U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 22 1992

Ms. Virginia Redstone
Secretary
Association of Ship Brokers
and Agents (U.S.A.), Inc.
90 West Street, Suite 2021
New York, New York 10006

Dear Ms. Redstone:

This letter responds to your request on behalf of the Association of Ship Brokers and Agents (U.S.A.), Inc. ("ASBA") for a statement pursuant to the Department of Justice's Business Review Procedure (28 C.F.R. § 50.6) of the Department's current enforcement intentions regarding the ASBA's proposal to provide oil companies with market based rate estimates for intra-company cargo movements.

As we understand it, a Tanker Broker Panel is to be organized and administered by the ASBA, which is a non-profit trade association of ship brokers and agents. You have stated that the purpose of the Tanker Broker Panel is to assist oil companies in their internal cost accounting by enabling the oil companies to reflect an accurate arm's length charge for internal cargo movements. Moreover, if accepted by the IRS, you expect this service to be used for establishing a value for tax purposes of services performed for a firm by its subsidiaries.

We understand the procedure to be as follows. An oil company will submit a request to the ASBA for a rate quotation for a particular voyage that has already taken place or will take place in the near future. The ASBA will then send that request, with the customer's name omitted, to five of the participating tanker brokers. The five tanker brokers will then, independently, each formulate an estimate of what that voyage would have, or would likely, cost. The estimated rate will be expressed as a percentage of an already published standard rate, such as the AFRA (average freight rate

assessment), published by the London Tanker Brokers Association, and expressed in terms of Worldscale. The five rate estimates will be returned to the ASBA, which will arrive at an "average" rate by eliminating the highest and lowest rates and taking the mean of the three remaining rates. This average rate will be the rate provided in response to the customer's request. The customer will only see the rate estimate and will not be informed of the identity of any tanker brokers who participated in providing estimates. The tanker brokers, similarly, will not be notified of the identity or rate estimates of the other tanker brokers. ASBA will not disclose any of the rate estimates to any ASBA member or to any person other than the customer.

You have stated that the ASBA will offer this service only for international voyages, and not for Jones Act trades. The service is also intended to provide an alternative to the London Tanker Broker Panel, which is currently the only provider of this service to the major United States oil companies.

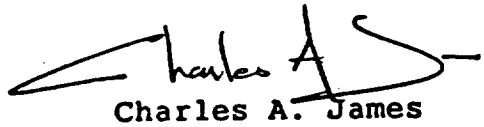
Although the exchange of price and other competitive information can facilitate anticompetitive coordination among competitors, there does not appear to be a substantial risk of that result in this case. The ASBA states it will protect the identities of the oil company customers and broker providers of this service, and will not disseminate the rate estimates to any party other than the customer, and no separate brokerage fee estimates will be sought by ASBA or provided by the brokers. We further understand that the ASBA Secretary, and ASBA officers and employees who work with the data, will be held to a strict standard of confidentiality.

Based on the above information, the Department of Justice has no current intention of instituting enforcement proceedings to challenge implementation of the ASBA's Tanker Broker Panel. This letter, however, expresses the Department's current enforcement intention only. In accordance with our normal practice, the Department reserves the right to bring an enforcement action in the future if the actual operation of the Tanker Broker Panel 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 request and this letter will be made available to the public immediately. Your supporting documents will be made publicly

available within 30 days of the date of this letter unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,



Charles A. James
Acting Assistant Attorney General