TRANSPORTATION

Moving closer to deregulation

Senate Commerce Committee Chairman Howard Cannon says he is "mad as hell," and with good reason. He's incensed that the Interstate Commerce Commission is implementing deregulation by de facto means, and not only exceeding its congressional mandate but overriding Congress's transportation legislation.

"It is not the responsibility of the regulatory agencies to determine how the American economy should operate on a day-to-day basis," said Cannon. "Such challenges will not go unanswered."

During the administration of outgoing chairman Daniel O'Neal, the ICC has progressively relaxed many of its most important regulatory measures. That trend will greatly accelerate when Darius W. Gaskins becomes the ICC chairman on Jan. 1. Gaskins will "make Dan O'Neal look like a regulator," in the words of Bennett C. Whitlock, president of the American Trucking Association. The new chairman is an economist from the University of California at Berkeley, whose credentials are exemplified by his service at the Civil Aeronautics Board under airline deregulator and inflation czar Alfred Kahn.

The ICC is considering several moves that would effectively knock out regulation in the trucking industry. Last week the commission shifted the burden of proof in motor carrier entry cases. In order to receive certification, previously, new applicants had to prove that existing carriers were unable to handle the freight volumes over their routes. Now, the ICC ruled, if new applicants are to be denied, *existing* carriers must prove that further competition would drive them out of business.

This is a built-in formula for reductions in trucking routes, as both Teamsters and industry officials contend. It is unlikely that most com-

BANKING

Comptroller's hearing on Marine Midland hit snag

An apparent oversight by lawyers for Marine Midland Bank and the Hongkong and Shanghai Banking Corporation left bank officials with red faces at Oct. 23 hearings before Comptroller of the Currency officials in New York City. Marine Midland is the object of a "friendly" takeover by the HongShang.

In applying for conversion from a state to a national charter, Marine stated that the primary motivation for the timing of the application was that "by June 1979, it became clear that the Superintendent probably would not approve the transaction, at least on the terms approved by the shareholders of Marine Midland Bank, Inc. ... Accordingly, Marine Midland Bank filed its application to obtain the approval of the Comptroller to convert to a national bank and, upon receipt of that approval, to take all the steps necessary to effect its conversion to a national bank."

In framing that statement, Marine Midland General Counsel Frank J. Laski apparently forgot that the Comptroller's own guidelines explicitly state that no such application may be made in order to "circumvent state regulation." Yet that is what Laski indicated Marine Midland is trying to do.

In June, New York State Banking Superintendent Siebert forced the Hongkong and Shanghai Bank to withdraw its application for permission to vote the shares it wanted to acquire in Marine Midland. Approved by the Federal Reserve, the HongShang takeover hit the rocks after the New York Anti-Drug Coalition launched a campaign through the state legislature protesting the merger. At issue were U.S. Labor Party-published charges, incorporated in the best-selling paperback *Dope, Inc.*, that the HongShang is still involved in financing international narcotics traffic.

Superintendent Siebert testified at the Oct. 23 session, following testimony in Buffalo the day before from Marine Midland and U.S. Labor Party representatives. In her testimony, Siebert complained that the HongShang had failed to provide information of the type that any American bank would submit, including an accurate statement of the distribution of profits, a full list of mon carriers could prove potential bankruptcy from one or two such applications per route; they would tend to cut less profitable routes instead. The entry changes are a further means of eroding the fixed rates set by the industry, an erosion which would cut profit margins and, again, spur route abandonments.

The railroad "transition"

The ICC has already lifted many of the pricing restrictions on railroads, to the misguided delight of the industry generally. Railroads argue that rate deregulation will enable them to cut prices and attract more volume in areas of high competition with trucking.

But the rails' great hope, as the *Journal of Commerce* recently underlined, "lies not only in freedom to price and market more imaginatively, but in the rationaization of their systems—the abandonment of unprofitable mileage and mergers with acquisitions of other railroads." While Gaskins is softpedaling this line because of the outcry from shippers, his policy commitments are exactly in this direction. He admits the consequences. "While this may be inevitable and desirable in the long run ... it could present severe transition problems for some shippers dependent for the moment on rail service."

Among the newest champions of rail dereg is the Committee of Railroad Shippers (CORS), a grouping of 15 major corporations formed earlier this year. One CORS proposal is for Congress to legislatively authorize contracts between individual shippers and railroads, which the ICC until recently had not permitted.

On the one hand, shippers would gain security of knowing they would be able to get cars and trains at specified times. But given rail car and locomotive shortages, what will tend to happen is that large corporations and (to a far lesser extent) shipper cooperatives will corner the market on "train space." This could easily give rise to a rail space futures market, with speculation on and manipulation of cars and trains driving prices out of sight—and leaving smaller shippers even more stranded than they often are now.

CORS also wants the ICC and Congress to abrogate railroad right-of-way rules, under which railroads are not permitted to cross another line's tracks or lay new track along that line's right of way. As Clifford M. Sayre of Dupont puts it, "This would be a way for a shipper to reach around a marginal railroad to a healthy railroad, which could contribute to the collapse of short haul railroads or marginally profitable railroads."

—*Stephen Parsons*

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subsidiaries, and certified balance sheets (see below).

But the Superintendent's strongest statement came in response to a question from a U.S. Labor Party representative at the hearings. "We didn't investigate the charges that the Hongkong and Shanghai Bank refused to submit its books because of involvement with illegal dope revenues," Siebert said. "We decided that the Federal authorities were in a better position to handle this. It is theoretically possible that the Hongkong and Shanghai Bank was involved in this." With the paucity of information provided by the bank, she concluded "there was no way to tell."

At the hearings, the Labor Party charged that if the Comptroller violated its own stated rules by supporting the takeover application, "it would damage the integrity and credibility of the American monetary authorities."

—*David Goldman*

HongShang statements inadequate

The following are excerpts from New York State Banking Superintendent Siebert's testimony before the Comptroller's hearings on Oct. 23.

The number of financial statements [submitted by the HongShang] was inadequate to properly analyze the Hongkong and Shanghai Banking Corporation group as an economic entity. Second, the statements which were submitted did not contain enough detail to make a comprehensive analysis of them possible. In fact, the statements were rather abbreviated. The profit and loss statements, for example, showed only the amount of published profit and how it was distributed. ...

A glaring example of this is the practice of Hongkong and Shanghai Banking Corporation to credit an account called "inner reserves" with the true profit of the bank and then to take from this account the amount of profit that management wants to publish. The secrecy of the true profit is further reinforced by the practice of burying the inner reserves account in the deposits account. The result of this practice is that profits, deposits, and capital are not fairly stated in the published financial statements of Hongkong and Shanghai Banking Corporation. ...

Requests [for further information] resulted in a long series of marathon bargaining sessions between applicant and the banking department. We were told that most of the material we had requested was not available, that the applicant was not geared to produce it readily, and that producing it would involve inordinate costs and delay. It was also evident that the desire to preserve the secrecy of some of the information was also a significant factor.