BOOK REVIEW

TRUCKING MERGERS—A REGULATORY VIEWPOINT by James C. Johnson, Lexington Books, D.C. Heath and Company, Lexington, Mass., 1973, pp. 237, $14.00.

REVIEWED BY JAMES C. HARDMAN, J.D.*

James C. Johnson, currently Assistant Professor of Marketing and Transportation at the University of Tulsa, has written an interesting and informative book about the regulatory aspects of interstate motor carrier operations.

The title is a misnomer since the author discusses subjects exceeding the limited issue of trucking mergers. A considerable portion of the book is devoted to the history, theory, and scheme of government regulation and the economic reasons which led to it.

The reader will find the above discussion to be an interesting and helpful review which will serve also as a foundation for the better understanding of the specific regulatory issues involving trucking mergers, or more accurately, acquisition proceedings.[1]

Based on an analysis of more than 450 reported finance decisions of the Interstate Commerce Commission, the author attempts to acquaint the reader with the issues the administrative agency has considered relevant and material to the proper resolution of the statutory criterion "public interest".

The cases were selected by the application of formal statistical methods and, on the basis of the cases cited, it appears that a representative sampling was achieved.

Professor Johnson relates the reasons given by the Interstate Commerce Commission in granting or denying acquisitions. Discussed are such issues as fitness, dormancy, and competition.

Professor Johnson is not an attorney and his analysis is more descriptive or narrative in nature than analytical. Transportation attorneys may find the work disappointing in this respect. On the other hand, a trucking executive may find the approach more interesting.

Based on the survey made, Professor Johnson reaches the conclusion that the Interstate Commerce Commission has caused carriers to operate less efficiently than possible by the imposition of gateway and tacking "restrictions"[2] and by deleting certain portions of authority on the basis of dormancy.

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1. The author uses the term "merger" loosely to include acquisitions of all types including the purchase of operating authority and/or corporate stock.

2. The problem may not really be significant as the author implies since he also states

Before discussing the author's solutions or recommendations, the reviewer should like to transgress briefly to note that this academician apparently makes the same basic error that numerous critics of transportation regulation including the celebrated Ralph Nader have made. The Commission does not force carriers to tack or to utilize gateways. "Tacking" is an incidental privilege of a grant of authority which a carrier may or may not choose to exercise. In reality, carriers have affirmatively exercised the privilege when it was economical and feasible to do so. Where it was not economical and feasible to do so, many carriers have complained about the "procedure" and enlisted many in the academic community to support the position that limitations on tacking and gateway requirements should be eliminated. "Tacking" and also "interlining", as incidental rights, are basically inconsistent with the statutory scheme of regulation since authority generally issues on the basis of proof of need for more limited service and the need for service to points via tacking or interlining is not considered. Furthermore, adequate procedures already exist to eliminate gateways which responsible carriers observe and are satisfied to follow. Opponents of regulations tend to ignore the availability of such procedures.

The solutions which the author suggests to the problems he conceives are two-fold: (1) Imposition of a greater burden of proof on protesting carriers to show the need for restricting or modifying authority, and (2) Imposition of indemnity payments upon the applicants to compensate existing carriers for damages conclusively proven to result from the "merger".

The first recommendation of the author may already have achieved a considerable degree of fruition. Current judicial and administrative cases indicate that protesting carriers may now have an increasing burden of showing compelling reasons for the imposition of the restrictions or cancellation of authority in finance cases. The decision in *Garrett Freight Lines, Inc.* v. *United States*, ____ F. Supp. ____ (W.D. 1973), 1973 CCH Fed. Car. Cases ¶82,404, and *Branch Motor Exp. Co. - Control - Middle Atl. Transp.*, 109 M.C.C. 807 (1971) should be contrasted with the author's position.

On the other hand, however, the recent administrative decision in *Gateway Elimination*, 119 M.C.C. 530 (1974) has clearly placed the burden on applicants seeking to extend irregular route operating authority through purchase of similar authority to prove that tacking is required in order to avoid such a restriction or to allow direct authority encompassing what otherwise could be accomplished by tacking.

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at a prior point in the book that it is only occasionally that the Commission will impose a no-tacking restriction on the purchasing carrier or party.

The second recommendation, which involves indemnity payments, is based on the theory that the payments would allow existing carriers to remain solvent and that during the period of such payments said carriers would be able to adjust operations to the new competitive situation caused by the merger.

Unfortunately the author does not develop this theory in detail or establish its feasibility. As a result, the recommendation will not receive serious consideration. On its surface, it does not appear to be a practical solution because of the diverse factors which bear on a motor carrier's financial status and the difficulties which would be present in isolating the effect of a single factor such as a merger.

The failure of the author to develop his indemnity proposal, however, is typical of the lack of other meaningful analysis of the subject matter. The reader should be aware that the author's approach is basically a descriptive one and that the presentation of material is analogous to textual hornbook material.

The non-attorney should also recognize that the book is not and should not be a self-help guide to handling finance cases before the Interstate Commerce Commission and transportation attorneys should recognize that its greatest value is in its summarization of subject matter and copious citations to cases and other legal references. The latter includes numerous texts and law review articles. Unfortunately, however, the author, despite his apparent thoroughness, failed to cite the printed papers of the 1969 Transportation Law Institute, jointly sponsored by the Motor Carrier Lawyers Association and the Denver University School of Law, which the reviewer feels collectively present the most thorough and exhaustive study of the subject involved.

Despite the limited shortcomings mentioned, this book should be a significant part of any transportation library.