U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

APR 19 1994

Christopher B. Hockett, Esq.
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Three Embarcadero Center
San Francisco, California 94111

Dear Mr. Hockett:

This letter responds to your request on behalf of Automobile Transport Fleet Affiliation ("ATFA") 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 Department's current enforcement intentions regarding the creation by eight regional automobile transport firms of an entity, ATFA, that would serve as a marketer and coordinator of their efforts to obtain additional business in the transporting of new and used automobiles, and would act as a common purchasing agent for certain items used by its members. Based on the information and materials that you have provided, the Department has no current intention to challenge the proposed creation and operation of ATFA as long as it is operated in the manner described in the materials that you sent the Department.

You have informed us that ATFA will represent one regional automobile transporter from eight regions, with the members to be selected from those who have indicated a willingness to participate.[1] According to your presentations, the provision of truck transport services for new automobiles is highly

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[1]The eight firms will be chosen from the following firms, with one firm per region: Bavarian Motor Transport, Inc. (Northeast); Diversified Automotive, Inc. (Northeast); ADESA Auto Transport (Southeast); Centurion Transport (Southeast); Auto Elite Transport, Inc. (Mid-Atlantic); Auto Transport, Inc. (Mid-Atlantic); Auction Transport, Inc. (Texas-South Central); Jack Key Auto Transport (Texas-South Central); Northland Auto Transport, Inc. (North Central); Automobile Transport Specialists, Inc. (Rocky Mountain); Selland Auto Transport, Inc. (Pacific Northwest); Car Transport Corp./CTC (Pacific Northwest); Sierra Mountain Express Inc. (California-Southwest); and D.M. Trucking (California-Southwest).

concentrated with the top four firms accounting for approximately 78 percent of revenues, and the top eight firms accounting for approximately 98 percent of sales. None of the potential members of ATFA are among the top eight. Nor does any possess sufficient capacity to bid for large or nationwide new car transport business from the principal customers of that service--the automobile manufacturers. You have also informed us that the business of transporting used cars by trucks is highly fragmented with hundreds of small-to-medium sized firms offering regional services to customers such as auction firms, rental car companies, auto dealerships and leasing firms. The demand for transporting used cars is more episodic than that for new cars, and the number of used cars to be moved per individual contract is usually smaller than for new cars. At present, customers seeking to transport a significant number of used cars must incur high administrative costs; they must negotiate with a number of small transporters in order to piece together the needed equipment.

ATFA will market itself to the potential customers for new or used automobile transport services as representing a network of transporters capable of providing service throughout the nation. It would offer a single point of contact for negotiations. ATFA will communicate separately with each of its member firms to determine the price and terms which each is willing to offer for specific new or used car transport business. ATFA will put together the lowest overall bid based on the individual responses from its members and communicate it to the potential customer. None of the information that ATFA receives from a member with respect to a potential customer will be communicated to any other member. It is envisioned that the information will be communicated between ATFA and its members via a computer network that would be constructed to allow communications between ATFA and individual members, but not between the members. ATFA's members will be free to compete with ATFA for any business, new or used car, that ATFA seeks. In all other respects, the members will continue to act independently. After it has won a contract for new or used car transport, ATFA will provide a centralized management for the execution of the contract thereby providing a single point of contact for customers. Finally, ATFA will act as a common purchasing agent for its members for items needed to participate in the vehicle transport market, e.g., trucks, trailers, tires, software, and insurance.

Based on the information that you have provided, the Department has no current intention to challenge the creation or operation of ATFA as proposed in the materials submitted to us. To the extent that ATFA is operated in accord with the statements and commitments in the materials submitted to the Department, the joint venture should not produce any anticompetitive effects. The program appears to have been designed with sufficient

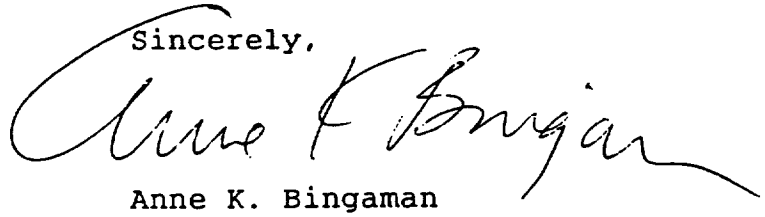
safeguards that the information exchanged bilaterally between ATFA and individual members is not likely to facilitate collusion between its members, or in any other way reduce the incentives of individual members to compete for auto transport business that they are capable of handling on their own. In addition, any ATFA action as common purchasing agent for its members is unlikely to have any anticompetitive effect. Its purchases would constitute such a small percentage of the total sales of any such item as to eliminate any concern that ATFA could exercise monopsony power to artificially depress price or output. Nor is there reason to believe that any joint purchasing would reduce selling rivalry among the members.

To the extent that the ATFA's activities allowed its members to participate to a greater extent in the transport of new automobiles, they will have a procompetitive effect--additional entry into a highly concentrated business. It is also possible that by providing customers of used car transport services with a central contract and administration point, ATFA may have a procompetitive effect in the transport of used automobiles, i.e., it may enhance efficiency and lower operating costs.

This letter expresses the Department's current enforcement intentions. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future if the actual operation of the ATFA joint venture proves to be anticompetitive in purpose or effect.

This statement 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 publically available immediately, and any supporting data will be made publically available within thirty 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,



Anne K. Bingaman
Assistant Attorney General