

VICE CHAIRMAN MULVEY, *concurring* in part and *dissenting* in part:

I concur with the majority in authorizing TTX's pooling of railroad car services and the division of revenues derived therefrom with respect to intermodal and autorack flatcars for an additional ten-year term. The record before us amply demonstrates that the pooling of these types of flatcars will be in the interest of better service to the public or of economy of operation and will not unreasonably restrain competition.

I dissent with regard to the ten-year extension of pooling authority to additional types of flatcars. In reviewing requests for pooling authority, the Board follows the generally accepted principle that grants of antitrust immunity are to be narrowly construed. Given that standard, it does not appear to me that petitioners have sufficiently demonstrated on this record that the pooling of specialized flatcars will promote better service to the public or economy of operation, or that it will not unreasonably restrain competition.

I understand that petitioners have been pooling this equipment for some time, and I recognize that an order immediately denying authority could be disruptive. Therefore, I would have extended immunity for specialized flatcars, but for an interim period. This would have given the Board an opportunity to re-examine the case for pooling specialized flatcars before locking into a long-term authorization, and it would have required the petitioners to present stronger evidence in support of the benefits they allege.