory pricing. Some antitrust lawyers in private practice told us they believe predatory pricing is occurring, but feel it is extremely difficult to prove in court. Some of the recent legal literature has suggested that recent court decisions have narrowed the legal definition of predatory pricing. However, we were not told of any obstacles to bringing a predatory pricing case in the trucking industry different from those occurring in any other industry.

The FTC is currently barred from exercising its enforcement powers against interstate common carriers and has therefore restricted its activity in the trucking industry to intrastate trucking. While the FTC was litigating several intrastate trucking cases earlier this year, it dropped two of these cases as a result of the Supreme Court's recent Southern Motor Carriers decision, which limited federal action against intrastate restraints of trade. All of these FTC cases are also price-fixing cases.

We found two complaints to the ICC concerning predatory pricing. The ICC is empowered to prevent predatory pricing in the regulated interstate trucking industry under the Interstate Commerce Act. The ICC dismissed these cases for lack of evidence.

In short, we found no cases where the remedies available under either the antitrust laws or the Interstate Commerce Act have been used against alleged predatory pricing in the LTL segment of the trucking industry. We cannot say whether this is because predatory pricing has not occurred, or because it is difficult to prove that it is occurring.

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Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions you might have.

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