



DEPARTMENT OF JUSTICE  
Antitrust Division

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James R. Weiss, Esq.  
K&L Gates LLP  
1601 K Street, N.W.  
Washington, D.C. 20006-1600

Re: Business Review Request: The Reliance Network

Dear Mr. Weiss:

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 your clients, Averitt Express, Inc., DATS Trucking, Inc., Lakeville Motor Express, Inc., Land Air Express of New England, Pitt Ohio Express, Canadian Freightways, and Epic Express (collectively, the "Applicants") for the Reliance Network, a joint venture that provides less-than-truckload ("LTL") freight transportation services, to engage in certain collaborative activity that is beyond the scope of a pooling agreement approved by the Surface Transportation Board ("STB").

The Applicants are all LTL motor carriers who hold authority to transport general commodities. You represent that each serves a distinct geographic region in North America with insignificant overlap among their respective operations. The Applicants previously applied to the STB for approval of an agreement to pool their operating territories into a service network – the Reliance Network – covering the continental United States. Under the pooling agreement, the Reliance Network would coordinate operations, sales and marketing efforts for shipments of goods covering at least two Applicants' respective service regions. Each Applicant would continue to operate its regional LTL business independently, so that shipments originating and ending in a single Applicant's service territory would not involve the Reliance Network. On January 31, 2008, the STB approved the pooling agreement,<sup>1</sup> the effect of which is to exempt the Applicants from the antitrust laws for activities specified in the agreement. See 49 U.S.C. § 14302(f).

You contend that the STB decision authorizes only the pooling of services, traffic and

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<sup>1</sup> STB Docket No. MC-F-21023, *Averitt Express, Inc., DATS Trucking, Inc., Lakeville Motor Express, Inc., Land Air Express of New England, Pitt Ohio Express, Canadian Freightways, and Epic Express–Pooling Agreement*, STB Decision (Jan. 31, 2008).

revenues, and that successful collaboration by the Applicants requires a certain level of coordination beyond those activities delineated in the STB decision. The Applicants have executed a Supplemental Agreement to the Reliance Network Pooling Agreement (“Supplemental Agreement”) that provides for geographic limitations on participants’ operations and for nationwide or multi-regional pricing.<sup>2</sup> You have requested the Antitrust Division to issue a statement regarding its enforcement intentions with respect to the business activities proposed in the Supplemental Agreement.

Collaborative Pricing: The Supplemental Agreement allows a single member carrier to negotiate a bid on behalf of the Reliance Network in those cases where a customer has a variety of shipping needs originating in multiple regions. Under the procedures set forth in the Supplemental Agreement, the Reliance Network member carrier that receives a request or bid for national or multi-regional services (*i.e.*, shipments originating in more than one operating region) will communicate with the other participating carriers to determine an acceptable pricing level. You represent that such discussions will likely involve selecting an appropriate base rate to apply to the customer’s shipping needs and an acceptable discount off that base rate. A single member carrier will then have the authority to negotiate on behalf of the Reliance Network.

You assert that this collaborative pricing provision creates efficiencies by allowing the Reliance Network to solicit business like a fully integrated company. In the LTL business, shippers traditionally have contracted with carriers that operate in the region where the shipment originates. The originating carrier arranges to pick up the shipment, issues the invoice, and delivers the shipment if the destination is within the region the originating carrier serves. If final delivery is in another region, the originating carrier transfers the shipment to another carrier for final delivery (*i.e.*, through an “interline” arrangement). The originating carrier, however, maintains the relationship with the shipper. You represent that without the collaborative pricing provision, multiple Reliance Network members would need to bid on accounts with shipments originating in multiple regions. The Reliance Network, therefore, would not be able to compete as effectively with nationwide LTL carriers or firms providing modes of transportation that can offer single, uniform responses to nationwide or multi-regional bids or requests for service. The collaborative pricing provision allows a single Reliance Network member to negotiate with a potential customer on behalf of the entire joint venture. You assert that this could be the Reliance Network member having the best relationship with a potential customer, but this is not required.

You also assert that the Supplemental Agreement limits the scope of the collaborative pricing provision. The collaborative pricing discussions would be strictly limited to responding to service requests covering multiple shipments originating in more than one region. When shipments in a service request originate in only one region, the individual carrier for that region will negotiate pricing with its customer. The other carriers will not have input into those pricing negotiations. Other carriers participating in a given shipment (*i.e.*, delivering a shipment that originated in a separate region) will accept the pricing and agreed-upon revenue divisions. You

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<sup>2</sup> The proposed Supplemental Agreement contains additional provisions covering the management of the joint venture, including certain record-keeping and dispute resolution terms, that do not raise antitrust issues.

also assert that individual carriers will independently price shipments that operate solely within that carrier's territory; *i.e.*, that originate and end within one region.

Geographic Limitations on Participants' Operations: The Supplemental Agreement defines operating territories for member carriers and sets limits on the ability of each member carrier to expand its operating territory. Under the Supplemental Agreement, if a member carrier seeks to expand beyond its defined operating territory, it must first give 90 days advance notice to all other members of the Reliance Network and obtain consent. If consent is not granted, the Reliance Network may ask the member carrier seeking to expand to withdraw from the joint venture. The carrier would also retain the unilateral ability to withdraw from the joint venture by providing 180 days notice to the other members if consent is not granted.

You stated that this provision is designed to protect the interests of the joint venture for the benefit of all its members by ensuring that each member carrier advances the interests of the joint venture rather than usurp collective opportunities. You stated that the provision is crucial because the member carriers would not otherwise provide nationwide service through the Reliance Network unless each member was assured it would also not be competing against its network partners in its own historical service area.

You state that the Applicants' collaboration would not permit the exercise of market power. You represent that the relevant market within which to analyze the proposed conduct includes numerous modes of transportation and is much broader than LTL freight transportation services. However, even within a LTL market, you represent that, although precise market share numbers are not available, the Applicants together have far less than 20 percent of total domestic motor carrier LTL shipments, that each Applicant has no more than eight percent of the shipments within its particular region, and the joint venture's market share would be less than 20 percent in each of the individual geographic regions in which the Applicants operate.<sup>3</sup>

In addition, you assert that the Reliance Network can achieve many procompetitive efficiencies. You contend that the Applicants together can overcome the shortcomings of traditional interline agreements between carriers, which typically cover shipments of goods across fragmented service areas. In order to achieve these efficiencies, the Applicants have asserted that they plan to coordinate and combine information technology (to trace and track shipments, process claims, and establish transit times, among other things); operations (by establishing optional joint interchange facilities); sales and marketing efforts (by developing an internal and external communication plan, training representatives for the partnership, and instituting ways to cross-sell and promote each others' services); and administration. An important element of this effort is the sharing of key information and internal systems of the

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<sup>3</sup> Section 4.2 of the *Antitrust Guidelines for Collaborations Among Competitors Issued by the Federal Trade Commission and U.S. Department of Justice* (2000) provides that "[a]bsent extraordinary circumstances, the Agencies do not challenge a competitor collaboration when the market shares of the collaboration and its participants collectively account for no more than twenty percent of each relevant market in which competition may be affected." You note that there may be traffic lanes between the Applicants' regions in which their shares of traffic may exceed 20 percent.

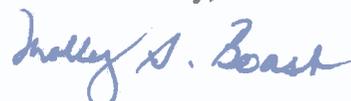
participating carriers, including the sharing of customer lists and other confidential information. You assert that the members of the Reliance Network together will be able to provide comprehensive, nationwide service in competition with large, national LTL carriers and other modes of transportation. You also contend that the joint venture will allow the Applicants to make more efficient use of their resources in various ways, leading to reduced costs and the ability to offer more competitive services.

Based on the representations made in your submissions, the documents and information submitted in support of your request, and the information obtained during our investigation, the Department has no present intention of challenging the conduct contemplated by the Supplemental Agreement. You have asserted that the geographic restrictions and price collaboration provisions in the Supplemental Agreement are necessary for the multi-region Reliance Network to operate efficiently to compete on a national scale. To the extent this cooperation creates an additional option for customers, these efforts could be procompetitive. We, however, would be concerned if the operation of the Supplemental Agreement were likely to cause anticompetitive harm by eliminating significant current or potential competition among the members of the Reliance Network. You have represented that the Supplemental Agreement is not likely to cause such an effect because the individual applicants are not competitors or reasonably likely to be potential significant competitors within their respective regions or on a multi-regional basis (absent the Reliance Network). Moreover, it appears that none of the individual members has a significant share of LTL shipments within the respective regions in which they operate. We also note that if a member seeks consent to expand beyond its defined operating territory, special caution may need to be exercised to prevent collaborative rate-setting between members who may become actual competitors.

This letter expresses the Division's current enforcement intention solely with respect to the proposed business activities outlined in the Supplemental Agreement and is predicated on the accuracy of the information and assurances that you have presented to us. In accordance with its normal practice, the Division reserves the right to bring any enforcement action in the future if the actual activities of the Reliance Network or its members prove to be anticompetitive in purpose or effect in any market.

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,



Molly S. Boast