

**PREPARED STATEMENT OF**  
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competition, not to limit the sovereign regulatory power of the states. The Court held, therefore, that regulatory conduct that could be attributed to “the state itself” is immunized from antitrust scrutiny.

This rule, and its objectives, seem clear enough at first, but become doubtful in light of

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With respect to “active supervision,” the problem has been slightly different. Because of a lack of guidance as to what this factor actually requires, it has not functioned as a significant limitation on grants of immunity. In *Midcal*, for example, the Court held that a state must engage in a “pointed re-examination” of regulatory conduct. In *Patrick v. Burget*,<sup>7</sup> the Court clarified that a state is required to “exercise ultimate control.” And, most recently, in *Federal Trade Commission v. Ticor Title Insurance Co.*,<sup>8</sup> the Court noted that a state must exercise “independe

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concluded that the Board could not satisfy the “clear articulation” requirement. That decision is currently on appeal to the Fourth Circuit.

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such as packing, moving particularly bulky items, and overtime. Once the tariff is filed, the mover must charge the rates therein, and may only offer discounts on those rates with the approval of the KTC. Rather than assisting its members in filing their tariffs individually, however, the Association facilitated collective ratemaking. Any member's proposal for a rate increase was submitted to a majority vote, establishing a collective rate binding on even those members that opposed it.

The record showed that in the ten-year period f the ten-y

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and calculated operating ratios for household goods carriers, it had not done so for over two decades. The Commission also found the KTC did not even obtain the data – including the cost and revenue data specified in the statute – that would enable it to assess the reasonableness of the Association’s rates. Finally, the Commission determined that the Kentucky program lacked the procedural elements – such as public input, hearings, and written decisions – that often are important indicators of active state supervision.

Accordingly, in a 5-0 vote, the Commission affirmed the ALJ’s decision on the grounds that, in light of *Midcal*, *Patrick*, and *Ticor*, the KTC had not satisfied the active supervision requirement.

This concludes my prepared testimony. There is certainly more that could be said on the subject, but I have attempted to tailor my remarks to the time allotted. I look forward to your questions.