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Law and Economic Regulation in Transportation

by Paul S. Dempsey and William E. Thoms

The prospect of writing a legal reference book on transportation during a time of tumultuous change in economic regulation is daunting indeed, especially given the usual lag times in preparation and printing of such texts. No wonder the authors refer to the project in their preface as a "nebulous monster." This book of 349 pages covers - in one form or another - rail (freight, commuter, and Amtrak), trucking, bus, freight forwarders, air, pipeline, and water. Chapters are organized by area of regulation or governmental involvement (entry, exit, and adequacy of service; rates; antitrust and finance; liability; government operation; labor relations) and within these (except for the government operation chapter, which applies only to rail) by mode; one chapter is dedicated to urban transit, while the initial chapter serves as a historical survey. The last two chapters, on government operations and urban mass transit are arguably beyond the authors' "call of duty," since they pertain to public promotional policies rather than strictly to regulation. The authors rely very heavily on previously published material, both their own and others', all properly attributed, with permission granted. This material is adapted and fitted along the logical lines indicated above, with little apparent loss of uniformity in style. The loss of uniformity, as discussed below, appears to have been mostly in emphasis among subjects covered.

To whom then, is such a book addressed? Evidently the primary target is the lawyer who needs help entering into transportation regulation in general or some facet of it with which he or she is not familiar. But since legal jargon is virtually absent and the only aspect of the book marking it as legal is the extensive use of footnotes and citations, the target could just as well be any professional with similar needs.

One readily distinguishes different levels of treatment for individual subjects depending on whether one, some, or all of the following elements are provided:

- (a) extensive excerpts from key agency or court decisions;
- (b) a historical background summary;
- (c) a narrative explaining the applicable statutory provisions and how agency deci-

sions have interpreted those provisions; and

- (d) excerpts from various other documents (e.g., correspondence or testimony). Often, the book dispenses with connective material between sections. Sometimes the only entry under a chapter subheading is an extensive excerpt from a court decision. The overall impression is one of tightness and practicality.

Whether a particular subject gets the full treatment, i.e., all elements noted above, appears to depend mostly on the authors' work experience or prior publications and not so much on relative importance. Well covered subjects include rail mergers, rail abandonments, Amtrak, motor carrier entry, and rate bureaus.

For the most part the authors treat their material dispassionately, as one would expect in a reference text. But a major exception is the rather polemical discussion of ICC's interpretation and implementation of the Motor Carrier Act of 1980 and the steps ICC took before the Act to promote trucking deregulation. The authors adduce citations and excerpts to show that the Commission overstepped what the authors see as the moderate bounds intended by the legislation.

The authors often tie together the material in each chapter by pointing to underlying thrusts and trends, of which they seem to have a good grasp. On rail mergers, for example, the authors point to a realignment of the industry into fewer systems with attendant spinoffs of regional and short line railroads and a discontinuance of open route pricing. They also eschew much of the history of regulation which met dead ends and would shed little light on what goes on today, e.g., the ICC's rate structure investigation of the early 1970's.

On the other hand, some important subjects do get a short shrift, partly because of timing problems. Much has happened since 1985, the last year covered by the book. Yet railroad freight car service and car hire - which are left out - remained important throughout the period covered. Also not treated is the area of joint rate cancellations and competitive access, except as an adjunct to the discussion on mergers. Yet the Staggers Rail Act particularly emphasized this area, with the objective of granting

individual railroads relief from noncompensatory divisions while safeguarding competition from short lines. And while differential pricing is covered, in large part by use of decision excerpts, no mention is made of stand-alone costs, the primary conceptual tool the ICC has relied upon in recent years for coal traffic. In this last instance, though, the authors may have lacked sufficiently clear indications at the time of writing.

To conclude, Dempsey's and Thoms' book provides useful breadth of coverage and depth of sophistication. The reader is cautioned, however, that gaps occur, some inevitably because of the fast changing legal and economic environment at the time the authors went to press.

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