

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. 84-F-1737

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROCKY MOUNTAIN MOTOR TARIFF
BUREAU, INC.,

Defendant.

FILED: May 10, 1985

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On August 28, 1984, the United States filed a civil antitrust complaint alleging that the Rocky Mountain Motor Tariff Bureau, Inc. ("RMB") conspired with member carriers to restrain trade in the transportation of commodities specified in 49 U.S.C. § 10526 as being exempt from Interstate Commerce Commission (I.C.C.) jurisdiction (hereinafter "exempt commodities") in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint requests the Court to find that the RMB has violated Section 1 of the Sherman Act and further requests the Court to enjoin the continuance of the conspiracy.

II

PRACTICES GIVING RISE TO THE ALLEGED VIOLATION

The Reed-Bulwinkle Act, which was passed in 1948, authorizes two or more motor carriers to apply to the I.C.C. for approval of

an agreement to establish a rate bureau to set certain rates collectively (49 U.S.C. § 5b, currently codified at 49 U.S.C. § 10706(b)(2)). Upon I.C.C. approval of a rate bureau agreement, a rate bureau may set rates for transportation of commodities subject to the jurisdiction of the I.C.C. Such rate setting activities are not subject to the operation of the antitrust laws, provided that the rate bureau's actions conform to the procedural requirements set forth in the approved agreement. Every rate bureau agreement must reserve to each of the rate bureau's members the right to take a rate action independent of the rates set collectively by the rate bureau (49 U.S.C. § 5b(6), currently codified at 49 U.S.C. § 10706(b)(2)(B)(ii)). Once a rate is published in a tariff, motor carriers who participate in the tariff are required to charge the rates specified in that tariff (49 U.S.C. § 10762).

On July 1, 1980, the Motor Carrier Act of 1980 went into effect. Under the Act, after July 1, 1984, no rate bureau agreement approved pursuant to 49 U.S.C. § 10706(b) may provide for discussion of or voting upon single-line rates. (49 U.S.C. § 10706(b)(3)(D)). A single-line rate is a rate, charge or allowance proposed by a single motor common carrier of property that is applicable only over its line and for which the transportation can be provided by that carrier. Agreements between competing motor carriers on single-line rates therefore constitute price fixing, a per se violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

Also under the Motor Carrier Act, as of July 1, 1980, the I.C.C. has had no jurisdiction over, and has not been empowered to authorize, collective rate action for the transportation of exempt commodities, whether carried in loads comprised exclusively of exempt commodities or carried in mixed loads, i.e., loads comprised in part of exempt commodities and in part of regulated commodities (49 U.S.C. §§ 10526, 10528). Agreements between competing motor carriers on rates for the transportation of exempt commodities therefore constitute price fixing, a per se violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

The RMB, which was incorporated in Denver, Colorado, in 1939, had its original operating agreement approved by the I.C.C. in 1958. That agreement was recently amended pursuant to requirements of the Motor Carrier Act of 1980. During all or part of the time covered by the Complaint, RMB's Rules of Procedure Governing Additions, Changes and Eliminations in Tariffs Published by Rocky Mountain Motor Tariff Bureau, Inc. ("Rules") governed the procedure for modification of RMB tariffs. The Rules require, with some exceptions, that all proposals for modification of rates in RMB tariffs be submitted to one of various RMB rate committees for consideration. The RMB By-Laws require that the membership of each rate committee be derived from RMB member motor carriers

participating in tariffs under the jurisdiction of each such committee. Committee members, who are competitors of each other, consider each rate proposal and vote to approve, disapprove, or defer action on the proposal.

The Government contends and was prepared to show at trial that, on numerous occasions following July 1, 1980, RMB rate committees, organized and funded by the RMB and assisted by RMB employees, approved proposals to raise, establish, or extend rates for transportation of exempt commodities. RMB then published all such rates in its tariffs. A representative sample of such collective action was attached as Exhibit A to the Government's Opposition to Defendant's Motion to Dismiss filed March 7, 1985. Exhibit A was based on minutes of only one of the ten RMB rate committees that were in existence during the period 1980 to 1984.

The Government contends that this conspiracy between Defendant RMB and member carriers fixed, raised, or maintained at artificial and noncompetitive levels, rates for the transportation by motor carriers of various exempt commodities between points in the United States. As a result, competition between and among the co-conspirators engaged in the motor carrier transportation of various exempt commodities between points in the United States has been restrained.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and RMB have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The proposed Final Judgment provides that its entry does not constitute any evidence against, admission by, or an estoppel against either party with respect to any issue of fact or law.

Under the provisions of § 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section XI of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that the RMB and its members discontinue all unauthorized practices which have the purpose or effect of restraining competition among motor carriers for the transportation of exempt commodities.

A. Prohibitions and Obligations

Under Section IV of the proposed Final Judgment, RMB is enjoined and restrained from allowing any of its rate committees

or subcommittees to vote on or consider proposals, defined as requests to establish a rate, or to change, modify or revise provisions in an existing rate, for the transportation of exempt commodities. Rates include specific rates or rate levels, allowances or charges, rules which solely affect or apply to rates for the transportation of exempt commodities, and procedures or policies pertaining thereto. The RMB may not submit a proposal for consideration by a rate committee or subcommittee that includes rates for the transportation of exempt commodities. Section IV also enjoins the RMB from publishing in its docket bulletins proposals for the transportation of exempt commodities. The RMB is further enjoined from publishing rates for the transportation of exempt commodities in any of its tariffs, except rates submitted by individual carriers pursuant to 49 C.F.R. 1312.1(e), that is, rates submitted and published for informational purposes only. In addition, the RMB is enjoined from setting, fixing, maintaining, or establishing rates for transportation of exempt commodities in any of its tariffs and from taking any other action which has the purpose or effect of setting, fixing, maintaining, or establishing rates for the transportation of exempt commodities between or among competing carriers. Finally, the RMB is enjoined from recommending to any of its member carriers any rate for the transportation of exempt commodities.

Section IV permits the RMB and its members to take action on intrastate rates for the transportation of exempt commodities, as long as such action is immune from the operation of the antitrust laws under the state action doctrine as set forth in the holding of the United States Supreme Court in Southern Motor Carriers Rate Conference, Inc. v. United States, ____ U.S. ____ (1985).

Section V of the proposed Final Judgment requires the RMB to purge from each of its tariffs within 90 days after the entry of the proposed Final Judgment all rates for the transportation of exempt commodities including, but not limited to, rates for the transportation of (1) specific exempt commodities and (2) exempt commodities included within a commodity group, unless the exempt commodity rate is being published pursuant to 49 C.F.R. 1312.1(e) and the RMB has clearly marked in its tariff that such rate is being published for informational purposes only. The RMB is obligated to mail or otherwise furnish within 60 days after entry of the Final Judgment a copy of the Final Judgment to each of (1) its officers and directors, (2) its agents and employees with supervisory or management responsibility, or with responsibility for dockets, docket bulletins, or rates and (3) member motor carriers that participate in one or more of the RMB tariffs. Under this section, the RMB is obligated to file with the Clerk of the Court and to serve a copy upon the United States within 90 days after the date of entry of the Final Judgment an affidavit setting forth the fact and manner of compliance with this Section.

To ensure understanding of the Final Judgment, Section VI of the proposed Final Judgment directs the RMB to establish a reasonable program for dissemination of, education as to, and compliance with the Final Judgment, involving each corporate employee, officer, director, agent, and every rate committee or subcommittee member having responsibility in connection with or authority over dockets, docket bulletins, or rates, and advising them of their obligation under the Final Judgment. The program shall include, but is not limited to, the inclusion in an appropriate RMB manual or internal document of a copy of the Final Judgment, in whole or in part, or an explanation thereof, and a statement of RMB compliance policy thereunder.

B. Scope of the Proposed Final Judgment

Section X of the proposed Final Judgment provides that the Final Judgment shall remain in effect for ten (10) years.

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to the RMB and to the RMB's officers, directors, agents, employees, or members and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

Section VII of the proposed Final Judgment requires that the RMB shall require any purchaser or successor of all, or substantially all, of its assets to agree to be bound by the provisions of the Final Judgment.

Section VI (B) of the proposed Final Judgment requires the RMB to maintain for the effective period of the Final Judgment an agent for service of process in connection with any proceedings relating to the construction, modification, or enforcement of the Final Judgment.

C. Effect of the Proposed Final Judgment on Competition

The relief set out in the proposed Final Judgment is designed to prevent recurrence of the activities alleged in the Complaint. The proposed Final Judgment provisions are intended to ensure that neither the RMB nor any of its members take any collective action with respect to rates for the transportation of exempt commodities.

IV

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The only alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial cost to the United

States and is not warranted since the proposed Final Judgment provides all the relief that the United States sought in its Complaint.

V

REMEDIES AVAILABLE TO PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages it has suffered as well as costs and reasonable attorney fees. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the Final Judgment has no prima facie effect in any lawsuit which may be brought against the RMB.

VI

PROCEDURES AVAILABLE FOR COMMENT ON THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person may submit written comments on the proposed Final Judgment to Gary R. Spratling, Chief, San Francisco Field Office, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102, within the sixty day period provided by the Act. The comments and the government's responses to them will be filed with the Court and published in the Federal Register. All comments will be given consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to its entry. The proposed Final Judgment itself provides that the Court will retain jurisdiction over this action and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification or enforcement of the Final Judgment.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C.

§ 16(b) were considered in formulating this proposed Final Judgment. Consequently, none are filed herewith.

Dated:

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