

THE COMMON OWNERSHIP ISSUE FROM POLITICAL  
IDEOLOGY TO A PRACTICAL CONSIDERATION OF  
BENEFITS AND GOALS FOR PUBLIC SERVICE

PAUL W. CHERINGTON\* and DAVID M. SCHWARTZ\*\*

Control through ownership of carriers of two or more transport modes is a rather unusual business arrangement, at least in the United States. Those arrangements that are in existence are either looked upon as something special or extraordinary, or are limited activities bounded severely by regulatory constraints.

And yet it is operationally possible to create and manage multi-mode transport firms, and it has been possible to do so for many years. The policy implications of such an operation from the standpoint of efficiency and the economics of the services to be rendered, both from the standpoint of demand and of competition with other transport services—single as well as multi-mode—are open questions. After all, a fair judgment about the operational advantages and economics of multi-mode ownership cannot be made until it is really tried.

So little thought has been given to the possibilities of common ownership that there is even lacking a clear understanding of what kind of economic objectives are attainable. Much of the issue is debated in terms of phraseology and issues that are more than half a century old. No research piece has outlined the conditions under which such an enterprise might succeed or fail. There is little empirical study of even the limited areas where it has been tried. There are few objective thought-pieces which go into the logic of the economic issues presented.<sup>1</sup>

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\* Assistant Secretary for Policy and International Affairs, Department of Transportation; B.S., Harvard College (1940), D.B.A., Harvard Business School (1956).

\*\* Director, Office of Policy Review and Coordination, Department of Transportation; A.B., Dartmouth College (1952), J.D., Georgetown University (1957).

The views expressed herein are those of the authors.

1. Two such papers have appeared in the ICC *Practitioners Journal*: Byron Nupp, "Regulatory Standards in Common Ownership in Transportation," (November-December 1966); and Peter S. Douglas, "The Economic Irrelevance of 'Common Ownership,'" (July-August 1969). The former reviews the sporadic legislative history of present regulatory statutes bearing on the subject and abstracts from them a set of general principles that might be used to guide a more consistent pattern of regulation, while the latter points to the absence of obvious economic benefits from ownership of two or more transport services in coordinated service and outlines some alternative approaches to better coordination of transport service.

Exploring first the reasons why this severe taboo on a transport operation easily feasible has persisted to the present time one finds that the basic reasons today lie not in operations nor in economics but in political factors—often expressed in the most ideological language. This political ideology rests on the historic circumstance that the first truly modern form of transportation was railroading, and this form for a while dominated the entire transport scene.

Railroads were early discovered to require exclusive control of the entire operation by a single management including control of the use of the traveled way. This was in contrast to road and water transport where a multiple control system could operate on a common way. Railroads thus became inherently a common carrier service, not easily dominated by any shipper or receiver of goods. This was because of the need for common operational control, plus the enormous capital requirements for a threshold into the business. In most countries only governments could provide this control and capital. In a few countries, such as England and the United States, private capital succeeded in the railroad business but only with public aid and promotion—and later, regulation.

Newer forms of modern transportation by water, pipeline, highway, and air lived in fear of the already established behemoth railroad industry. The railroad industry itself tended to look with disdain upon its newer and more puny rivals and either ignored the opportunities to get into the new transport enterprises or, if they did get in, took a rather restrictionist point of view, usually with the aim of limiting competition with the railroad.

In this way a political situation was created—the railroad and its supporters versus its newer competitors and their supporters. This conflict became rather ideological in countries where the railroad was owned by the government. A new trucking or bus company might be a private enterprise in competition with a public railroad. Friends of enterprise would seek to limit the expansion of public ownership and could justify their policy by pointing to the vigorous growth of private companies in the newer transport industries. Advocates with a more social purpose in mind would point to the great public benefits of the railroad system and the threats to it from private exploiters using the newer forms of transport as levers.

Resolution of these conflicts has not been sought in rational operational terms, capitalizing on the economic advantages of coordinated services, but for the most part through restrictive regulatory ends. Private enterprise truck and water services have been restricted

through some form of entry control, and railroads have been often confined to their traditional service obligations. In most countries this has led to a marginal trucking and water industry, and irrational assignment of all kinds of unnecessary public obligations to the State-owned railroads. Such countries have been faced with a primitive system of nonrail transport, on one hand, and a deficit ridden rail system on the other. It has only been in the past 15 years that some advanced countries, such as Britain, have sought a way out of this impasse by eliminating many artificial restraints on railroad service and eliminating many of their obsolete public service obligations.

In the early 20th century, United States railroads operated many domestic water transport services. These were severely restricted in the 1912 legislation known as the Panama Canal Act, which not only forbade railroad operation of intercoastal service through the Canal, but also restricted other rail-owned water operations. In the strategic *Lake Lines* case in 1915, the Interstate Commerce Commission eliminated rail ownership of water services on the Great Lakes, which had grown extensively.<sup>2</sup> This decision is written in the form of a political diatribe. It abounds in rhetorical statements that have been quoted ever since, but lacks the most elementary judicial analysis of the problem presented. Obviously, no economic analysis is present.

In *Lake Lines*, the Commission made no distinction between the use of Great Lakes shipping to destroy competition and the constructive use of it to improve transportation service. The end-to-end service of small railroads, such as the Lehigh Valley, was wiped out along with the parallel routes of other lines. The constructive work of the Pennsylvania in transforming an old obsolescent fleet into first class water service was eliminated, along with the most blatant anti-competitive "fighting ship" outfits. *Lake Lines* was in reality a necktie party motivated by political rhetoric and nothing more. It not only eliminated rail control of Great Lakes shipping, it was probably the most important single event in the elimination of common carrier service on the Lakes. Certainly, the liberated forces of independent water lines did not respond after their unleashing by the ICC rhetoricians. By the 1930's the last common carrier on the Lakes of general cargo had disappeared.

Political fear of railroads also motivated regulatory restrictions on common ownership of truck and bus lines and aviation services in the 1930's. Statutory limitations make this clear.<sup>3</sup>

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2. *Lake Lines Applications* 33 ICC 700 (1915).

3. Motor carrier acquisitions are governed by Section 5(2)(b) of Part I of the Interstate Commerce Act, and aviation acquisitions are governed by Section 408(b) of the Federal Aviation Act.

Modern consideration of the common ownership issue should be dominated by two economic considerations:

1. The extent to which transport development has made common ownership interesting to nonrail forms of transportation, thus bypassing the old railroad political issue.
2. The economic results to be expected from common ownership.

While most of the specific legislative provisions applying to common ownership in Federal regulation stem from the fear of the railroad devil, the present state of development in air and motor carriers places them in the forefront of transport industries for whom common ownership might well be appropriate. At the same time, the railroads have become more interested in diversified investment in nontransportation activities—the so-called conglomerate phenomenon. This outlet for their cash flow, tax loss, and other aspects of capital transfer may have made the ownership of other transport forms less attractive to the railroads, on the basis of higher alternative earnings in nontransport investment opportunities.

In the motor transportation field there has been considerable interest in getting into the air freight field through motor ownership of air freight forwarders, an indirect form of air carriage.<sup>4</sup> Motor carriers have also shown increased interest in integrating into water transportation: in the *McLean* case involving the joint motor-water movement of highway containers in coastwise and noncontiguous trades under a single management; and in the proceeding before the ICC involving the combination of a truck line and the American Commercial Barge Lines on the Mississippi River System.<sup>5</sup>

Both aviation and trucking companies are becoming associated with conglomerate enterprises. This association should cause many managements to become familiar with conditions and opportunities in trucking and aviation and in the advantages from a combined transportation service. The growth potential in separate air and truck enterprises will be assessed against the growth and other economic advantages of combined service, and again against the growth possibilities of other forms of business investment. Common ownership may emerge as a result of improved investment management.

Our basic concern with common ownership is, or should be, the

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4. Docket 16857 is a case before the Civil Aeronautics Board involving numerous motor carriers seeking authority of air freight forwarders.

5. *TTC Corporation—Purchase, Terminal Transport Company, Inc.* 97 MCC 380 (1965).

economic motives for it. Common ownership should provide a smoother and more effective process of finding resources to develop new transportation markets. It should do this by providing a direct channel for the assignment of investment funds to new growth opportunities, whether these investment funds are derived from new capital issues or from the surplus of other, more slowly growing, or obsolete forms of investment, including those in some modes of transportation.

This direction of investment and the assignment of resources on the basis of comparative returns should be accompanied by the retention of the basic market skills in existing enterprises both in and out of transportation. In other words, the growth of management ability to deal with new growth should be in a direct line of evolution from the management experience of present firms. In the past, newer forms of transportation have sometimes suffered from capital famine due to their isolation and from management starvation as inexperienced people entered transportation fields from which other transportation managements were excluded.

The marginal status of other types of carrier service, particularly highway and inland water carriers, in countries where the government owns the railroads has already been mentioned. In the United States, a very high price has been paid for the growing pains of nonrail transportation. Aviation grew on government subsidy. Inland water transportation also depended on government promotion for its start, following the development of the rivers and the perfection of towing technology. Its growth was slow and uncertain in the earlier years and did not come into its own until about 1950. A high price has also been paid for the exclusively independent growth of trucking. The undercapitalized trucking firms characteristic of the 1920's and 1930's needed regulatory protection in order to grow. A restrictionist pattern of rates and services, based on excessively detailed certificate restrictions, has led to a high rate scale for some truck traffic, to the political demand for regulatory exemption for other truck traffic, chiefly agricultural commodities, and to the escape of other large amounts of truck traffic from common carrier service as shippers rebelled against high rates and restrictive service.<sup>6</sup>

In contrast to the agonized growth of trucking in its formative period, the motor bus industry in the United States experienced early fast growth and market stability under the guidance of competent

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6. Complete exemption from rate, entry and other economic regulation is provided for unmanufactured agricultural commodities and private transportation. The various motor carrier exemptions are set forth in Section 203 of the Interstate Commerce Act.

managements. Much of the credit for the early smooth sailing of the motor bus industry is due to the active participation of railroad capital in the bus companies. The usual pattern was a 50 percent railroad ownership of the stock in a regional bus company, providing a stability in the capital structure unique among developing forms of transportation in the United States.

While the United States is still paying the price of ideology in terms of restrictive service and high rates in some of the newer modes of transportation, it is also paying in terms of loss of markets to common carrier service and the incentive to develop new services. The present balkanized transportation system is unable to compete effectively with private carriage, either in rates or service. Two-thirds of the capacity in U.S. inland waterways and highways is dominated by private shippers along with practically all of the oil pipeline network. The impact of this fact upon the organization of American business has never been calculated.

Obviously, the ability to invest in one's own transportation is a sign of business size, and the ability to use this control of transportation to seize and hold markets is a mark of business dominance. This issue has come to a head only in pipelines, and no one can say that the negotiated solution is a completely satisfactory one from the point of view of the competitive growth of American business.<sup>71</sup> Instead of a common carrier service capable of serving the major shipping needs of a competitive industry, there is a fragmented one at the mercy of a relatively noncompetitive business system in control of many of the principal arteries of trade and transportation through its ownership of private carriage by all principal modes. Through common ownership of its own private transport facilities, business is dominant in transportation, even as common carrier transportation fights its own civil war among the modes.

Fragmented common carrier services, fighting the battle of the modes, have lagged behind in the development of new services; witness the long, uncertain, and slow growth of container freight service, a true hostage of separate control of transportation services. There is much made of the great growth of TOFC service on the railroads since a favorable ICC decision in 1954<sup>8</sup>—from practically nothing to a million and a half

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7. In the early 1940's the U.S. Department of Justice negotiated an antitrust consent decree with the petroleum companies owning pipelines stipulating specific returns on investment to limit pipeline rates and other matters. The background and significance of this action is discussed by Arthur M. Johnson; *Petroleum Pipelines and Public Policy*, (Cambridge, Harvard University Press, 1967).

8. *Movement of Highway Trailers by Rail*, 293 ICC 93 (1954). In *Ex Parte* No. 230,

carloads. There is, however, a tendency to forget that this service struggled for recognition for more than 20 years as the modes fought for control. The present system still protects the vested interests of motor carriers, railroads, and shippers respectively in the various plans that have been prescribed. This has undoubtedly limited the growth of container service, particularly the use of piggyback by trucking companies. It has indeed favored the private shipper, who again has his own favored plan on better terms than his rail or truck competitors who must use their own, often outmoded rate structures to participate.

Supporters and critics have overlooked the primary purposes of common ownership in transportation: the best possible means of using the mature economic position of existing transportation to provide assured investment and management for newer developments in the field and to use the marketing experience of a mature industry to promote new transportation services on a wide scale. This function has been abandoned to the shippers themselves, who have developed their own multimode transportation systems and have used them often as a means of market dominance.

Instead of concentrating on the principal goal of a coordinated transportation service, supporters and critics of common ownership have concentrated on what is really the secondary goal—the mechanical integration and coordination of specific transport operations.<sup>9</sup>

This concentration on the secondary aims of coordinated service can be illustrated by the history of rail ownership of motor vehicles. The “key point” doctrine, guaranteeing that railroads use motor vehicles only to provide end-to-end service to actual rail movements has a long regulatory history;<sup>10</sup> so has the idea of substituted service, where small, nonprofitable movements over lightly traveled rail lines can move over the highway under direct railroad control once the line has been abandoned. In recent years the rigors of the key point doctrine have been alleviated by a limited liberalization of the use of motor vehicles in substituted service. In the most recent cases, earlier key point restrictions have been lifted to recognize the discontinuance of trains with head-end

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*Substituted Service—Piggyback*, the Commission in its decision (322 ICC 301 (1964)) did achieve a greater degree of simplification and equality in piggyback plans and operations.

9. In its 40th Annual Meeting, the ICC Practitioners Association held a panel discussion on common ownership. The report of the discussion seems fairly evenly divided between attention to ideological aspects and the secondary aspects dealing with mechanical coordination. (ICC Practitioners Journal, September-October 1969).

10. The key case is *Pennsylvania Truck Lines Incorporation, Acquisition, and Control of Barker Motor Freight, Inc.* (1 M.C.C. 1936).

freight, the falling off of less—carload traffic, and other railroad vicissitudes which now lead to a wider use of motor vehicles. But the emphasis is still static and mechanical rather than in terms of service innovation.

Common ownership is thus caught between the mediocrity of a few dozen minor cases involving secondary transport operations and the high flown ideological language of the modal apologists. It is difficult to speculate about its true potential or even the true dangers which it may present to the public interest in certain areas of abuse.

It can be postulated, however, that there are certain areas where common ownership is not an appropriate form of transport organization. One would not, under present conditions, expect a joint control of transportation enterprises under two or more modes where the combination would contribute nothing positive to transport development not attainable under separate ownership. Common ownership should contribute some public advantage, either in terms of new service or a more effective organization of existing ones. This public advantage should be made demonstrable as a condition of approval.

There should also be an assurance that firms are not engaging in common ownership merely to thwart development or to provide cross-subsidy for inefficient or outmoded services. This was the besetting fear of the early pioneers in aviation: that the railroads would get a hold on the nascent technical development of the airplane and use it for the advantage of the established railroad enterprise. One cannot tell the extent to which this is a justified fear and where it may be an imaginary evil. Certainly, the early association of the Boston and Maine and the Maine Central Railroad with Northeast Airlines did not thwart its development. On the contrary, the Civil Aeronautics Board took special pains to see that the railroads did not extend Northeast's development beyond its grandfather rights. Here, the fear of common ownership may have thwarted aviation development as much or more than a full exercise of common rail and air management in a new transport market.

A true common carrier service based on common ownership of many transport modes under a single management will be a product of regulation designed to capitalize the business incentives of carriers to improve transport service. Some advanced thinking and some imagination are needed for the design of such a regulatory system. Such a system would, however, be founded on forms of analyses in widespread use both in industry and government. Some of the ingredients would be as follows:



- a. Investment analysis of alternative opportunities for the use of funds in transport enterprises: in the existing transportation industry, in conglomerate activity in nontransport industry, and common ownership as a genuine investment alternative.
- b. Market and technology forecasts to outline the need for new transport service and investment opportunities which may exist regardless of the present artificial modal boundaries of common carrier service.
- c. Benefit-cost analysis to test the effectiveness of alternative coordination patterns for many types of services, such as small shipments, geographically dispersed locations, and relief of congestion. Common ownership of transport modes should be assessed against joint service of separate transport modes, single carrier service either unsubsidized or under some kind of subsidy, either internal or publicly provided.

It is probably too much to expect such a group of regulatory studies to be generated by the present agencies, or even by carriers in the present regulatory environment. In view of the present statutory restrictions, what carrier would seriously consider an elaborate common ownership proposal?

This field is an appropriate one for initial development by independent scholars, perhaps sponsored by one of the independent research institutes. Such scholarship, however, cannot be the real foundation of improved performance in the transportation industry through common ownership. As pointed out earlier, the initiative will come from carriers outside the railroad field, very likely air and motor carriers seeking to find improved service in a common ownership of their two services. At this stage, the common ownership discussion will move off the ideological plane toward a consideration of basic economic factors and alternatives.

Regulation, of course, deals with the public interest in the final analysis. Business efficiency is compatible with the public interest; in fact, it is the public interest so long as the benefits are passed along to the public. The future regulatory pattern of common ownership will reconcile business incentives with public interest factors. Regulatory standards will be derived from the economic analyses already outlined and will include:

- a. Estimates in specific or even quantitative terms of the public benefits of common ownership proposals.
- b. Appraisal of the competitive environment of transportation

operating in a regime of common ownership, and the design of regulatory features to preserve competition.

c. Design and promulgation of negative safeguards to prevent capricious common ownership proposals not promising public benefits, and proposals designed to thwart or hamper development.

Under such a regime, the true public advantages of common ownership would become apparent in provision for the continuity of transport service in line with technological development and the use of business incentives to provide continuing improvement in the services of common carriers to competitive business.