DEPARTMENT OF JUSTICE
Antitrust Division

ANNE K. BINGAMAN
Assistant Attorney General

Main Justice Building
10th and Constitution Ave., N.W.
Washington, D.C. 20530
(202) 514-2401 / (202) 616-2645 (Fax)

[issued February 22, 1995]
Kevin J. Arquit, Esquire
Rogers & Wells
607 14th Street N.W.
Washington, D.C. 20005-2011

Dear Mr. Arquit:

This letter responds to your request for a statement by the Department of Justice, pursuant to the Business Review Procedure, 28 C.F.R. § 50.6, of its antitrust enforcement intentions with respect to a series of discussion forums that the Intermodal Council of the American Trucking Associations, Inc. ("ATA") proposes to convene for participants in the intermodal freight transportation industry. The stated purpose of the proposed forums is to eliminate inefficiencies in the way that transportation carriers participate in intermodal freight movements.

Intermodal freight transportation involves the exchange of trailers or containers of freight between different modes of transportation, e.g., ocean carriers, motor carriers, railroads, and air cargo carriers. To accomplish an intermodal haul, all of the carriers that participate in the haul must interact with one another. In most cases, intermodal trailers and containers are owned by the railroads, ocean carriers, or shippers. Thus, each individual motor carrier must negotiate agreements (called Equipment Interchange Agreements) with the owners of intermodal equipment to govern the motor carriers' use of the equipment. Equipment Interchange Agreements provide motor carriers with incentives to make timely pick-ups and deliveries and address other issues, such as the risk of loss or damage to the freight and levels of insurability. Similarly, the participants in an intermodal haul must adopt rules and procedures for the transfer of freight between carriers at the over 200 intermodal freight terminals in the United States.

Your request states that there are currently substantial inefficiencies in the way carriers participate with one another in connection with intermodal hauls, making intermodal transportation a less attractive alternative for shippers than it could be. Because there are over 2,000 intermodal motor carriers in the U.S., all with diverse operations, you indicate that it is very difficult for the owners of intermodal equipment (e.g., the railroads) to identify and incorporate into their Equipment Interchange Agreements the most efficient terms and industry practices. Moreover, you have indicated that it is equally difficult for the owners of intermodal terminals to arrange for the smooth and efficient transfer of freight between intermodal partners. The result is inefficient use of intermodal equipment, higher costs for intermodal carriers, and higher prices for shippers.

You have stated that the purpose of the ATA Intermodal Council's proposed discussion forums is to address these inefficiencies by identifying industry best practices for carriers and shippers to consider or implement on an individual basis. You have further represented that invitees to the proposed forums will include representatives of all members of the intermodal transportation community, including the Office of Intermodalism at the U.S. Department of Transportation, the Class I railroads, ocean carriers, intermodal motor carriers, shippers, and representatives of the carriers' and the shippers' trade associations. At the

various forums, speakers representing these groups will identify inefficiencies and suggest efficient best practices. An open discussion among all forum participants will be encouraged to solicit views on equipment interchange, utilization and terminal management practices.

The ATA Intermodal Council will put in place several procedural safeguards to ensure that its forums do not produce any anticompetitive effects. Representatives of all interested parties, including the shipper customers and their trade associations, will be invited to participate in all forums. An agenda will be prepared for each forum, and that agenda will be reviewed in advance of the forum by experienced antitrust counsel. There will be no discussions at forums beyond the scope of the reviewed agenda, and forum participants will limit their discussions at all times to ways to achieve efficiencies and cost savings in the intermodal freight transportation industry. The Council will publish -- first in draft form for comment by all participants -- a report of the ideas and efficient best practices identified at each forum and make that report available to all interested parties. Freight rates or other competitively sensitive topics will not be discussed at any forum or in the Council's published reports.

After careful consideration of the information that you have provided, the Department of Justice has concluded that it has no present intention of challenging under the antitrust laws the ATA Intermodal Council's proposed discussion forums for the intermodal transportation industry. The proposed forums will be strictly limited to identifying inefficiencies and best practices in the intermodal transportation industry. Any implementation of recommended practices by intermodal carriers or shippers will be on a unilateral and voluntary basis, and all intermodal contracts and all other agreements among intermodal shipping partners, including Equipment Interchange Agreements, will continue to be the subject of individual negotiation by the relevant parties. In light of these circumstances, the proposed conduct does not appear to raise risks to competition, or constitute an illegal agreement under the antitrust laws.

Moreover, the proposed discussion forums could have procompetitive effects by improving the efficiency of intermodal service in transportation markets. If the proposed ATA Intermodal Council forums serve to reduce inefficiencies in intermodal service, the forums could make intermodal transportation a more effective, lower cost alternative for shippers.

This letter only expresses the Department's current enforcement intention, and is based on the information and assurances that you have provided. In accordance with our normal practices, the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest if actual operation of any aspect of the proposed conduct 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 together with any other information you supplied and this letter will be made available to the public 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.

Sincerely yours,

/s/
Anne K. Bingaman
Assistant Attorney General