



DEPARTMENT OF JUSTICE
Antitrust Division

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April 9, 2007

David Owen, President
National Association of Small Trucking Companies
104 Stuart Drive
Hendersonville, TN 37075

Richard L. Bell
Bell & Company
4504 Burrow Drive
North Little Rock, Arkansas 72116

Dear Mr. Owen and Mr. Bell:

This letter responds to your request 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 intention with respect to a proposal by the National Association of Small Trucking Companies ("NASTC") and Bell & Company ("Bell") to conduct an operational and financial survey of small- and medium-sized trucking companies and to make this information publicly available in aggregate form.

You represent that NASTC is an active association for small trucking companies and serves as an advocate for, a consultant to, and a source of collective purchasing services for its member companies. Bell is an independent firm of accountants and business advisors. Almost one hundred percent of the members of NASTC are truckload carriers. You request review of a proposal to conduct an operational and financial survey of small- and medium-sized trucking companies and then share the collected information in aggregate form with survey participants and nonparticipants "to enable them to benchmark themselves against the aggregate information and to reduce their operating costs." Consequently, you represent that the project may increase competition and lower costs among transport companies, and potentially lower prices for their customers.

You also represent that Bell will collect the following information from transport companies nationwide: (1) general company information, including the company name, address and telephone number; (2) equipment information, including the number of tractors, number of trucks, total miles run during the year, total loaded miles run and average number of empty trucks; (3) revenue and expense information, including gross linehaul revenue, brokerage revenue, fuel surcharge revenue and total operating expense; (4) balance sheet data, including current assets, total assets, current liabilities, and total liabilities; and (5) employee information, including number of drivers at the beginning of the year, number of drivers at the end of the year, driver turnover rate and average rate paid to drivers.

You state that all owners (or their designees) of the 2,150 member companies of NASTC will be asked to complete the survey. The raw survey results will then be compiled and a report in aggregate form will be issued so that summaries and nationally-aggregated data can be examined by small trucking companies to benchmark their own performance. You further state that the report will be made available for purchase by any interested party, and persons who participated in the survey will be offered a copy of the report gratis or at a reduced price. In addition, you plan to present the nationally-aggregated information at various times at NASTC conferences, other national or state conferences, industry meetings, and seminars. You state that you may also recommend best practices based on the aggregated data.

You represent that Bell and NASTC will take steps to preserve the confidentiality of the survey forms submitted. The only people who will see the raw survey results will be representatives from an independent consulting firm assisting in gathering and aggregating the survey information; the President, Vice President, and Director of Operations at NASTC; and management members and employees of Bell who provide services to the transportation industry. We understand that the President, Vice President, and Director of Operations of NASTC are employees of that organization and are not employed by any member truckload carrier. You further assert that individual survey responses will be held in the strictest confidence by Bell and stored in a secure area.

You submit that individual company information obtained through the survey forms will be kept confidential and only aggregated information will be shared. You further indicate, in letters dated November 10, 2006, and March 9, 2007, that (1) you will not publish or disseminate aggregated responses to any survey question for which fewer than five responses are received, (2) the collected data will be at least three months old at the time the report is issued, and (3) only national aggregated data will be used at any conferences or seminars. You represent that the use of any recommended best practices that result from the project would be left to the voluntary decision of each participant and that neither Bell nor NASTC intends to enforce, coerce, or otherwise pressure carriers to adopt any such best practices. Recommended best practices will not include recommendations on competitively sensitive matters such as the specific rates firms should charge for their trucking services or the compensation firms should pay drivers. The procedures as laid out by NASTC and Bell appear to fall within the safe-harbor rules prescribed in Statement 6(A) of the Justice Department and Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care (Aug. 1996).

You assert that the trucking industry is not concentrated, is highly competitive, and has no significant barriers to entry. As evidence of this, you state that each week more than 400 individuals apply for the authority to become regulated for-hire carriers, and that a large percentage of these carriers are truck-load carriers. You submit that the top 100 truck-load carriers, which are listed each year on Transport Topics, a trucking website, represent only one-third of the freight hauled by all truck-load carriers. You further state that small truck-load carriers represent about 37% of the truck-load market.

Based upon the representations made in your request and subsequent correspondence, the documents and information submitted in support of your request, and the information obtained during our own review, we conclude that the proposed operational and financial survey of small- and medium-sized trucking companies is not likely to reduce competition. Participation by members of an industry in benchmarking surveys does not necessarily raise antitrust concerns. In fact, with appropriate safeguards, such surveys can benefit consumers when industry members

use information derived from such surveys to gain efficiencies and price their products or services more competitively. The proposed survey appears to include appropriate safeguards to prevent the use of the information obtained through the survey to facilitate collusion or otherwise reduce competition. The survey will be administered by third parties; individual company information will be kept strictly confidential; the published report will contain only aggregate information and will be published only when there are five or more responses to a survey question; the aggregate information in the report will be at least three months old; and only nationally-aggregated information will be used at any meetings or seminars. Moreover, the voluntary nature of any use of the information developed under the benchmarking survey and the limitations on the type of best practices recommendations that you intend to make would substantially reduce any antitrust concerns over the best-practices recommendations. Your letter also asked whether it will be necessary for NASTC to have antitrust counsel present at all meetings where the survey is discussed. This business review letter is based on the understanding that NASTC and its members will comply with the representations provided to the Department, and it remains the responsibility of NASTC and its members to decide how best to ensure such compliance.

Consequently, based on the information and representations you provided, the Department has no present intention to challenge the proposal to conduct an operational and financial survey of small- and medium-sized trucking companies and to share the collected information in aggregate form with survey participants and nonparticipants. This letter expresses the Department's current enforcement intention and is issued in reliance on the information and representations contained in Bell's and NASTC's written submissions and oral statements. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future should the proposed operational and financial survey or its dissemination prove to be anticompetitive.

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 publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Yours sincerely,

A handwritten signature in black ink that reads "Thomas O. Barnett". The signature is written in a cursive style with a prominent initial "T".

Thomas O. Barnett
Assistant Attorney General