

INTERVIEW

TELEPHONE

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Fritz Kahn, General Counsel, ICC, 1957-1976

Milwaukee Road BN merger conditions were thought by ICC to be so much window dressing. Very weak conditions. ICC was taking a passive role in mergers though. Dept of Justice was very active, but ICC pretty much ignored them. Finally after a series of Supreme Court decisions affirming the ICC on the grounds that antitrust laws did not apply to railroads, and as long as ICC "considered" antitrust implications, the courts were helpless to overturn ICC approval of mergers. The Department of Justice more or less gave up. ICC was driven by industry initiative. We had a very good Bureau of Economics that could have provided meaningful data on railroad management and practices, but ICC did not use it for any independent assessment purposes; railroads could request information from it however. Very little creativity from ICC in those years. Nathan Klitenic had tried to interject some creativity into the UP/Rock Island case, and got hammered for it, then _____ Brown got castigated for the process taking so long. ICC began losing authority over RR reorganizations in the Penn Central Case to the courts, and then especially in the Milwaukee case through the MRRA. ICC took everything on a case by case basis. There was no consistent application of general principles and so the Milwaukee was treated differently in each case in which it appeared as a principle or objector. We could have watched Milwaukee's decline and made an investigation, the ICC had that power, but simply did not use it that way. A railroad had to initiate any movement on the part of the ICC, and even then ICC was relatively passive, as when ICC refused to accept any reorganization plan for Milwaukee, and simply let the clock run.