



DEPARTMENT OF JUSTICE
Antitrust Division

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Assistant Attorney General

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Phillip A. Proger, Esquire
Kathryn M. Fenton, Esquire
Jones, Day, Reavis & Pogue
Metropolitan Square
1450 G Street, N.W.
Washington, D.C. 20005-2088

Dear Mr. Proger and Ms. Fenton:

This letter responds to your request, on behalf of Business Travel Contractors Corporation ("BTCC"), for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. § 50.6. You have requested a statement of the Antitrust Division's current enforcement intentions with respect to BTCC's proposal to form a joint buying arrangement to negotiate fares for air transportation services on behalf of its corporate customers.¹ Based upon the information and commitments you provided to us and our own investigation, we have no present intention to challenge BTCC's proposal to negotiate air fares on behalf of its customers.

We understand the facts to be as follows. BTCC is a privately-held Pennsylvania corporation and is owned entirely by its management employees. No air carrier or potential BTCC customer has, or will be permitted to acquire in the future, any ownership interest in BTCC.

BTCC would function as a joint buying group to purchase air transportation services on a net fare basis on behalf of its customers. BTCC's customers will be corporations. They will enter contractual agreements with BTCC and pay BTCC a fee for its services. BTCC calls the fares it will negotiate with airlines "Business Contract Fares." Business Contract Fares will have the following characteristics:

- (1) the fares will be net of travel agent commissions, overrides², frequent flyer credits or other buyer inducements (such as upgrades to first class seating), and other direct marketing costs;
- (2) the fares will be available on all domestic city-pairs served by a participating airline;
- (3) the fares will be offered on all flights offered by a participating carrier between cities in the continental United States;

¹ BTCC also intends to eventually offer travel management services to corporate travel departments. BTCC has not, however, requested a review of their proposed travel management services activities.

² "Overrides" or "override commissions" are payments to travel agents, in addition to the relatively standard 10 percent of fare value, paid on sales by a travel agent of a specific airline's tickets provided the agent achieves specified sales goals.

- (4) the fares will be based upon recent actual corporate travel costs and will be primarily mileage-based;
- (5) maximum fares will be guaranteed for a specified period of time, subject only to adjustments due to fuel price changes; and
- (6) airlines may offer fares that are below the maximum fare at any time and over any city-pair routes.

BTCC will not actually make reservations or issue tickets to its customers. Individual BTCC customers will arrange separately with travel agents to provide these services for negotiated compensation or perform them in-house. Individual BTCC will make the existence of Business Contract Fares and the procedure for using them available to all of its customers.

BTCC intends to negotiate Business Contract Fares with any interested airline. Thus, BTCC will not impose any minimum size requirements or minimum number of city-pairs on participating airlines. BTCC will conduct all discussions with air carriers on an individual basis and will not transmit, comment on or otherwise share information concerning one carrier's plans to any other carrier.

BTCC would require that its customers commit contractually to use Business Contract Fares for at least 90 percent of their business travel on city-pair routings for which such fares are available. Compliance with the 90 percent minimum will be based upon the total volume of business from a customer over all routes for which Business Travel Fares are available, and not upon the customer's air travel over any particular route.

To avoid any risk of creating undue collective buyer power, BTCC will limit the total number of customers that it will serve to make sure that, as a group, its customers do not account for more than 35 percent of the purchases of air transportation services in any relevant market.

The Department's determination that it has no present intention to challenge BTCC's proposed activities is based upon our careful consideration of the information you have provided, as well as our independent inquiries. The BTCC proposal will in essence enable its customers to aggregate their air transportation purchases and potentially achieve sufficient volume to make it attractive for airlines to incur the risks and costs of implementing a net fare program. It does not appear likely that the proposed conduct would create or facilitate the exercise of market power or result in anticompetitive effects.

The Department would be concerned if BTCC as a joint buying group accounted for so large a portion of air travel services in any relevant market that it could drive Business Contract Fares below competitive levels. In that case the joint buying group would effectively exercise monopsony power, resulting in a misallocation of resources.

The Department has consistently used city-pairs as the relevant market when analyzing air transportation competition issues.³ BTCC has presented substantial data showing that BTCC's initial customers would account for less than 10 percent of purchases in the overwhelming majority of city-pair markets. These data also show that the few markets where BTCC customers would have more than 10 percent of purchases are all relatively low density routes. Even over these routes, BTCC customers would initially account for less than 35 percent of purchases.

So long as BTCC's customers do not account for more than 35 percent of air travel purchases over any city-pair market, it is unlikely that BTCC would be able to exercise monopsony power to negotiate fares that are below

³ Because BTCC's customers do business in a wide variety of industries and, for the most part, are not direct competitors, it is unlikely that their participation in a buying group will lead to any reduction in competition in the markets in which they do business.

competitive levels. Moreover, the BTCC proposal will not increase the potential for the exercise of monopsony power on specific city-pairs where BTCC's share results from a single customer that already accounts for such a large share of air travel services.

We also considered whether BTCC's requirement that its customers commit to using Business Contract Fares for 90 percent of their travel needs on the routes offered by BTCC might suppress competition by foreclosing other firms, including traditional travel agencies, from a share of the market sufficient to negotiate for net fares. BTCC has, however, committed to negotiate these contracts on a relatively short term basis and to impose no sanctions, other than not renewing the contract, on any corporate customer that uses Business Contract Fares for less than 90 percent of their air travel purchases. Thus, BTCC's customers may effectively terminate their contracts at any time and are unlikely to be constrained from switching to a venture offering them a more favorable package of air fares and travel services.

The BTCC proposal does not appear to pose a significant risk of anticompetitive results and may have procompetitive effects. It will provide corporations with another option for purchasing air travel services, and the net fares, which will exclude frequent flyers credits and other buyer inducements, may reduce the cost and improve the efficiency of corporate air travel service purchases.

For the forgoing reasons, the Department has no present intention to challenge BTCC. In accordance with our normal practices, the Department remains free to bring whatever action or proceeding it subsequently concludes is required by the public interest if the actual effect of any aspect of BTCC's activities proves anticompetitive in purpose or effect.

This statement of the Department's enforcement intentions is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made available to the public within thirty days of the date of this letter unless you request that part of the materials you submitted be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

/s/

Joel I. Klein
Acting Assistant Attorney General