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FLORIDA DEREGULATION – A MODEL FOR THE NATION

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Effective July 1, 1980, the Florida Legislature repealed Chapter 323 of the Florida Statutes,[1] sunsetting fifty-one years of rigid intrastate motor carrier regulation. This state legislation far surpasses the partial deregulation effected by the Federal Motor Carrier Act of 1980,[2] avoiding the distorting effects of piecemeal deregulation. Economist Alfred Kahn lauds this complete deregulation:

> Moving as rapidly as possible to a system of universal free entry – and exit – is the way also to deal with the asserted inequality of competitive abilities and opportunities during a slow transition: make the transition rapid; move quickly, on as broad a front as possible, to permit all carriers to slough off the restrictions that limit their operating flexibility, to leave the markets they find it uneconomical to serve, to enter the markets they want to enter.[3]

By repealing Chapter 323, the Florida Legislature implicitly rejected several traditional arguments in favor of regulating motor common carriers. Among these is the common myth that deregulation will lead to monopoly.[4] However, deregulation could lead to market dominance by a few large firms only if economies of scale existed in the trucking industry, or if surviving firms could bar new industry entrants. Studies have indicated the opposite is true. There are no economies of scale in trucking,[5] and, in fact, small firms might even have an advantage in rural or truckload freight markets. Nor are there effective entry barriers in the industry. As required technology, trucks, drivers, and terminal facilities are readily available in the market, fears of monopoly in the industry are unfounded.[6]

Its proponents further claim that regulation prevents excessive competition and predatory pricing, informs shippers of their transportation options, pro-

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1. FLA. STAT. §§323.01-.67 (1979) (repealed by Regulatory Reform Act, 1976 Fla. Laws, ch. 76-168, §3, *as amended by* 1977 Fla. Laws, ch. 77-457, §1).

2. Act of July 1, 1980, Pub. L. No. 96-296, 94 Stat. 793 (to be codified in scattered sections of 49 U.S.C.).

3. Kahn, *Applying Economics to an Imperfect World*, REGULATION, Nov./Dec. 1978, at 21.

4. *See* P. MACAVOY & J. SNOW, REGULATION OF ENTRY AND PRICING IN TRUCK TRANSPORTATION 35-43 (1977).

5. *See* Moore, *Deregulating Surface Freight Transportation*, in BROOKINGS INSTITUTION, PROMOTING COMPETITION IN REGULATED MARKETS, 1975, at 74 (1976).

6. P. MACAVOY & J. SNOW, *supra* note 4, at 37.

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tects the viability of railroads, and promotes transportation safety. These claims are groundless. Industry management includes far-sighted businessmen, too prudent to engage in self-destructing competition. Shippers are competent consumers, able to accurately gather information and assess price and service options. Railroads are not in need of trucking regulation, as rails and trucks currently handle different kinds of freight traffic.[7] Finally, studies have shown that economic regulation does not ensure safe operating practices in the trucking industry.[8] These goals and policies can be effectively achieved without the high administrative costs generated by regulation.

The opportunity to succeed or fail based on merit, unencumbered by regulatory restraints, is new to the motor carrier industry. A company seeking new ways to maximize profits may no longer subjugate its business judgment to the policies of the Public Service Commission. Inefficient operations will not be insulated from economic consequences by the general rate increase homogenization process. Florida's deregulation is an acknowledgment that the management executive with direct experience in the industry is more capable of assessing trucking markets and shipper needs than the regulator who is often lost in well-meaning isolation. The hope is that industry decisions are better made through carrier and shipper awareness of marketplace realities than through enforced allegiance to legislative and regulatory vagaries.

The key in reaching and maintaining profit objectives lies in identifying and supplying necessary, efficient transportation services. Each company must adopt the strategy which best utilizes its unique expertise. Those strategies suitable to a regulatory framework must be discarded if the company expects to effectively compete in an unregulated market place. Carriers previously restricted to providing one type of service over narrowly prescribed routes may now offer an expanded variety of services and routes. Additionally, intermodal coordination may be implemented to broaden operations. For those willing to use imaginative and novel approaches, the market opportunities are unlimited.

A strategy for successful adaptation to the new environment should also allow for the uncertainties that will accompany the inception of deregulation. Unanswered questions include: the number of truckiing companies which will compete in any particular market; the varieties of price and service options which will be offered; the extent to which greater productivity can offset downward competitive pressures on prices; and the role and strength of organized labor in an environment conducive to independent action. Each company should consider corporate alternatives in light of these uncertainties.

In a service oriented business such as trucking, the structural framework of a company can be generally categorized as falling somewhere along a spectrum between the simple and complex. While there are as many management methods as there are executives, deregulation strategies might best be geared towards fulfilling business objectives in regard to the relative operational complexity.

A common feature of structurally simple companies is low overhead and

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7. TRANSPORT TOPICS, Sept. 29, 1980, at 4.

8. SENATE COMM. ON THE JUDICIARY, FEDERAL RESTRAINTS ON COMPETITION IN THE TRUCKING INDUSTRY: ANTITRUST IMMUNITY AND ECONOMIC REGULATION, 96th Cong., 2d Sess. 151 (1980).

high volume. A simple operation may involve no rehandling and a minimum of drop-off service and terminal investment. Service may be provided in a broker-type format, with the telephone, rather than the terminal or warehouse, the most important operational tool. As service capabilities are accordingly limited, the simple operation may benefit from contractual arrangements with other carriers and shippers. Such arrangements may include intermodal connections, with railroads the most obvious service partners. Structurally simple organizations offer minimal service extras, and consequently they must rely heavily on marketing skills, particularly customer feedback. Each employee with whom potential customers deal becomes a marketing tool. Drivers must be aware of the importance of shipper communication and must relay the shippers' needs or dissatisfaction to management for action.

Other motor carriers have relatively more complex operations. The business of the irregular route truckload carrier requires greater numbers of equipment and personnel. More complex still is the less-than-truckload (LTL) general freight company, with its ability to consolidate freight, to increase customer service through multiple pickup and storage en route, and to employ a variety of equipment and scheduling options. At the farthest end of the spectrum are complex motor carrier enterprises such as United Parcel Services (UPS), with high overhead and complex operating formats. These entities seek to serve a broad geographical area and to offer varying services and prices, depending upon location, type of commodity and volume of business. Such carriers own warehouses and operate origin, consolidation and destination terminals. They benefit from extensive use of computers and other monitoring and tracking devices. A complex company is able to offer services to both the large city manufacturer and its small community counterpart. This type of operation succeeds by meeting shippers' needs for multifaceted service and flexible schedules while maximizing profits through efficient use of assets. Because it performs a service not otherwise available, it need not rely as heavily on marketing skills. Ideally, its reputation for efficient performance of complex operations should ensure ample traffic volume.

A corporate strategy must match the organization's level of complexity. The success of any trucking enterprise depends first upon evaluation of its current level of relative complexity, followed by implementation of appropriate structural modifications. Management must necessarily assume calculated risks to optimize the new opportunities created by deregulation. This requires both coordination and flexibility. Carving out and maintaining a competitive advantage by providing desired service at a reasonable price is critical to both the complex and simple enterprise. Management must develop and implement internal efficiency standards which maximize the productivity of personnel and asset capital.

The business implications of deregulation may not be self-evident to a manager who under regulation became accustomed to perceiving only limited options. This became quite clear during preliminary observations of several Florida motor common carriers made two months after sunset.[9] This informal

9. The survey consisted of informal observations of several Florida motor common carriers conducted by the Commissioner's office two months after deregulation.

study, although not a basis for comprehensive analysis, serves as an indicator of industry attitudes and approaches to deregulation. Although all of the observed companies were engaged primarily in intrastate operations, they differed in size, revenues, type and scope of authority, and ratio of owner-operators to company employees. Each company owed its fiscal security to a strong financial base,[10] and the chief executive officers (CEOs) had a firmly established company image. While some had reassessed goals with deregulation in mind, only one seemed fully aware of the extent to which he could benefit from the new, though uncertain, opportunities attending deregulation. There were significant variations in attitude among the executives, attributable more to individual personality than to company characteristics. At one extreme were CEOs who remained strongly committed to regulation and were certain that the legislature would reenact it. They continued to devote their full energies to vehement opposition of the reality of deregulation. Some suggested the possibility of significantly increasing prices and engaging in other activities to subvert sunset. The likelihood of such activity is negligible, as competitors would view such actions as creating a market opportunity. The intermediate stance consisted of executives who adopted a wait-and-see attitude. They feared sunset simply because they had profited under regulation. If they fail to adjust to the new environment, this fear may become a self-fulfilling prophecy. At the other extreme were CEOs who had planned for deregulation, analyzed options and revised corporate goals and strategies to maximize new opportunities. These managers understood that shipper demands will change in accord with altered circumstances. Sensitivity to shipper needs prompted them to explore new ways to meet demands.

A number of carriers have begun to evaluate the contract rate agreement as a device for simultaneously satisfying important shippers' service needs and complying with deregulation's independent rate action mandate. Contracts assure shippers continued service for a specified time, while providing the carrier with a predictable source of income. Carriers' opinions differed on the degree to which they could freely negotiate individualized price and service contracts without incurring legal liability for price discrimination. More timid executives expressed fear that contracting would be violative of the antitrust laws. However, more aggressive CEOs felt that as the option to independently contract existed even under regulation, these fears were groundless. While some grimaced at the prospect of customers' reaction upon learning that a competitor is receiving a lower rate, one aggressive CEO suggested that any irate shipper capable of matching another contractor's volume and locations could obtain the same contract rate.

Although the companies did not articulate corporate strategies shaped by their structural complexity, their varied goals can easily be viewed in that light. Warehousing companies are expanding the scope of their service offerings and

10. The two most common financial concerns voiced by CEOs were the uncertain value of their operating rights certificates and the loss of owner-operators. Neither concern was debilitating. The commonly held conviction was that the owner-operator was aware that he could profit more, even without regulation, by staying with the company and contracting out what he perceived to be the undesirable aspects of the business.

enlarging their transportation operations. One general freight LTL carrier is aggressively expanding markets, seeking new shippers, opening terminals, and exploring previously untried intermodal connections and interstate operations. It also monitors service to determine whether increased volume of business affects the quality of service. The company plans to train employees to take advantage of the new environment. While other companies have published tariffs without significant changes, this carrier has made a concerted effort to simplify tariffs and to implement rate innovations which were stifled by the Public Service Commission.

In contrast, another carrier of the same type is attempting to simplify its organization. This company is solidifying present, desirable markets by increasing personalized shipper contact, reducing interline service, and evaluating rate increases. It is reducing complexity to maximize strengths, determining which markets should be deemphasized or discontinued, and purposefully rejecting expansion which it views as inimical to its best interests.

All of the executives acknowledged anxiety about the future of their companies under deregulation. Some are taking an active role in shaping that future; others, however, continue to resist the change. Successful growth strategies must incorporate either increasingly simple or complex structures. Management must recognize a company's competitive strengths, and take an active role in shaping and implementing company goals. Operational, marketing and financial decisions must be made with these goals in mind. In short, a company's success depends on the recognition of existing opportunities under deregulation, and on the conversion of these opportunities to profit through careful corporate planning.